

Neutral Citation: [2016] NIQB 67

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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

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**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

BEFORE A DIVISIONAL COURT

Stevenson's (Ryan) Application (Judicial Review) [2016] NIQB 67

**IN THE MATTER OF AN APPLICATION BY RYAN STEVENSON
FOR JUDICIAL REVIEW**

Before: Gillen LJ, Weatherup LJ and Weir LJ

WEATHERUP LJ (Delivering the judgment of the Court)

[1] This is an application for Judicial Review of a decision of the Northern Ireland Prison Service, made on 12 October 2015, to calculate the Early Release Date ("ERD") of the applicant from prison by excluding those days when the applicant had been required to sign bail at a police station prior to being charged with the offence in respect of which he was ultimately sentenced to a term of imprisonment. Ms Quinlivan QC and Mr Halleron appeared for the applicant and Mr McGleenan QC and Mr Daly appeared for the respondent, the Northern Ireland Prison Service.

[2] On 17 March 2013 the applicant was arrested on suspicion of burglary. On 24 February 2014 he was charged with the burglary. He was released on police bail on condition that he reported to the police station at certain times. He appeared before Lisburn Magistrates' Court and was sentenced to 6 months' imprisonment for the offence of burglary. On 26 August 2015, on appeal to Craigavon County Court, the sentence of 6 months' imprisonment was affirmed.

[3] The respondent calculated the applicant's ERD as 23 November 2015. The applicant challenged the calculation as it made no allowance for two occasions on which the applicant had been required to attend the police station as a condition of his bail. The issue on this application for Judicial Review is whether and in what manner attendance at a police station as a condition of bail should be taken into account to reduce any sentence of imprisonment subsequently imposed for the offence in respect of which the prisoner was on bail.

[4] The relevant dates are as follows:-

(a) 17 March 2013. The applicant was arrested for burglary and interviewed by police. There was insufficient evidence to charge the applicant. He was released on bail pending receipt of forensic evidence. The total period of police detention was 8 hours 52 minutes. The respondent credited the applicant with one day in custody in respect of this period of detention.

(b) 9 September 2013. The applicant attended at the police station as a condition of bail. The forensic evidence was not then available and the applicant was re-released on police bail. The total period involved was 38 minutes. No credit was given for this period.

(c) 3 December 2013. Again the applicant attended at the police station and as the forensic evidence remained outstanding he was re-released on police bail. The total period involved was 8 minutes. No credit was given for this period.

(d) 24 February 2014. The applicant attended at the police station. He was charged with burglary. He was released on bail to attend Lisburn Magistrates' Court. The total period involved was 23 minutes. The respondent credited the applicant with one day in custody in respect of this period of detention.

[5] The approach of the Prison Service was to give credit for periods in 'police detention' and this included periods when a person was arrested and when a person was charged. For ease of administration the respondent gave credit of one day in the calculation of the period in custody for each part of a day when a person was in such police detention. The respondent did not regard a person who attended the police station as a condition of his bail as being in police detention and gave no credit for such attendances.

[6] The affidavit of Julie Clingan, Head of the Custody Unit of the respondent, explains how they approached the task of giving credit for periods in police detention. When a prisoner comes directly into the respondent's custody from police custody a form is provided by police which identifies the days spent in police custody. The respondent then credits those days against the prisoner's sentence.

However when a prisoner surrenders himself directly into the custody of the Court and then enters the respondent's custody, the respondent relies on the prisoner and/or the prisoner's solicitor for information as to previous police detention. Should the prisoner and/or the prisoner's solicitor be unable to produce evidence to that effect the respondent obtains the information from the Police Prison Liaison Officer.

[7] In the present case police provided to the respondent the information that the applicant was held in police custody on 17 March 2013 and 24 February 2014 and hence the respondent reduced the sentence by those 2 days only.

[8] The applicant contends that credit should also be given for attendances at the police station as a condition of bail because such attendances amount to 'police detention'. Further the appellant contends that the credit given for such attendances should also be one day for each such attendance. The applicant also challenges the respondent's contention that it was not the respondent's practice to give credit for attendance at police stations in answer to bail, citing instances when such credit is said to have been given.

[9] Article 4 of the Criminal Justice (Northern Ireland) Order 2003 provides that a person released on bail should be under a duty to surrender to custody. Surrender to custody means surrendering according to the requirements of the grant of bail into the custody of the Court or the police station or the Governor of a prison at the appointed time and place.

[10] The Court is satisfied that the legislation leads to the conclusion that attendance at a police station as a condition of bail amounts to 'police detention' and the sentence of imprisonment shall be reduced by the period in police detention. It is not a straightforward path.

- The path commences with the Treatment of Offenders Act (Northern Ireland) 1968 at section 26(2) which provides that the length of any sentence of imprisonment or term of detention in a young offenders' centre imposed or ordered in relation to an offender by a Court shall be treated as reduced by any 'relevant period'.
- Section 26(2)(a) of the Act provides that any 'relevant period' means any period during which the offender was in 'police detention' in connection with the offence for which the sentence was passed.
- Section 26(6) of the Act provides that a person is in 'police detention' for these purposes at any time when he is in police detention for the purposes of the Police and Criminal Evidence (NI) Order 1989.
- Article 2(3) of the 1989 Order provides that a person is in 'police detention' for the purposes of the Order if he is under arrest and at a

police station and includes when he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it.

- Article 48(1) of the 1989 Order provides that the duty of a person who is released on bail under Part V of the Order to surrender to custody under Article 4 of the Criminal Justice (NI) Order 2003 consists of a duty to attend at such a police station at such time as the Custody Officer may appoint.
- Article 35(8) of the 1989 Order provides that a person who is at a police station to answer to bail is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail.

[11] The result is that a person who attends a police station as a condition of bail is to be treated as having been arrested and is therefore in police detention. The length of any sentence of imprisonment is to be treated as reduced by any period in police detention in connection with the offence for which he was imprisoned. Thus the applicant's sentence is to be treated as reduced by the period he was in police detention by answering his bail at the police station.

[12] As attendance at the police station to answer bail is a period of detention, section 26(2) of the 1968 Act requires that "any period" in police detention be treated as reducing the length of any sentence of imprisonment. That period was on the first occasion 38 minutes and on the second occasion 8 minutes. It may be noted that the reduction is stated to be to "the length of any sentence of imprisonment" and not the lesser period that the prisoner is required to serve in custody.

[13] The respondent has taken the practical administrative course of treating any period of detention on any day as representing a reduction of one day in the period that the prisoner is required to serve in custody.

[14] The applicant contends that the respondent should apply its policy in relation to police detention so as to reduce the applicant's sentence by one day in respect of each period of police detention while the applicant was answering bail at the police station. The applicant contends for a substantive legitimate expectation that the sentence would be so reduced. Reliance is placed on Loughran's Application [2010] NIQB 121 where the judgment of Coghlin LJ records that the respondent accepted the practice of reducing sentences by one day for each part of any day that a prisoner was in police detention.

[15] The respondent contends that the practice of reducing the sentence by one day for each part of a day in police detention did not apply and was not intended to apply to any period of attendance at a police station in answer to bail, as the respondent had not regarded such attendance as amounting to police detention.

[16] The applicant's solicitor challenged the respondent's contention that its practice in relation to police detention did not extend to those occasions when a prisoner was attending at a police station to answer to bail. Reference was made to other cases where the applicant's solicitor had provided information to the respondent which had included days when a prisoner had attended a police station in answer to bail and had received credit for those days. Ms Clingan pointed out that the information provided by the applicant's solicitor on those occasions had not identified the dates as occasions when the prisoner was attending the police station to answer his bail. Ms Quinlivan, on behalf of the applicant, submitted that, when a series of dates were provided to the respondent and credit was given in respect of all such dates, it must have been apparent to the respondent that some of the dates must have been occasions when the prisoner was attending the police station in answer to bail.

[17] We are satisfied that the respondent did not have a practice or intend to reduce any sentence in respect of any day that a prisoner attended a police station to answer his bail. Any legitimate expectation the applicant might have had in respect of the respondent's practice would have been limited to a reduction in respect of days in police detention other than occasions when answering bail at a police station, which was not previously regarded by the respondent as amounting to police detention.

[18] The applicant has not sworn an affidavit reciting any expectation in respect of the reduction in sentence. However the grounding affidavit of the applicant's solicitor, relied on by the Court at the grant of leave because of the urgency of dealing with the issue prior to the disputed dates for release, remained the grounding affidavit on the application. We proceed on the basis of the applicant's expectation being that expressed by the applicant's solicitor as arising from the practice of the respondent and articulated to the Court in Loughran's Application. As indicated above we are satisfied that that practice was not intended to extend to police detention of a prisoner attending a police station to answer his bail.

[19] It is now accepted by the respondent that the two periods when the applicant attended the police station in answer to his bail amounted to periods of police detention and are periods that reduce the applicant's sentence. The legislative requirement is to reduce the length of the sentence of imprisonment by the period of such police detention, a total of 46 minutes. The administrative difficulty of applying the relevant period strictly is easily recognised.

[20] For present purposes the respondent proposes that the 46 minutes be treated as having been including in the 2 day reduction already granted to the applicant for the other periods in police detention, which actually totalled 9 hours 15 minutes. On the other hand the applicant proposes that credit be given for one day in respect of each period.

[21] The respondent is obliged to reduce the sentence by the periods in police detention while attending the police station as a condition of bail. The respondent has taken a pragmatic approach to the reduction of sentences for reasons of good administration. As a result of this application the respondent has to adopt an approach that reflects the requirement to include attendances in answer to bail. Pending any new policy or practice that may be implemented in respect of all periods of police detention the respondent's approach to attendances in answer to bail should not undermine the existing practice of giving credit for one day in respect of each period of police detention, other than attendances at the police station in answer to bail. Otherwise, the manner in which the respondent gives effect to the reduction for the two periods in police detention when the applicant attended the police station to answer his bail, namely on 9 September 2013 and 3 December 2013, is a matter that the Court leaves to the respondent.

[22] The respondent is entitled to change its policy and practice for the future, introducing any such policy in accordance with the applicable legislation and public law duties.

[23] The recognition that attendance at a police station in answer to bail amounts to police detention is more likely to bring into effect the time limits on detention provided under the Police and Criminal Evidence (NI) Order 1989, an issue for the police to address.

[24] The Court will make a declaration that a person attending a police station in answer to bail is in police detention and upon being sentenced for an offence, is entitled to a reduction in the length of the sentence of imprisonment by any period during which the person was in such police detention in connection with the offence for which the sentence was passed.