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*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

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BELFAST CROWN COURT

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THE QUEEN

-v-

SAMUEL FRANCIS MORRISON

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HART J

[1] The defendant is charged with the murder of his brother George Morrison on 6 July 2009. His trial is due to start on 1 November 2010. On Friday 17 September 2010 he appeared before the court and informed the court that he had discharged his previous solicitors and wished to approach a new solicitor. He has been in receipt of a defence certificate for a solicitor and counsel, and after hearing the reasons he gave for this course of action, I refused to assign him a new solicitor and counsel. I said that I would give the reasons for my decision today, and I now do so.

[2] Before turning to the facts of the present application it is necessary to consider the law and principles which apply in circumstances such as those which arose in the present case. Article 29 of the Legal Aid Advice and Assistance (Northern Ireland) Order 1981 at sub-paragraph (1) provides that:-

> "any person returned for trial for an indictable offence shall be entitled to free legal aid in the preparation and conduct of his defence at the trial and to have solicitor and counsel assigned to him for that purpose in such manner as may be prescribed by rules made under Article 36, if a Criminal Aid Certificate is granted in respect of him in accordance with the provisions of this article."

[3] As McCollum LJ observed in R v Winward [1997] NIJB 187:-

> "The Order therefore envisages that any person tried on an indictable offence whose means are insufficient to enable him to obtain legal aid shall be entitled to free legal aid."

In recent years, as Winward demonstrates, there has been a practice on the part of some defendants of changing their legal advisors, in some cases more than once, and expecting to be provided with fresh legal representation at the public expense. In Winward McCollum LJ concluded that the court has a discretion whether a further defence certificate would be granted, and that in order to exercise the court's discretion in an appropriate way "the court is entitled to know the circumstances in which the original defence certificate has ceased to be effective." He continued:-

> "..if the court took the view that the defendant had capriciously or unreasonably discharged his legal advisors then the court would be slow to grant a further defence certificate."

[4] In the course of his judgment he adopted the observations of Lawton LJ in R v Kirk (Maurice) (1982) 76 Cr. App. R. 194 at 198 when dealing with a similar situation:

> "It follows therefore that when somebody does want to get rid of his legal aid representation the court is under no obligation whatsoever to assign new legal aid representation."

[5] McCollum LJ concluded:-

> "While the Court has a duty to ensure that every defendant is adequately represented a defendant may lose his right to legally aided representation if he has acted unreasonably or capriciously in terminating the services of the legal team assigned to him."

[6] In R v Ulcay [2008] 1 Cr. App. R. 27 Judge P (now Lord Judge CJ) considered a similar situation. It is unnecessary to refer to the circumstances of that case, however in the course of the judgment he stated:-

> "Claims of a breakdown in the professional relationship between lawyer and client are frequently made by defendants, and they are often utterly spurious. If the judge intends to reject an application for a change of legal representative he may well explain to the defendant that the consequence may be

> that the case will continue without him being represented at pubic expense. The simple principle remains that the defendant is not entitled to manipulate the legal aid system and is no more entitled to abuse the process than the prosecution. If he chooses to terminate his lawyer's retainer for improper motives, the court is not bound to agree to an application for change of representation. What we find in practice in most cases is that courts faced with this problem are usually prepared to agree to at least one change of representative, provided they are proposed in reasonable time before the trial, and before substantial costs have already been expended in preparation of the defence case. In the end, however, the ultimate decision for the court is case and fact specific, and it does not follow from the repeated indication of the mantra 'loss of confidence' that an application will be granted."

[7] These principles have been propounded for several reasons. When a defendant is granted a fresh grant of legal representation, particularly when the trial is imminent or even underway as has happened on a number of occasions in recent years, the consequences are very significant. First of all, a very considerable amount of public money is wasted because the lawyers who had been retained by the defence in the case to date are entitled to be paid for the work they have done, as indeed are the counsel for the prosecution. Particularly if the application is brought during the trial, this can involve a very considerable amount of money depending upon the nature of the charges. Secondly, the progress of the case to trial, or the trial itself, will be very considerably disrupted, and scarce judicial and court time wasted. If the trial is at hearing it may well be necessary to adjourn the case and start again. An example of this is R v Gorski where several weeks into the trial in 2009 the defendant, who was a Polish national with no English and faced an equally serious charge based on complex scientific evidence, was permitted to have fresh representation at the public expense. Thirdly, when cases are adjourned this results in very considerable inconvenience to witnesses who have to come back on another occasion, and in some cases go through the process and stress of giving evidence again. Fourthly, the time devoted to the first case by the court has been wasted, and other cases which could have been dealt with when the first trial was underway, or which will have to be adjourned because of the necessity for a re-trial, are also adversely affected. The defendants and witnesses in those cases have to await a new date to be made available, and this can involve serious inconvenience and stress to a great many people. Whilst the courts are under an obligation to ensure that a defendant receives a fair trial, defendants must appreciate that

resources are not infinite, and that unreasonable and capricious decisions to seek new legal representatives will not be countenanced by the courts.

[8] From the authorities the following principles emerge.

(i) When a defendant who has been granted legal aid representation at public expense wishes to change that representation the court has a discretion whether fresh representation at public expense should be granted.

(ii) When a solicitor has been assigned under a defence certificate and has instructed counsel, then solicitor or counsel (as the circumstances require) has a duty to explain to the court why they are unable to carry out their assigned duties of representation so that the court will have the information necessary to properly exercise its discretion whether to grant a new defence certificate, or to allow the case to proceed in the absence of legal representation.

(iii) When a defendant and/or his advisors inform the court that a change of representation is being sought, whilst the detail of discussions between the defendant and his legal advisors is a privileged matter, or the disclosure of it might be harmful to the defendant's defence, a general statement of the defendant's reasons for the withdrawal of instructions would not breach that privilege nor prejudice his trial and ought to be given to the court in as much detail as possible.

(iv) If the court concludes that the defendant has capriciously or unreasonably discharged his legal advisors then the court will be slow to grant a further defence certificate, and is not obliged to do so.

(v) A change of representation which is not proposed a reasonable time before the trial, and is not proposed before substantial costs have already been expended in the preparation of the defence case, is unlikely to be favourably regarded.

(vi) The ultimate decision for the court depends upon the circumstances of each case, and it does not follow that an assertion of "loss of confidence" will result in an application being granted.

(vii) If, as a result of a capricious or unreasonable decision on the part of the defendant to discharge his legal advisors, the defendant is deprived of legal representation at his trial, then the defendant must face the self-inflicted consequences of his own actions.

[9] The application made by the defendant that he should be permitted to engage a new set of legal advisors has to be viewed against the background of the circumstances of this case. If granted, this would have been the fourth set of legal representatives provided to the defendant at public expense. He was

first remanded in custody on 9 July 2009, and from then until 13 January 2010 was represented by Archer Heaney and Magee solicitors. It appears that at the remand stage he was permitted to change his legal representation for the first time, because he was represented by Kevin Winters and Co from 14 January 2010 to 22 April 2010. He was committed for trial on 11 March 2010, and therefore was represented by Kevin Winters and Co for two months before, and approximately six weeks after, he was sent to the Crown Court for trial.

[10] On 16 April 2010 his case was listed for arraignment but the defendant did not appear, although his solicitor and counsel were present. The arraignment was adjourned to 23 April 2010 when the defendant appeared. It then emerged that he had changed his legal advisors for the second time, and an application was granted for the transfer of the defence certificate to Edwards and Co, who were therefore the third firm of solicitors to act on his behalf at public expense since his arrest. The defendant's arraignment was adjourned to 30 April as Edwards and Co. had not yet received the papers.

[11] On 30 April 2010 he was arraigned and pleaded not guilty, and the usual enquiries were made by the court as to what steps the defence required to take to prepare the case for trial, and the case was listed for review on 28 May.

[12] The accused came before the court again on 14 May 2010 in relation to a breach of bail, he was re-admitted to bail on the same terms and the time for extension of the defence certificate was extended to 21 May. I directed that the accused was to attend on 28 May because by then the court had received a letter from Kevin Winters and Co which took issue with the assertions made by the defendant on 23 April when the court asked the defendant why they were not properly dealing with his case when the defence certificate was transferred to Edwards and Co.

[13] On 28 May I gave Mr Winters of Kevin Winters and Co the opportunity to state in open court his side of the dispute in view of the serious nature of the allegations which the defendant had made about the way his firm had been preparing the defendant's defence.

[14] On 28 May, and in the presence of the defendant, the court, as is usual at a pre-trial review, asked Messrs Edwards and Co. in detail what steps had been taken on behalf of the defendant to prepare his defence. The court was informed that a number of steps had been taken or were contemplated. These were:-

(i) Three third party disclosure applications in relation to medical and psychiatric notes and records relating to the deceased had been lodged with the court.

(ii) A further third party disclosure notice in relation to a significant witness, Bridget Kelly, was to be brought once the PPS provided the defendant's solicitors with her GP details.

(iii) A report on the deceased's psychiatric condition was to be obtained from a consultant psychiatrist who had indicated how long it would take to produce the report once the Legal Services Commission (LSC) authority was forthcoming. That authority depended on the psychiatrist providing a fee note.

(iv) A consultant psychologist, Professor Davidson, had been retained to examine and report upon the defendant.

(v) LSC authority was required to instruct Messrs Borers in relation to certain forensic enquiries.

(vi) A pathologist, Professor Cassidy, was to be retained on behalf of the defendant and again LSC authority was awaited.

As is the usual practice the court gave various directions as to when these reports were to be ready. As already stated the defendant was present and so was aware of exactly what was being done by his solicitor on his behalf. The case was fixed for further review on 25 June.

[15] On 7 June the defendant was produced to the court having appeared before Dungannon Magistrates' Court for a breach of bail on 5 June, and was remanded in custody.

[16] On 25 June the matter was reviewed when various directions were given by the court in the light of the progress which the defence had in relation to obtaining expert reports. In particular the court directed that all defence reports were to be lodged by 4.30 pm on 3 September, listed the trial for 1 November, and listed the case for further review on 10 September.

[17] At the review on 10 September the defendant was present. His solicitors informed the court of the progress in relation to various reports that were being received, and since that date the following defence reports have been served on the prosecution and delivered to the court:

(i) Dr Harbinson, a consultant psychiatrist, has reported on the deceased's psychiatric condition in the light of the medical evidence made available to her.

(ii) Keith Borer consultants have reported on the blood distribution and other relevant matters.

(iii) Professor Davidson's report on the defendant's intellectual ability, and the effect upon him of the quantity of alcohol which he asserted he had consumed at the relevant time.

(iv) A report from Professor Cassidy, and a further psychiatric report from Dr Fred Brown, were still outstanding, and the court directed them to be lodged by 4.30 pm on 1 October if relied upon, confirmed the trial date for 1 November, and fixed the case for further review on 8 October.

[18] The case was then listed again at the suggestion of the defendant's solicitors who informed the court that the accused had notified them by letter dated 13 September that he wished to change his legal advisors. On 17 September the defendant was produced and I directed that he gave evidence on oath. Before he did so the court explained to him that in order for the court to decide whether or not he should be permitted to have further legal representation at public expense to conduct his defence it would be necessary for him to explain why he was changing his solicitors. It was also explained to him that he was not under an obligation to disclose matters which were confidential between himself and his solicitor. The defendant produced a lengthy letter which I read, and I also had the benefit of a letter sent to the defendant by Ms Rice of Edwards and Co setting out a number of what she understandably described as very serious allegations by the defendant about the manner in which she has conducted his defence. It also appeared from his evidence that he was dissatisfied with his junior and senior counsel.

[19] Having considered the defendant's evidence, the contents of his letter to the court, and the history of the case to date I was satisfied that so far as the court was in a position to judge Ms Rice had thoroughly and energetically taken all the necessary steps to prepare the defendant's defence for trial. He appeared to be concerned that she had not spoken to him more frequently, but he admitted that she had two meetings with him, as well as a third meeting at which junior and senior counsel were also present. As will be apparent from the account I have given of the various review hearings which had taken place since Messrs Edwards and Co took over the defendant's defence there can be no doubt that the various expert witnesses whom the defendant's legal advisors consider should be retained to assist the defendant's defence have been approached, and their reports obtained, in as timely a fashion as possible. The defendant referred in both his evidence and in his letter to the court to a number of concerns which he has about various matters such as his solicitors not posting letters to MPs and matters of that sort. These are trivial matters, and could not justify his implied assertion that he had lost confidence in his solicitors. To judge by Ms Rice's letter to him which was presented to the court the defendant has made other allegations about her conduct of his case, and it is sufficient to say that these appear to be bizarre.

[20] I concluded that the defendant's explanation why he wished to change his solicitors was wholly without merit. He has been present at a number of reviews and has heard the steps his solicitors have taken on his behalf to prepare his defence. The reasons he advances for no longer having confidence in Ms Rice are spurious. I am satisfied that he is not justified in seeking to change his legal representation, is engaged in manipulating the processes of the court, and his decision to change his solicitors for the third time is capricious and unreasonable. If his application were to be granted it would result in him being represented by a fourth firm of solicitors, and very probably a new set of counsel, at public expense. This is entirely unjustifiable. Nothing has been advanced by the defendant to justify my exercising my discretion to grant further legal representation at public expense and his application was therefore refused.

[21] I explained to the defendant that the matter would be reviewed again in a week's time, and that in the interim there appear to be three options open to him. The first is that he conducts his own defence at his trial which is several weeks away, giving him sufficient time to prepare to represent himself. The second is that he could approach a firm of solicitors who would be prepared to act for him without remuneration as I presume he does not have the means to pay solicitors, counsel and the various experts his defence may require. The third is that he compose his differences with Ms Rice who, in her letter of 10 September to him, made it abundantly clear that she was only prepared to continue to represent him if the defendant withdrew the allegations he had made against her.