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Judgment: approved by the Court for handing down | *Delivered:* **03/04/2014**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

R

v

JOHN CHRISTOPHER WALSH

Before Morgan LCJ and Girvan LJ

MORGAN LCJ (ex tempore)

Introduction

[1] This is an application to extend the time in relation to two appeals from decisions of Mr Justice Weatherup delivered on 18 June 2012 and 30 October 2012.

[2] The background is that the applicant was convicted at Belfast Crown Court on 7 December 1992 on a charge of possessing a coffee jar bomb with intent, contrary to Section 3 of the Explosive Substances Act 1883. The trial judge was His Honour Judge Petrie and he was sentenced to 14 years' imprisonment. On 7 January 1994 the Court of Appeal dismissed the applicant's appeal, the judgment being delivered by Lord Justice MacDermott. On 27 March 2000 the Criminal Cases Review Commission referred the case back to the Court of Appeal. On 7 January 2002 the Court of Appeal dismissed the appeal, the judgment being delivered by Carswell LCJ. In January 2007 in the Court of Appeal Kerr LCJ granted leave to reopen the appeal and on 10 March the Court of Appeal allowed the appeal and quashed the conviction. This then led to an application for compensation by the applicant although he has at all times made it clear that his principle interest is in vindication.

[3] His application for compensation was refused as a result of which he initiated judicial review proceedings which culminated in a judgment from Weatherup J given on 9 March 2011 where he dismissed the application insofar as it applied to judicial review of the decision of the Chief Constable but otherwise adjourned the application in light of the pending decisions of the Supreme Court in McCartney and MacDermott's application. The matter again came before Weatherup J on 18 June

2012 where he analysed the remaking of the decision by the Department on the application and came to the view that there were a number of respects in which the Department's review was incomplete. He accordingly decided at paragraph 46 of the judgment to refer the matter back to the Department to re-consider the decision in light of his judgment. The applicant complains that his counsel and solicitors had indicated to him that his case would be presented on the basis that he was uncontrovertibly innocent in relation to the charges (the first category) whereas he recognises that the submissions that were made to the learned trial judge accepted that the applicant might well have fallen into the second category which is where the fresh evidence was such that had it been available at the time of trial no reasonable jury could properly have convicted the applicant.

[4] It appears that there was dissatisfaction expressed by him with his team of solicitors as a result of which he then made a personal application before Weatherup J which appears to have commenced in or about September 2012 and was dealt with on 30 October 2012. The applicant sought what he termed a writ of coram nobis which essentially was a writ of error which was the mechanism by which a party was enabled to call into question or effectively appeal a decision of the Queens' Bench Division. The writ has not been in use in effect since the Judicature Act 1875 when proper provisions in relation to appeal were put in place and has fallen into desuetude, the point being that it is a procedural opportunity which is in effect no longer available because there is now in place a mechanism by way of appeal.

[5] So by this stage the applicant had unhappily felt himself dissatisfied with the remedy that he was given as a result of Mr Justice Weatherup's decision because he had not upheld his entitlement to be treated as innocent and therefore compensated and he was dissatisfied with the fact that Mr Justice Weatherup had found that he had no jurisdiction to revisit that decision. The applicant then pursued his next port of call which was the Bar Council with a view to complaining about the conduct of those who had represented him. He received a letter dated 13 December 2012 in which the Bar Council's Complaints Professional Conduct Committee indicated that it did not accept that any case was made out against any of the counsel. Thereafter, it appears that the applicant did not consider that he had an appeal which was worth appealing in the sense that it was likely to be one in which he could succeed. He lodged an application with the European Court of Human Rights on 3 May 2013 having recognised that he had gone as far as he could. It then appears that, having become aware that his solicitors were paid by legal aid the costs which already had been ordered to be paid in respect of the hearing before Weatherup J in June 2012, he concluded that this reopened the door in the sense of enabling him to contend that there was fraud on the part of his professional representatives, a claim for which there frankly appears to be no evidence on the face of the papers before us.

Consideration

[6] So far as the extension of time to appeal is concerned that has been comprehensibly considered in the case of Magill v The Ulster Independent Clinic

and others in a judgment delivered by Lord Justice Girvan where he noted that the court has power to extend time either before or after the expiry of the proscribed time limit. It applies to the Court of Appeal as well as to the High Court and enables the Court of Appeal to extend time on application made before the expiry of the appeal period without prejudice to its wider powers to extend after the expiry of the appeal period. The principles applicable in relation to such a decision were set out by Lowry LCJ in Davis v Northern Ireland Carriers where he said that:

> "Where a time limit is imposed by statute it cannot be extended but where the time is imposed by rules of court the court must exercise its discretion in each case and the first of the principles was whether the time was sped."

[7] The time in this case was well sped in that the period for appeal in each case was 6 weeks and at the very least a period of 9 months has passed in relation to it. That is a factor against the application because as Lord Lowry said a court will where the reason is a good one look more favourably on an application made before the time is up. Where the time has expired the court must take into consideration the extent to which the party applying is in default which is considerable in this case. Thirdly, the effect on the opposite party of granting the application in particular whether he can be compensated by costs, that would depend upon the ability of Mr Walsh to be able to pay them, which we have not had evidence on and therefore that ought not to be held against him. Fourthly, whether a hearing of the merits has taken place and would be denied by refusing an extension; this is a case where there has been a hearing on the merits before Mr Justice Weatherup. Fifthly, whether there is a point of substance which means a legal point of substance which could not otherwise be put forward and in many respects this is a case in which Mr Walsh wants to re-argue the question of remedy which was put before Mr Justice Weatherup in circumstances where Mr Justice Weatherup had carefully examined whether this was a case which satisfied the test of establishing that the applicant was a category one case within the formulation that was put forward by Lord Dyson. Sixthly, whether the point is of general and not merely particular significance; again Mr Walsh in his own submission said that this was an example of something which might not arise for another generation or even more so it is hard to see that the point is of general significance. Seventhly, of course, that the rules are there to be observed.

[8] Mr Walsh considered that the door opened for him in relation to the pursuit of a successful appeal by virtue of the fact that costs were paid to his lawyers but it is difficult to see how that really assists him because the order in relation to those costs was already made as a result of the decision of Weatherup J in June 2012 and therefore they already had the benefit of a costs order which was of value to them and if he had wanted to pursue his appeal it seems to us that he would have been in a position to do so then. Mr Walsh has indicated that he was not aware of the order for costs made in favour of Mr Winters but that he was aware that Mr Winters was going to be paid by Legal Aid and therefore it is perfectly clear that Mr Walsh was

aware from at least July which was when he said he had this conversation that Mr Winters and his team were going to be compensated and recompensed for the work that they had done and therefore the costs order was a matter that was of value to them. It would have been perfectly open to Mr Walsh at that stage to have pursued the issue that he seeks to pursue here.

[9] But as I have said there is not material that we can see in terms of the submissions which were made to the various courts or the material which has been advanced by Mr Walsh which indicates that counsel on his behalf has done anything other than present a perfectly, proper, professional approach to what was a difficult case for counsel and undoubtedly a difficult personal case for Mr Walsh and we recognise that.

[10] Now it seems to us in those circumstances that, having applied the guidance in Magill and Davis v Northern Ireland Carriers, this is not a case where we should extend time and accordingly the application to extend time is refused.