Neutral Citation No: [2023] NICA 46 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **HOR12169** *ICOS No:* **11/139188/02/A01** *Delivered:* **02/06/2023**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

Between:

RITA OKOTETE

Appellant

and

THE PUBLIC PROSECUTION SERVICE

Respondent

The Appellant appeared as a Litigant in Person
Philip Henry (instructed by the PPS) for the Respondent

Before: Horner LJ and Kinney J

HORNER LJ

Introduction

[1] Rita Okotete ("the appellant"), a litigant in person, seeks an order compelling His Honour Judge McGurgan ("HHJ") to state a case for the opinion of the Court of Appeal under Order 61 rule 4 of the Rules of the Court of Judicature (NI) 1980 in relation to her two convictions of:

(i) Disorderly behaviour; and

(ii) Resisting arrest.

[2] The question the appellant wanted the Court of Appeal to give its opinion on was that she says the judge "failed to take into account the merits of her appeal in refusing to state a case." The convictions which lie at the centre of this application are dated 8 December 2012.

[3] HHJ refused to state a case for the opinion of the Court of Appeal and was of the opinion that:

(i) The applicant's proposed question, as drafted, erroneously relies upon the factual proposition that I did not take into account the merits of the case (the appeal on convictions).

(ii) The application, as it relates to the question drafted, does not raise a point of law.

(iii) The application, as it relates to the question drafted, is frivolous and/or unreasonable.

[4] On 8 December 2022 the appellant lodged an application for an order from the Court of Appeal to compel HHJ to state a case for the opinion of the Court of Appeal. It is accepted that this application was made within the applicable time limit.

[5] It is also important to note that on 23 August 2022, the appellant issued judicial review proceedings challenging the decision of HHJ. She issued and conducted those proceedings by herself. On 7 November 2022, the judicial review proceedings were stayed with the agreement of all parties to allow the appellant to ask HHJ to state a case for the opinion of the Court of Appeal.

[6] The parties agreed that the only period of delay which this court should consider is the 10 years approximately between the convictions in the magistrates' court and the application to extend time to appeal those convictions.

Background Facts

[7] On 23 November 2011, the appellant was arrested for disorderly behaviour and assault on a police officer, charged and brought before Belfast Magistrates' Court on 24 November 2011. The appellant was represented by a long-established and very experienced law firm. At the adjourned hearing on 8 December 2011 the solicitors applied successfully to come off record. The appellant was prima facie entitled to legal aid and there is no explanation readily available to this court as to why the appellant should have proceeded without legal representation unless it was a personal choice. However, the fact is that she did so.

[8] The case came on for contest on 26 July 2012 before the Presiding District Judge, Judge Bagnall. The appellant, as a litigant in person, was convicted of disorderly behaviour. The second charge of assault was reduced to resisting police in the execution of their duties by the court after it had heard all the evidence. She was convicted on this basis. Any appeal should have been submitted within 14 days, that is before the beginning of August 2012.

[9] It would appear that the appellant left Northern Ireland in August 2013. On 12 January 2015 the appellant appears to have returned to Northern Ireland to

commence a civil action against the police in the High Court in respect of the events which had taken place in 2011. It was then that she became aware that the convictions would effectively sabotage any possible claim for compensation.

[10] Almost 10 years later the appellant sought leave to appeal her convictions out of time.

[11] On 24 February 2022, an application was lodged by Phoenix Law on behalf of the appellant seeking an extension of time in which to appeal to the county court. On 30 May 2022, HHJ refused the application to extend time for a county court appeal.

[12] The appellant issued judicial review proceedings challenging the said decision. She issued and conducted those proceedings herself. As I have stated, these proceedings were stayed by consent of all parties on 7 November 2022 so that the appellant could ask HHJ to state a case for the opinion of the Court of Appeal. On 14 November 2022, the appellant applied to HHJ to state a case for the opinion of the Court of Appeal in respect of his refusal to extend time. On 5 December 2022, HHJ refused to state a case for the opinion of the Court of Appeal and provided a short ex tempore judgment. The judge took no issue with the application to state a case being outside of the normal time limit, in other words that was not the reason or contributory reason for him refusing the request. The appellant then lodged an application on 8 December 2022 for an order from the Court of Appeal to compel HHJ to state a case for the opinion of the Court of Appeal. This application was made within the applicable time limit.

Judgment of HHJ

[13] HHJ pointed out that this was an application pursuant to Article 144(2A) of the Magistrates' Court (Northern Ireland) Order 1981 and Order 32 rule 6A of the County Court Rules (NI) 1981, seeking leave for an extension of time to lodge a Notice of Appeal against conviction in relation to offences of disorderly behaviour and resisting the police. He noted that the case came on for hearing on 26 July 2012 before the Presiding District Judge and that at that hearing the appellant represented herself. Following a contested hearing she was convicted as set out above. He noted that under Article 140(1) of the Magistrates' Court (Northern Ireland) Order 1981 a right of appeal exists for any person convicted by a magistrates' court with an appeal notice being lodged within 14 days commencing the date of conviction. In this case that would have been 26 July 2012. He noted that nearly 10 years later the appellant sought leave to appeal after dismissing her original legal team.

[14] Counsel for the appellant put forward various arguments on her behalf. These included submissions and arguments on the merits of the case. HHJ noted the relevant provisions and the need to comply with time limits. He went on to record that:

(a) The court was entitled to take into account the merits of the proposed appeal.

(b) The principle of finality and the significant public interest in litigation being final.

[15] His attention was also drawn to *R v Brownlee* [2015] NICA 39 at [8](ii) where Morgan LCJ said that not only is there an obligation to explain prolonged periods of delay, the applicant must also have substantial grounds to justify an extension of time.

[16] The learned trial judge concluded in saying that the application was nearly some 10 years out of time and the main reason being advanced appeared to be the appellant's ignorance of the law. He noted that being unemployed she is entitled to legal aid and in all probability could have engaged solicitors to advise her. He also noted that she had a history of working as a legal secretary for a corporate law firm in London and that she had instigated civil proceedings against the Crown in the High Court in Northern Ireland as a personal litigant. In giving his judgment HHJ makes the following points:

(i) HHJ had a broad discretion in this matter.

(ii) He would require substantial grounds for a delay of some 10 years and no substantial grounds had been offered.

(iii) The appellant had demonstrated the ability to seek legal assistance and to mount her own proceedings.

(iv) He took into account the public interest.

(v) The issue of prejudice to the prosecution given the lapse of time.

(vi) The principle of the finality of actions.

(vii) Taking all matters into account he decided not to exercise his discretion in favour of the appellant and dismissed the application.

[17] It is quite clear from the judgment, and it is an ex tempore one, that one of the matters which was drawn to HHJ's attention was the entitlement to take into account the merits of a proposed appeal. It seems to us that on any fair reading of what is an ex tempore judgment, the HHJ did take into account the merits, but was unimpressed by them.

Relevant statutory provisions

[18] Article 144(2A) of the Magistrates' Court (Northern Ireland) Order 1981 provides:

> "The period within which notice of appeal must be given and lodged under paragraph (1) may be extended, either before or after it expires, by the county court … on an application made in accordance with the County Court Rules.

Order 32 rule 6A of the County Court Rules (NI) 1981 states:

> "6A.-(1) An application for an extension of time under Article 144(2A) of the Magistrates' Courts (Northern Ireland) 1981 (NI 26) Art.143 shall be made in writing, specifying the grounds of the application."

Article 140(1) of the Magistrates' Court (NI) Order 1981 states:

> "140.- (1) Except where the court otherwise directs, a person ordered to pay a sum by a magistrates' court in proceedings upon complaint shall, unless a warrant to enforce payment thereof has been issued, pay that sum or any instalment thereof to the clerk of petty sessions."

Relevant case law

[19] We have referred to *R v Brownlee* [2015] NICA 39 and the comments of Morgan LCJ at [8](ii) where he said

> "(ii) 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."

[20] It is clear that the court is entitled to take into account the merits of any proposed appeal against convictions in deciding whether to extend time eg see *R v Croydon Crown Court* [1993] 77 Cr App R 277. However, generally time limits are there to be observed: *R v White* [2007] NICC 20. HHJ specifically referred to both authorities and was aware that the court's entitlement to take into account the merits in deciding whether to extend time.

[21] Ex tempore judgments should be encouraged. It would be wrong that "experienced judges who have the gift of brevity should be deterred from displaying it by an inappropriate readiness on the part of appellate courts to interfere" (see [48] of *(Children) (Fact-Finding Hearing):* ex tempore judgment, [2011] WL 6328 789.

[22] The Court of Appeal "will look to see whether the judge's reason, even if not expressed in terms expressed clearly, could be deduced from those documents and the evidence. If the reasons are one which can be deduced from those documents and the evidence, and if the judge's findings of fact were ones which he was entitled to make having regard to those documents and that evidence, this court will not accede to a challenge of the judgment on the grounds of insufficiency of reasons": see *Bassano and another v Battista* [2007] EWCA Civ 370.

[23] The appellant has also shared the advice of her counsel, Mr Sean Devine BL, and has waived any privilege in respect of his remarks. He said in respect of any appeal:

> "There is no merit in any further appeal. The court identified all of the correct factual and legal factors and unfortunately declined to extend time to allow Mrs Okotete to advance her appeal."

We agree.

Discussion and Conclusion

[24] We have an application to compel HHJ to state a case for the opinion of the Court of Appeal in circumstances where:

(i) The application to state a case is made almost 10 years after the decision was given and no substantial reason (or, indeed, any reason) is given for the gross and inordinate delay. The only explanation appears to be that some time afterwards the appellant discovered that if the convictions remained on her record, she had no prospect of taking a civil action successfully against the police.

(ii) There has been a full hearing before the President, District Judge Bagnall, who had an opportunity of seeing and hearing all the witnesses when they gave their evidence.

(iii) The appellant's own counsel is on record as advising the appellant that there is no merit whatsoever in any further appeal, and that the court had identified all of the correct factual and legal factors.

(iv) On the evidence before this court the conclusion of Mr Devine is in line with the one that this court would have reached on the evidence before it.

(v) HHJ knew he was entitled to take into account the merits of any appeal and it seems clear from a fair reading of his ex tempore judgment that this is what he did.

[25] We are satisfied from all the evidence that this appeal is frivolous and that the appellant is acting unreasonably in seeking to try and persuade HHJ to state a case for the opinion of the Court of Appeal. HHJ was quite correct to refuse to do so, and the matter is not whether the strict or more lenient test is adopted.

[26] In the circumstances, we refuse the application. We will hear the parties on the issue of costs.