

# Judicial Communications Office

9 December 2022

## COURT REFUSES LEAVE TO EXTEND TIME FOR APPEAL AGAINST 1978 CONVICTION

### Summary of Judgment

The Court of Appeal<sup>1</sup> today, by a majority of two to one, refused an application by Patricia Wilson to extend the time for her to appeal against her conviction in 1978 for terrorist offences.

#### **Factual background**

Patricia Wilson (“the applicant”), a 17 year old juvenile, was convicted on 15 February 1978 after a trial of causing an explosion of a nature likely to endanger life or cause serious injury to property, possession of an explosive substance with intent, carrying a firearm with intent all on 11 January 1977 and membership of a proscribed organisation, namely Cumann na mBan between 23 October 1976 to 25 June 1977. On the same date she was convicted of causing an explosion likely to endanger life or cause serious injury to property and possession of an explosive substance with intent on 14 March 1977.

The applicant’s statements, taken in Castlereagh Holding Centre in June 1977, formed the sole platform of the prosecution case against her and the basis of her conviction. She was seen by a doctor (“FMO”) on arrival and made no complaints at that time. The applicant, who was aged 17, was interviewed on eight occasions over three days. She did not have access to a lawyer until the completion of her interviews and did not have the support of an appropriate adult or a family member. Following her sixth interview, she was examined by a FMO who recorded a complaint that she had been physically assaulted, verbally abused and intimidated during the two interviews prior to the seventh interview at which she made her admissions. The FMO submitted a record of the applicant’s complaint to RUC Headquarters (“HQ”) for investigation and there is no record of whether the complaint was investigated and, if so, with what result. In her seventh interview, the applicant made statements of admissions. Prior to making her admissions she was held incommunicado and had no access to a solicitor or an appropriate adult. Only after she had been charged did she have access to her parents and her solicitor.

The applicant pleaded not guilty at her trial. She did not give evidence nor was any witness called on her behalf. She did not raise ill-treatment allegations despite the fact that she had made complaints to the doctor. The applicant was convicted by a judge sitting alone without a jury. He said he considered sentencing her to life imprisonment had it not been for the evidence of the Detective Sergeant McCoubrey. The judge imposed a sentence of 10 years’ imprisonment. The applicant did not exercise her right of appeal.

In January 2014, 35 years after her conviction, she applied to the Criminal Cases Review Commission (“CCRC”) for review of her convictions. The CCRC investigated the circumstances of her detention

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<sup>1</sup> The panel was Lord Justice Treacy, Sir Declan Morgan and Sir Paul Maguire. Lord Justice Treacy and Sir Declan Morgan delivered the judgments of the court (Sir Paul Maguire agreed with Sir Declan Morgan’s judgment).

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in Castlereagh and her conviction. This investigation uncovered material documentation that was never disclosed to the defence nor to the court at the time of her trial (the FMO's notes in relation to alleged ill treatment in the two interviews that preceded the interviews in which she made confessions, the note of a complaint made by the doctor on an RUC form that was submitted to RUC HQ for the purpose of being investigated, and evidence of multiple complaints and the prosecution of some of the officers who were involved in her interviews). The CCRC was unable to recover any record of an investigation following the doctor's referral to RUC HQ, but it obtained a number of files relating to complaints made by other detainees against the officers who also interviewed the applicant and judicial criticism of some of those officers. In September 2018, the CCRC, however, decided not to refer the case to the Court of Appeal because it said the evidence which was capable of belief, related to an issue not raised at trial and it considered that the Court of Appeal was unlikely to find a reasonable explanation for the failure to raise it.

The applicant lodged an application with the Court of Appeal seeking an extension of time within which to appeal her convictions and leave to call witnesses and produce fresh evidence to demonstrate that her confession statement should not have been admitted in evidence. The new evidence included that there had been a complaint made to doctors on 24 June 1977 which was escalated by a doctor to RUC HQ. It was contended that this was new material documentary evidence which had not been disclosed to the defence. She gave statements to the CCRC and oral evidence to the Court of Appeal.

## **Decision of Sir Declan Morgan and Sir Paul Maguire**

The court commented that the accounts given by the applicant in 2019 and 2020 were broadly consistent but were directly contradicted by the account she gave when she made her application to the CCRC in 2014. It said that the only realistic conclusion was that her accounts on recalling the making of complaints were false and they were advanced because she believed that they would help her application to extend time for her appeal by presenting the complaint to the doctor as a new fact.

The court concluded:

“[103] For the reasons given I am satisfied that this applicant had every opportunity to rely on the complaint she made to the FMO during the period of her detention. I am satisfied that she elected not to do so. She now seeks to pursue a challenge to her admissions but has provided no reasonable explanation for her failure to do so at her trial. Her evidence was deeply contradictory and unreliable and I am satisfied beyond reasonable doubt that she did not sustain the physical attacks that she alleged in various contradictory ways during her statement interview.

[104] The interests of justice require that those who are involved in the criminal process should make their case at their trial. I would refuse leave to introduce the fresh evidence upon which the applicant relies in respect of the admissibility of her statements of admission.

[105] I do not consider that there was any unfairness in this case by reason of any failure of disclosure. I am also satisfied that the arguments raised in respect of the reliability of the statements do not give rise to any concern about the safety of the convictions. We do not have the advantage of a record of the trial or the remarks of the trial judge on conviction. We know, however, that the applicant was represented by

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experienced counsel in whom she had complete confidence. No appeal was advanced or recommended by the lawyers representing the applicant. The applicant took no further steps for 35 years and cannot now come into court to make a new case which she could have advanced at the trial.

[106] I would refuse the application to extend the time for appeal.”

## Decision of Lord Justice Treacy

Lord Justice Treacy disagreed with the decision of Sir Declan Morgan and Sir Paul Maguire. He reached the following conclusion:

“[125] By reason of the very particular circumstances of her case and the accumulation of features summarised below I do not consider that her convictions, based on the confessions of this 17 year old girl whilst detained at Castlereagh, confessions which formed the sole platform for her prosecution and conviction, can, in all conscience, be regarded as safe. I have a significant sense of unease about her conviction. Her confession was obtained in breach of the rules at the time – in breach of the common law, the Judges Rules and the RUC Code. Her right to a fair trial was further breached by the failure of the prosecution to comply with its common law duty to furnish all relevant evidence of help to the accused which “is not limited to evidence which would obviously advance the accused’s case. It is of help to the accused to have the opportunity of considering all the material that the prosecution have gathered, and from which the prosecution have made their own selection of evidence to be led” [per Glidewell LJ at p644 *R v Ward*]. Full disclosure is one of the most important issues in the criminal justice system and is an indispensable element of the right to a fair trial. To recap she was not furnished with material relevant to any ill treatment she may have suffered or which may have a bearing on the admissibility and reliability of her confession. The prosecution failed to disclose (i) the record of her medical examination and the doctor’s contemporaneous record of her complaints of ill treatment; (ii) the document sent by the doctor escalating her complaint for investigation by RUC HQ; (iii) the multiple complaints and charging of officers who were involved in her interviews. The confession was also obtained in circumstances which denied the juvenile defendant important safeguards later thought necessary to avoid a miscarriage of justice.

[126] As the CCRC observed, “there can be no doubt” that she was subjected to a sequence of interviews that, by their number and length, could be described as “oppressive” for an unaccompanied and unrepresented young woman, “even by the standards of the time.” There were no countervailing safeguards to offset the obvious dangers of statements obtained in such circumstances. Further, in the present case the applicant was plainly denied a fair trial at common law and in breach of article 6 ECHR.

[127] My conclusions that the convictions cannot be regarded as safe and my significant sense of unease about them have been arrived at without reliance on her much later accounts to the CCRC or her even later evidence before us. I have confined myself to the contemporaneous documents, the indisputable circumstances surrounding the conditions of her detention and the newly disclosed material

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including the evidence regarding multiple complaints and even prosecution of some of the interviewing team conducting her interviews.

[128] The constellation of features present in her case include the following facts: she was a juvenile; had never been arrested before; had a clear record; did not have access to a lawyer prior to making statements of admission or at any stage during her detention in Castlereagh; although a juvenile she did not have the benefit of an appropriate adult at any stage during her detention; she was held incommunicado prior to making admission; prior to the impugned statements she had been interviewed repeatedly by rotating teams of detectives on numerous occasions for extended periods and which continued until she made admissions; her complaint to the doctor about being physically assaulted, verbally abused and intimidated in the two interviews immediately before the interview at which she commenced making the impugned statements; Dr Henderson submitted a record of her complaint, the complaint was sent to RUC Headquarters for investigation, there are no documents to indicate that following Dr Henderson's referral the complaint was investigated and, if so, with what result; failing to disclose material documents regarding her complaints; failing to disclose complaint and prosecution files regarding allegations of ill treatment and prosecution of her interviewing officers and the nature and volume of adverse material concerning the officers involved in the questioning of the applicant.

[129] By the standards of today this juvenile was denied all the important safeguards now thought necessary to avoid a miscarriage of justice. It is beyond question that her fundamental right to a fair trial enshrined in art 6 of the European Convention has been violated. She was denied rights she was entitled to at the time. There were also unlawful failures to consider the exercise of available safeguards considering her youth. It is to my mind inconceivable that the confession of this juvenile, forming the sole basis of her prosecution and conviction, obtained in Castlereagh without any of even the most basic of these safeguards, could be regarded as safe. Accordingly, I would extend time, admit the written material that the CCRC uncovered and allow the appeal.

[130] We are in an unusual situation where the court has not been able to come to a unanimous conclusion but all members of the Court are in agreement that two judgments should issue, one reflecting the majority view and the second recording this, my dissent, and the reasons for it."

## **Overall conclusion**

By a majority of two to one, the Court of Appeal refused the application to extend the time for appeal.

## **NOTES TO EDITORS**

This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

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ENDS

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