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	Delivered:	02/06/2026

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

LUONG BUI

Mr R McConkey KC with Mr S Magee (instructed by McConnell Kelly Solicitors) for the Applicant
Mr S Magee KC with Mr M O’Hara (instructed by the Public Prosecution Service) for the Crown

Before: Keegan LCJ, Treacy LJ and Kinney J

KEEGAN LCJ (*delivering the judgment of the court ex-tempore*)

Introduction

[1] This is an application for leave to appeal convictions out of time. The applicant was convicted by jury following a trial lasting 11 days on 15 September 2021. He had pleaded guilty to one count of possession of cannabis on 26 April 2021, his other convictions were for cultivating cannabis x3, abstracting electricity x3, assisting unlawful immigration and perverting the course of justice. All other co-defendants pleaded guilty to related offences including the applicant’s wife.

[2] In 2022, this court dealt with an appeal from the overall sentence which was imposed upon the applicant for this range of offending which was a total sentence of 15 years’ imprisonment split equally between custody and licence. The decision of the Court of Appeal was that the 12 years imposed for all of the cannabis related offending and associated assisting unlawful immigration should stand but that the three years imposed consecutively for perverting the course of justice should be reduced to one year. That made a total sentence of 13 years rather than 15 years as the disposal following the sentence appeal.

Background facts

[3] The background facts are set out by the Court of Appeal in the decision which was delivered by Mr Justice Fowler reported at [2022] NICA 78. He summarised them as follows:

“The applicant had control of a very substantial and highly profitable criminal enterprise capable of producing commercial quantities of cannabis within Northern Ireland. It comprised of two residential properties in Coalisland and Belfast, and a large commercial unit at La Mon Industrial Estate. Each factory had been rented by the applicant and each reconfigured to his exacting specifications in terms of internal configuration, heating, lighting, hydroponics and horticulture. The lighting and heating required very considerable consumption of abstracted electricity. The sophistication of these operations, the abstraction of the electricity and exploitation of an unlawful migrant worker made for highly productive and low running cost cannabis factories designed to maximise profit. The potential street value of the cannabis produced was estimated as being between £750,000 and £2,250,000. The estimated electricity abstracted was in the region of £35,000 and damage to the properties in the region of £16,000. While the conditions in which one of the gardeners was accommodated and fed could not as the prosecution said, ‘be considered as acts of humanity.’”

[4] The judgment of the Court of Appeal also notes that various cash deposits were made during the period August 2016 to November 2017 to the applicant’s bank account totalling £195,000. As the Court of Appeal said, the cash figures are only a snapshot at one limited point in time. We need say no more about the background facts which are also traversed in the decision of Mr Justice Scofield who is the single judge in this case. Suffice to say, we find it highly significant that the applicant did not appeal his conviction at the time of the sentence appeal despite the fact that he retained the solicitor who represented him at trial and he had the assistance first of experienced counsel including Mr Gavan Duffy KC who represented him at trial and then a second set of counsel including Mr Brendan Kelly KC who represented him on appeal.

[5] Notwithstanding this history, the applicant now seeks to appeal his conviction for these offences over three years out of time having filed an appeal notice himself on 20 December 2024. We acknowledge that the applicant began this application as a litigant in person, but he has of late had the benefit of a legal team before us. They have, through the offices of the solicitor and counsel including

senior counsel, Mr McConkey KC, filed an updated skeleton argument very proximate to this court hearing on 27 May 2026 and the prosecution filed a reply on 29 May 2026.

The single judge's decision

[6] The single judge's decision is an impressive piece of work. The judge engaged with the issues raised by the applicant as a litigant in person and obtained information from his previous lawyers given that there was an attack on the adequacy of their representation. As the judge himself reflects in his judgment that meant that the judgment took longer than usual and necessitated various enquiries. We commend the judge for the efforts he made in clarifying all matters and Mr Duffy KC, his junior counsel and instructing solicitor who also provided detailed information which undermined the applicant's case that was put in his notice of appeal.

[7] In short, the single judge in a detailed determination refused leave to appeal and he did so in very clear terms. We are drawn to the substance of para [22] because it engages with the issue of an extension of time which is bound up with merits but nonetheless is front and centre in this appeal. The judge stated as follows:

"22. The application for an extension of time is extremely unpromising. There has obviously been very considerable delay. I do not consider that substantial grounds have been provided to explain the entire period. I do not doubt that the applicant may have experienced difficulty in progressing his appeal in the circumstances; but his explanation, such as it is, does not in my view explain the entire period of delay."

[8] The judge also stated that it is not usually an adequate explanation for considerable delay that the defendant has sought further advice from alternative representatives. And in relation to issues of impediment or vulnerability, the judge noted that no medical advice has been provided to support the reliance on severe depression.

[9] However, the judge did engage with both the previous representatives, and the applicant to examine the substance of his claims. Without repeating all of the applicant's appeal points which are set out in the single judgment they are rooted in robust complaints against his lawyers prior to trial and during trial. Also, within the body of his appeal notice the applicant argued that he was the target of a witch hunt by the police and the PPS.

[10] The judge engaged with these matters notwithstanding the delay in bringing them. The substance of his ruling which we will not read out for present purposes is

comprehensively set out in the single judgment and summarised at para [70] as follows:

“[70] On the basis of the evidence before me, including the applicant’s detailed appeal submission, I do not consider that there is an arguable case that the applicant was inadequately represented either at all or to a degree which would undermine the safety of the conviction. This appears to me to be a case where the applicant’s case was fairly put to the jury, who assessed his credibility and rejected his account. He had an opportunity to make his case in evidence and is frustrated that he was not able to explain matters to the satisfaction of the jury, as he had hoped. However, the applicant’s complaint is really with the finding of the jury but is (unfairly) dressed up as a complaint about inadequate representation.”

[11] In short, having obtained the representations from the applicant, the replies from Mr Duffy, Mr Morgan and Mr Higgins, the judge was not satisfied that there were any meritorious points to be made in support of an appeal.

[12] He goes further because he also notes in his judgment that some of the applicant’s assertions were clearly wrong and misleading. A standout example of this is where the applicant said that his legal team did not challenge the bad character application when that was simply wrong. They did object as the transcript shows. In addition, the applicant had to concede (and did so expressly in correspondence to the court dated 2 July 2025) that, in fact, having indicated that his legal team did not consult with him, they did consult with him and that he agreed a statement of facts which included an acceptance of some of the CCTV evidence. This judgment is very clear in its terms and from it the merits of this appeal should have been obvious to all.

Our consideration

[13] We must determine whether there should be an extension of time. The requirements in our law for any appeal is that it is brought within 28 days under the Criminal Appeal (Northern Ireland) Act 1980 (“the 1980 Act”). There is a provision in section 45(2)(c) that time can be extended.

[14] The Court of Appeal has examined the circumstances when time could be extended in the case of *R v Brownlee* [2015] NICA 39. There are two parts of this ruling that pertain as follows. Where there has been considerable delay substantial grounds must be provided to explain the entire period. Where such an explanation is provided an extension will usually be granted if there appears to be merit in the grounds of appeal. In addition, even when there has been considerable delay or a

defendant had initially taken the decision not to appeal, an extension of time could well be granted where the merits were such that it would probably succeed.

[15] It is in the above context we turn to the argument now presented on behalf of this applicant by Mr McConkey. There are essentially three issues for us to decide. The first is whether there has been an adequate explanation for the three-year delay. On this Mr McConkey has made some very general comments on instructions about this. There is no affidavit from the applicant and so working on instructions, Mr McConkey says the delay is explainable by imprisonment, language difficulties and mental health difficulties. These are feeble arguments without any vouching evidence and none of them explain the three-year period of delay. In addition, there is a problem for the applicant in this case that we have already referred to, that he did appeal sentence with the help of lawyers. Added to that is the fact that his previous lawyers state that he never raised the issue of an appeal against conviction with them. Thus, there is no good reason why we would extend time based on the explanation given for the delay.

[16] That is not quite the end of the matter because we also are enjoined to look at the merits of the appeal. Mr McConkey has realistically (although he really did not have any other option as a professional as we see it on the facts of this case) refined the appeal to two points. He maintains that the inadequate legal representation claim is now effectively withdrawn by the applicant save one point which is that the applicant says he did not have access to some photographs on CCTV prior to trial. This is an extremely weak point. It is not an impressive position for the applicant to make strenuous complaints against his lawyers and then be found out in reply before withdrawing them. In any event, the remaining point does not stand up. Mr Duffy's response is very clear that he consulted with the applicant and considered the evidence with him. Also, the applicant's own correspondence to the court after filing his notice of appeal effectively makes a concession in relation to the strength of the case against him. The remaining semblance of a point on inadequate legal representation is totally without merit and would not be a sound basis upon which to consider extension of time.

[17] The second substantive point raised relates to the fact that during deliberations the jury sought guidance on one question - whether knowingly supplying equipment for the cultivation of cannabis amounted to an offence. The judge answered this question very simply for the jury and said it could. Mr McConkey has accepted that this was correct in law. Therefore, it is hard to see how a claim of the convictions being unsafe could be soundly based on this point. The ancillary arguments relating to the judge's description of the applicant being a linchpin in the cannabis factory operation do not convince us that the argument has any force. Even if there were a point, this should have been directed towards the level of sentencing applied to this applicant. He did not raise this at the sentence appeal. It is totally inappropriate and unconvincing for him to raise it now. Hence, the second argument also fails.

[18] It follows from what we have said that we find this appeal to be totally without merit on all grounds. The single judgment indicated how, on the applicant's own case filed when he was a litigant in person, there was no merit and on the refined case made by Mr McConkey there is no merit. We go further and reiterate our view that the applicant has misled the court on various fronts in his notice of appeal. His points in relation to how his legal representatives dealt with his case were easily answered against him. There is nothing that can be levelled against Mr Matt Higgins, solicitor and Mr Duffy and Mr Morgan of counsel who clearly represented Mr Bui applying the utmost professionalism and expertise.

Conclusion

[19] We refuse an extension of time and leave to appeal. The renewal of leave application which is made to this court fails and we dismiss the appeal.

Loss of time

[20] The final issue that has been canvassed with us is whether we should consider a loss of time direction. This has been raised before us in the skeleton argument which was filed on 29 May 2026

[21] Both parties accept that section 29(2) of the 1980 Act allows us to impose such a direction. Section 29 reads as follows:

"29 Computation of sentence.

(1) The time during which an appellant, pending the determination of his appeal, is not detained in custody shall not count as part of any term of imprisonment or detention under his sentence.

(2) The time during which an appellant is in custody pending the determination of his appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which he is for the time being subject.

(3) Where the Court gives a direction under subsection (2) of this section, the Court shall state the reasons for giving it and the Court shall not give any such direction where –

- (a) leave to appeal has been granted; or
- (b) a certificate has been given under section 1 of this Act; or

(c) the case has been referred to the Court under section 10 of the Criminal Appeal Act 1995].

(4) The term of any sentence passed by the Court in the exercise of its powers under section 13(2) of this Act shall, unless the Court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.”

[22] This is an exercise of discretion. As far as we are aware, this power has not been exercised by the Court of Appeal in Northern Ireland. The prosecution argument refers to two cases in England & Wales which we have briefly been taken to namely *R v Brown* [2007] 1 Cr App R31 and *R v Fortean* [2009] EWCA Crim 437. In England & Wales an order such as this has been made in unmeritorious appeals to deter such cases clogging the courts and to effectively amount to an abuse of process. We also note from our perusal of the authorities that the various appeal forms in England & Wales contain a warning to applicants that a loss of time direction may be made if they pursue an unmeritorious appeal.

[23] In opposing the application, Mr McConkey accepts that at a case management hearing on 17 April 2026 the applicant was warned orally that the court has the power to make a loss of time direction if he pursued an unmeritorious appeal. That was some six weeks ago. Thereafter, advice had to be given to him and the case prepared. Furthermore, as we have said, this appeal was prepared at short notice by the new lawyers and arguments have only been completed on 29 May 2026 and the defence have not had the opportunity to reply in writing.

[24] The above context is important. On balance, we consider that in the circumstances of the late representation we will not exercise our discretion to make a loss of time direction in this case. We have not heard full legal argument which is understandable as the legal argument from the prosecution was received on 29 May 2026. We are also mindful that the system is different in England & Wales which is a larger jurisdiction and the rules governing criminal appeals differ from Northern Ireland. The question of a loss of time direction was reasonably raised by the prosecution. However, for the reasons given we decline the request in this case. This judgment will highlight the fact for the legal profession that the power exists and can be exercised by the Court of Appeal in this jurisdiction. It may be a live issue in appeals which are totally without merit which is a view that a single judge or the plenary court may reach. If any such order is to be made in the future it should be reserved to the full Court of Appeal.