

Neutral Citation No: [2021] NICA 57

Ref: TRE11649

ICOS No: 74/000024/A01
75/00028/A01

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

Delivered: 19/10/2021

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

MARTIN THOMAS O'RAWE

Mr S Doran QC with Mr S Devine BL (instructed by McConnell Kelly, Solicitors) for the
Applicant

Mr G Simpson QC with Mr R Steer BL (instructed by the Public Prosecution Service) for
the Crown

Before: Treacy LJ and Maguire LJ

TREACY LJ (delivering the judgment of the court)

First Offence

[1] The applicant was convicted on 20 March 1975 of the offence of attempting to escape from lawful custody. At the date of the offence (24 December 1973) the applicant was held on foot of an Interim Custody Order ("ICO") dated 20 June 1973.

[2] That Order was signed "Belstead." The signature was that of Lord Belstead, who at the date of signature was the Parliamentary Under Secretary of State in the Northern Ireland Office.

[3] The decision of the Supreme Court in *R v Adams* [2020] UKSC 19 was to the effect that since the ICO on foot of which Mr Adams was detained was not signed by the Secretary of State, it was invalid and that, therefore, he was not lawfully detained. Accordingly, he was wrongly convicted of the attempt to escape from lawful custody (see para 41).

[4] Since, therefore, the ICO on foot of which this applicant was detained falls into the same category as that in *R v Adams*, the prosecution accept that the ICO was invalid.

[5] In the circumstances, and in light of the decision in *Adams*, the prosecution make no submissions in support of the safety of the first conviction.

Second offence

[6] The applicant was convicted on 18 April 1975 of the offence of assisting an attempt to escape from lawful custody. The offence relates to the attempted escape of Mr Adams on 26 July 1974. This applicant and Mr Bell were the two prisoners who were involved in the attempted escape with Mr Adams.

[7] This court held in *R v Ivor Bell* [2021] NICA 52 that in light of the fact that Mr Adams was not in lawful custody at the time of the attempted escape, Ivor Bell could not be guilty of the offence of assisting in the attempted escape from lawful custody.

[8] Following this court's decision in *Bell* the prosecution applied to have three questions certified in order that an application might be made to the Supreme Court for permission to appeal. The court declined to certify any of those questions.

[9] The prosecution have confirmed the matter will be taken no further.

[10] In those circumstances, since the facts of this applicant's case are on all fours with those in *Bell*, the prosecution make no submissions in support of the safety of the second conviction.

Conclusion

[11] In light of the foregoing we are not satisfied as to the safety of both convictions. We therefore extend time, allow the appeal and quash the convictions.