

Judicial Communications Office

19 March 2021

COURT REFUSES APPLICATION TO EXTEND TIME FOR PERMISSION TO APPEAL

Summary of Judgment

The Court of Appeal¹ today refused an application to extend time for permission to appeal by Owen Workman against his convictions for false imprisonment and membership of the UVF relating to the abduction of Archibald Galway in 1996.

Background

On 13 May 1996 a group of local residents gathered in the Mount Vernon area of Belfast close to the home of Archibald Galway. At about 6:15 pm a number of masked men, not including the applicant, entered Mr Galway's home carrying baseball bats and a hammer. He was assaulted, hooded, bound and taken to his own car where he was made to lie in the footwell. The car was driven for about 20 minutes after which Galway was put into another car and driven off. The police found Galway's car abandoned shortly after 7:30 pm. Sometime after 3.00 am on 14 May 1996, Galway was found in his underclothes lying in a ditch in the Larne area with head and arm injuries.

In the early hours of the morning of 14 May 1996 police became suspicious of a car travelling from Rathcoole on the Doagh Road into Newtownabbey. The three occupants of the car were arrested. One was the applicant, who identified himself as Paul Ferguson. At interview, following consultation with his solicitor, he told police that he had received a telephone call around 8:30 pm on 13 May to meet persons because they were going on a job. He was to go with others to look after Galway. When he arrived at the flat Galway was lying bound and gagged and the assault had already occurred. The applicant remained in the flat with another person and Galway until about 2.00 am when a car arrived and he went in the car with Galway leaving him in a remote part of the Larne area. The applicant made a 999 call to the ambulance service to alert them to Galway's location. He subsequently identified to police the telephone call box from which he had made the 999 call. At interview, the applicant admitted membership of the UVF. He said he had been sworn into the organisation in Larne approximately 2½ months prior to the date of the interview and that the first time he was contacted after the ceremony was in relation to these offences.

On 4 March 1997, the applicant pleaded guilty to one count of false imprisonment and one count of membership of the Ulster Volunteer Force ("UVF"). He was sentenced to concurrent sentences of four years' imprisonment in respect of the false imprisonment and three years in respect of membership of the UVF.

In January 2010, Gary Haggarty, a terrorist who was deeply involved with the UVF over a 16 year period, entered into an assisting offender agreement as a result of which he pleaded guilty to 202 counts. During the period of his offending he also provided police with regular information in respect of serious crimes committed by the terrorist organisation. Subsequent to the assisting

¹ The panel was the Lord Chief Justice, Lord Justice Tracey and Sir Donnell Deeny. The Lord Chief Justice delivered the judgment of the Court.

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offender agreement he disclosed his participation in the abduction of Mr Galway. He said the family of a child who had been abused approached himself and Mark Haddock, another leader of the UVF in the Mount Vernon area, alleging that Galway was the abuser. Haggerty stated that he and Haddock approached the leadership of the UVF to seek authority to kill Galway. They were told that they could damage his testicles. On the evening of Galway's abduction a police car was also in the vicinity. Haddock had arranged for a group of UVF men to attend for the abduction and had made a phone call to ensure the police car was directed elsewhere. The UVF then entered Galway's home and abducted him. Haggerty had identified a property in Larne in which to detain Galway and after the abduction he drove to Larne as the lead vehicle and guided the abductors to the property. Galway was assaulted in the property and Haggerty admitted kicking him. Subsequently Haggerty alleged that the UVF was informed that Galway was a member of the UDA and as a result they were instructed to release him to prevent any feud.

Application

On 12 June 2017, the applicant lodged an application to extend time for permission to appeal which was refused by the single judge. He later renewed that application. The basis of the application was that his conviction was unsafe as a result of the undisclosed involvement of Gary Haggerty at the relevant time. It was claimed that the failure of disclosure denied the applicant the opportunity to apply for a stay of the proceedings as an abuse of process. The applicant also pursued a wider abuse of process argument.

A written statement by the applicant was submitted to the Court of Appeal dated 10 November 2020. The applicant alleged that he had never been a member of the UVF or any other paramilitary organisation. He said he remembered denying that he was in the UVF but admitting that he had been present in the house. He agreed that he had pleaded guilty to false imprisonment and membership of the UVF but said that he had done so because it would make no difference to his sentence. The applicant said that various enquiries into the use of informers and supergrasses had exposed that Haggerty and Haddock were Special Branch informants when they were paramilitary commanders ordering the murder and assault of others. He did not contend that he had any engagement with Haddock or Haggerty in respect of these offences.

Three days before the hearing an application was made to introduce the statement pursuant to section 25 of the Criminal Appeal (Northern Ireland) Act 1980 ("the 1980 Act"). No application was made on behalf of the applicant to give evidence and be cross examined. The Court commented that the statement offered no explanation as to why the applicant made an admission of membership of the UVF to police at interview or why his plea was advanced on the basis that he had become a member of the UVF. It said his assertion that he pleaded guilty to UVF membership because it would make no difference to his sentence was plainly false:

"He pleaded guilty because he had made voluntary admissions that he had become a member. We concluded that the written statement was devoid of credibility and would be of no assistance in allowing the appeal. We refused to admit it."

Consideration

The Court said there was no evidence to suggest that the police had any advance notice of the intention to carry out this attack prior to its occurrence. It said the applicant's suggestion in his statement that he never was a member of the UVF was completely lacking in credibility:

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“His admissions to police and the submissions advanced on his behalf to the trial judge indicate precisely the opposite and no explanation is provided for that. He participated in this crime because he had committed himself to the UVF and was an intelligent man who could not have failed to understand the nature of its activities. He voluntarily elected to place himself at the service of that organisation.”

The Court said there was no material to suggest that he was placed under any pressure to participate in this offence but even if there had been, by being culpably negligent or reckless in exposing himself to the risk of being subject to coercive pressure, he would lose the right to call himself innocent by reason of his succumbing to that pressure. The Court referred to the case of R v Hill [2020] NICA 30 in which it considered the principles on entrapment. In that case the appellant had been provided with an unexceptional opportunity to commit a crime which he duly accepted: “In our view this case is no different. There is no basis for an entrapment claim.”

Counsel for the applicant sought to pursue a wider abuse of process claim. He relied upon the statement issued by the Police Ombudsman on her investigation into the circumstances surrounding the death of Raymond McCord junior and related matters where, at paragraph 31.27 she stated:

“Prior to 2003 some RUC/PSNI Special Branch officers facilitated the situation in which Informant 1 was able to continue to act as a senior figure in the UVF, despite the availability of extensive information as to his alleged involvement in crime. Informant 1, by virtue of his alleged rank in the UVF, must have been engaged in the direction of terrorism and must have known that he was not being dealt with for crime. Some RUC/PSNI officers, at all levels, were complicit in the failure to deal appropriately with Informant 1, both by way of criminal investigation and by dispensing with his services as an informant.”

It was submitted that these observations could properly be applied to both Haddock and Haggarty. The Court said there was no real dispute that Haggarty and Haddock had contributed to the commission of this crime. It said the applicant sought to take some support from the fact that Haddock left the scene at one stage to make a phone call with a view to getting the police car to move. The Court, however, said there was nothing to suggest that the removal of the police car was anything other than in connection with some other matter that required to be investigated and there was no basis for any sinister inference.

The Court considered that there was no material to support the contention that the applicant did not have a fair trial. It is well established that the court has power to stay proceedings where it offends the court’s sense of justice and propriety to be asked to try the accused in the particular circumstances of the case. In that category of case the court is concerned to protect the integrity of the criminal justice system and a stay will be granted where the court concludes that in all the circumstances the trial will offend the court’s sense of justice and propriety or will undermine public confidence in the criminal justice system or bring it into disrepute. The Court agreed that the findings of the Police Ombudsman are deeply troubling but did not accept that they justified the conclusion that Haddock or Haggarty or anyone else participating in crimes with them had impunity. It noted that Haggarty had been sentenced following his plea to a wide range terrorist offences:

“We do not consider that the trials of Haddock or Haggarty offended the court’s sense of justice and propriety or undermined public confidence in the criminal justice system or brought it into disrepute and said it can see no basis upon which those who

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voluntarily determined to participate in the activities of a terrorist organisation should avoid the rigours of a fair trial in connection with their conduct.”

Conclusion

The Court refused the application to extend time to bring an appeal.

NOTES TO EDITORS

1. 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>).

ENDS

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