

Neutral Citation No: [2021] NICA 56	Ref: TRE11622
<i>Judgment: approved by the Court for handing down (subject to editorial corrections)*</i>	ICOS No:
	Delivered: 04/10/2021

IN HER MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

v

IVOR MALACHY BELL
—————

Before: Treacy LJ, McCloskey LJ & Colton J
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Barry Macdonald QC SC with Joseph O’Keeffe (instructed by Phoenix Law, Solicitors) for
the Appellant
Gerald Simpson QC with Philip McAteer (instructed by the PPS) for the Respondent
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TREACY LJ (delivering the judgment of the court)

[1] This Court allowed the appeal of the appellant and quashed his conviction for the offence of assisting Gerard Adams in attempting to escape from HMP Maze [2021] NICA 52.

[2] Section 41 of the Judicature (Northern Ireland) Act 1978 provides as follows:

“41. Appeals to Supreme Court in other criminal matters

(1) Subject to the provisions of this section, an appeal shall lie to the Supreme Court, at the instance of the defendant or the prosecutor, —

(a) from any decision of the High Court in a criminal cause or matter;

(b) from any decision of the Court of Appeal in a criminal cause or matter upon a case stated by a county court or a magistrates' court.

(2) No appeal shall lie under this section except with the leave of the court below or of the Supreme Court; and, subject to section 45(3), such leave shall not be granted unless it is certified by the court below that a point of law of general public importance is involved in the decision and it appears to that court or to the Supreme Court, as the case may be, that the point is one which ought to be considered by the Supreme Court.

(3)- (5) ...”

[3] Pursuant to section 41 the prosecution applies to this Court to certify the following three questions:

- (1) Whether the making of a detention order by a Commissioner pursuant to the provisions of paragraphs 12 and 24 of Schedule 1 of the Northern Ireland (Emergency Provisions) Act 1973 is rendered unlawful by the fact that the interim custody order preceding it was purportedly made under article 4 of the Detention of Terrorists (Northern Ireland) Order 1972 by a Minister of State rather than the Secretary of State (see *R v Adams* [2020] UKSC 19)?
- (2) Whether a person who assisted another person held under such a detention order to attempt to escape from prison is guilty of an offence contrary to para 38(b) of Schedule 1 of the Northern Ireland (Emergency Provisions) Act 1973?
- (3) Whether, in any event was the Supreme Court was wrong to find in *R v Adams* [2020] UKSC 19 that the making of an interim custody order under article 4 of the Detention of Terrorists (Northern Ireland) Order 1972 [SI 1972/1632 (NI 15)] required the personal consideration by the Secretary of State of the case of the person subject to the order and that the Carltona principle did not operate to permit the making of such an Order by a Minister of State?

[4] By question (3) the prosecution seek to re-open and re-argue the *Adams* case. The Court is being asked to certify a point that has recently been decided by the Supreme Court. If the Court were to certify in such circumstances there is a real risk of applications to this Court seeking leave for points that have, as in the present case, been recently and authoritatively settled in the Supreme Court. The Court must give significant weight to the principle of legal certainty. Certifying would undermine the legal certainty of the judgments of the Supreme Court. We do not consider that there is a point of law of general public importance involved in the decision which appears to the Court ought to be considered by the Supreme Court.

[5] Questions (1) and (2) are indirect ways of raising the issue in question (3). As to question (1) we observe:

- (i) the Court of Appeal in *Adams* determined this point *obiter* [see para [53] of our decision];
- (ii) the prosecution in *Adams* chose not to appeal or challenge the conclusion of the Court of Appeal on this point - if it was a point of public importance it is surprising that it eluded the prosecution;
- (iii) the Supreme Court considered the legality of the detention in *Adams* and could not have quashed his conviction for attempted escape in July 1974 if his detention had been lawful. Question (1) has already been answered by the Supreme Court and the answer to question (2) inexorably follows from *Adams*.

[6] The overall conclusion of the Court is that none of the questions raise a point of law of general public importance which it appears to the Court ought to be considered by the Supreme Court.