

Finlay C.J.  
Griffin J.  
Hederman J.  
McCarthy J.  
Blayney J.

000212

THE SUPREME COURT

139/89  
146/89

OWEN GERARD CARRON

Plaintiff

and

JOHN PAUL McMAHON

Defendant

AND

OWEN GERARD CARRON

Applicant

and

THE GOVERNOR OF PORTLAOISE PRISON

Respondent

AND

OWEN GERARD CARRON

Applicant

and

DISTRICT JUSTICE JAMES P. GILVARRY

Respondent

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JUDGMENT delivered on the 6th day of April 1990 by  
FINLAY C.J. [Hederman J. concurring, Blayney J. agr]

The Plaintiff has appealed to this Court against the High Court Order of the 16th March 1989, made by a Divisional Court dismissing his claim brought pursuant to Section 50 of the Extradition Act 1965 for an Order releasing him from custody on foot of certain Orders for his delivery to Northern Ireland.

On the 17th November 1987 two Warrants were issued by an appropriate judicial authority in Northern Ireland for the arrest of the Plaintiff on two charges of the possession of a firearm and ammunition contrary to Article 25 of the Firearms (Northern Ireland) Order 1981. The offences charged are offences corresponding with offences against the Firearms Act 1925 as inserted by the Criminal Law (Jurisdiction) Act 1976.

These Warrants were duly endorsed by Deputy Commissioner John Paul McMahon and the Plaintiff having been arrested on foot of them District Justice James P. Gilvarry on the 20th February 1988 made Orders for his delivery to Northern Ireland pursuant to the provisions of the 1965 Act.

The incident out of which these charges arose occurred when the Plaintiff was on the 19th December 1985 driving his car in County Fermanagh and had as a passenger one James Maguire. James Maguire apparently had in his possession an AKM assault rifle and fifty-eight rounds of ammunition. The Plaintiff denies that he was aware of this fact. Both the Plaintiff and James Maguire were arrested by the RUC on this occasion and each of them was charged with similar firearm offences.

James Maguire was tried and convicted on these offences but the Plaintiff who was granted bail absconded from Northern Ireland and has not yet been tried on these charges.

The Plaintiff has claimed an Order for release pursuant to Section 50 of the Act on the grounds that the offences with which he is charged are political offences or, in the alternative, on the grounds that they are offences connected with the offences committed by James Maguire on the same occasion, which latter offences are political offences.

The Plaintiff in addition to swearing a number of affidavits concerning this issue was cross-examined before the Divisional Court, as were a number of deponents who had made sworn affidavits on behalf of the Defendant.

James Maguire deposed on affidavit that the firearms offences in respect of which he was convicted were "offences committed by me in furtherance of my political aim of forcing British forces to leave Northern Ireland so that the country of Ireland may be reintegrated."

The Plaintiff in addition to denying that he was aware that James Maguire was carrying the rifle and ammunition stated that he did not approve of violence and did not support the use of violent means to achieve political change in Northern Ireland. This latter assertion was contested on behalf of the Defendant.

The High Court held that having regard to the Plaintiff's denial of knowledge of the existence of the firearm and ammunition in his car and to his disavowal of any aim to achieve political objectives by the use of firearms he could not be heard to assert that the actual offences with which he is charged are political offences.

I would agree with that conclusion.

It is not necessary in order to claim and establish under Section 50 of the Act that an offence charged is a political offence for the Plaintiff to admit guilt. He can, in an appropriate case, establish that fact while

asserting his innocence by reference to the nature and character of the crime, irrespective of by whom it was committed. This is clearly, however, not such a case.

The Divisional Court has also found that the offences charged against the Plaintiff are "connected" with the offences of which James Maguire was convicted. This conclusion was not challenged by the Defendant on this appeal. Quite apart from that fact, I am satisfied that it is a correct conclusion.

It is not necessary for an offence to be of a political nature in order to be capable of being "connected with a political offence" within the meaning of Section 50 of the Act (cf. Bourke v. The Attorney General 1972 IR. What in my view is the correct test is whether there is a causal or factual relationship of sufficient strength to be properly described as a connection between the two offences concerned.

In the instant case, two persons were charged with apparently identical offences in respect of the same rifle and the same quantity of ammunition.

Even if as some of the evidence suggests the prosecution case would be that James Maguire had actual physical possession of both the rifle and the ammunition and that the Plaintiff had legal possession of each of

them by knowingly transporting them in his car, I have no doubt that there must be the closest possible connection between the offences of which James Maguire was convicted and the offences with which the Plaintiff is charged. On an interpretation of Section 50 of the Act, they must, it seems to me, be deemed connected offences.

The issue as to whether the Plaintiff is entitled to an Order of Release pursuant to Section 50 must, therefore, ultimately depend on the question as to whether the offences of which James Maguire was convicted in respect of the events of the 19th December 1985 were "political offences" within the meaning of the Section.

The Divisional Court applied to this issue, as it was then bound to do, the decision of this Court in Russell v. Fanning, and decided that having regard to the principles laid down in that case James Maguire's stated aim of reintegrating the country by force of arms constituted a subversion of the Constitution and a usurpation of the function of Government which prevented his offences from being deemed to be political offences within the meaning of Section 50. In the case of Finucane v. McMahon, unreported but decided on the 13th day of March 1990 this Court

affirmed its decision in Quinn v. Wren, that an offence committed for the purpose of subverting the Constitution or usurping the functions of the Government could not on a constitutionally acceptable construction of Section 50 be a political offence within that Section. It also held, however, that the decision in Russell v. Fanning in so far as it concluded that evidence of an objective to expel the British forces out of Northern Ireland by force of arms constituted in itself such a subversion or usurpation should not be followed.

The Affidavit sworn by James Maguire in this case has not been contradicted. Evidence with regard to the type of military rifle which he was carrying is entirely consistent with an intention to engage in a paramilitary activity or to assist others so to do.

The provisions of the Extradition (European Convention on the Suppression of Terrorism) Act 1987 which came into operation on the 1st day of December 1987 and which provide inter alia for the exemption of certain types of offences from the scope of political offences does not apply to this case in which the Warrant was issued prior to the commencement of the Act.

There is no evidence that the purpose of carrying this rifle and ammunition was to participate in or assist the commission of the type of atrocity which in the decisions of this Court in the case of McGlinchey v. Wren and again in the case of Finucane v. McMahon was held to be outside any concept of a political offence.

In those circumstances, applying the principles laid down in the case of Finucane v. McMahon to the facts established in this case, I conclude that the offences of which James Maguire was convicted in respect of the events of the 19th December 1985 were political offences within the meaning of Section 50.

For the reasons I have set out, this leads to the conclusion that the offences with which the Plaintiff is charged are offences connected with political offences.

The Plaintiff also appealed to this Court against the dismissal of two other claims brought in separate proceedings for his release from delivery to Northern Ireland. All three appeals were heard together by this Court.

Although a decision on his claim under Section 50 is sufficient to determine the result of the case, since the other issues were fully argued, and since one of them involves a question of law of general application,



I feel I should express my opinion on both of these two other appeals.

The Plaintiff instituted proceedings for an Order of Release from Detention pursuant to Article 40 of the Constitution. In the High Court three separate grounds were put forward and identified in the judgment of the Divisional Court for the claim to such an Order.

On this appeal only one was argued, namely, that identified in the judgment of Hamilton P. in the following terms:

"That there is a substantial reason for believing that if he were removed from this State his life would be placed in great danger and there exists a probability of his being subjected to assaults, torture, inhuman and degrading treatment, and threats on his life at the hands of prison officers and members of the RUC."

A direct conflict of oral testimony occurred before the Divisional Court concerning many of the facts involved in this issue.

In a careful and detailed judgment, with which the other members of the Court agreed, Hamilton P. rejected the Plaintiff's evidence on these disputed questions of fact on the grounds of want of credibility. He has set

out reasons in detail for rejecting the truth of the evidence given by the Plaintiff and preferring the evidence given by witnesses called on behalf of the Defendant. I am satisfied that his reasons for reaching this conclusion are carefully and reasonably founded and based on the evidence before him. There are no grounds in my view, on which this Court exercising its appellate jurisdiction could set aside or vary any of these findings.

In proceedings by way of judicial review, the Plaintiff sought to quash the Orders made on the 20th February 1988 by District Justice James P. Gilvarry for his delivery to Northern Ireland. The grounds on which liberty to seek this judicial review was in the first instance granted by the High Court were as follows:

"(a) The Minister for Justice did not decide whether or not the warrants should or should not be endorsed as required by Section 44 of the Extradition Act, 1965 and accordingly the District Court proceedings were brought without jurisdiction and in excess of jurisdiction and were premature.

- (b) There was no or insufficient evidence that the Minister for Justice considered whether or not a direction should be given pursuant to Section 50 of the Extradition Act, 1965 and accordingly the Applicant should not be delivered unless and until such direction is considered by the Minister.
- (c) There was no or insufficient evidence that the Minister for Justice considered whether or not the warrants herein should be endorsed for execution as required by Section 44 of the Extradition Act, 1965 and the learned District Justice thereby exceeded his jurisdiction, the said evidence being a necessary proof of compliance with the statutory requirement."

After careful review of the relevant statutory provisions and of the applicable authorities, which it is unnecessary for me in this judgment to repeat, Hamilton P., with whose judgment the other members of the Divisional Court agreed, concluded that each of these grounds failed.

With that conclusion I am in agreement. His decision is summarised in the following passages from his judgment.

"The duty of the District Justice in exercising the jurisdiction of the District Court in applications to which Part III of 'the Act' applies is as set out by Mr. Justice Walsh in the course of his judgment in The State (Holmes) v. Furlong 1967 I.R. at page 223).

'First of all, to be satisfied as to the validity of the warrant and other documents as prescribed by the Act and secondly, to be satisfied that the person who has been arrested is in fact the person named or described in the warrant. The District Justice should next satisfy himself that the offence in the warrant is one in respect of which he may make an order under the Act. If he is satisfied that he will make the order, he should then consider the question of the point of delivery and then make his order in accordance with the provisions of the Act. Having made the order he should then inform the prisoner of his right to bring an application of habeas corpus in the High Court and to inform him that he will not be delivered up during the period of 15 days except with his consent or

while any such habeas corpus application is pending.' "

With this statement of the limitations of the functions of the District Justice I find myself in complete agreement and I do not consider that it is necessary for me to add anything to it.

I would, therefore, dismiss the appeal against the refusal of the Application pursuant to Article 40 of the Constitution and against the application for judicial review, but I would allow the appeal pursuant to Section 50 of the Act of 1965 and direct the release of the Plaintiff under that Section.

*approved.*

*V. a. Finlay*

*6:4:1990*

Finlay C.J.  
Griffin J.  
Hederman J.  
McCarthy J.  
Blayney J.

(139/146-89)

THE SUPREME COURT

000225

OWEN GERARD CARRON

PLAINTIFF

AND

JOHN PAUL McMAHON

DEFENDANT

AND

OWEN GERARD CARRON

APPLICANT

AND

THE GOVERNOR OF PORTLAOISE PRISON

RESPONDENT

AND

OWEN GERARD CARRON

APPLICANT

AND

DISTRICT JUSTICE JAMES P. GILVARRY

RESPONDENT

JUDGMENT delivered on the 6th day of April 1990 by

GRIFFIN J. [Blayney J. agr.]

I agree with the judgment delivered by the Chief Justice. I would however like to add some comments.

By virtue of s. 50 of the Extradition Act, 1965, a person arrested under Part III of the Act shall be released if the High Court or the Minister for Justice so directs in accordance with that section. A direction under that section may be given by the High Court where the Court is of opinion that the offence to which the warrant for his arrest relates is a political offence or an offence connected with a political offence.

The warrants issued for the arrest of the plaintiff related to offences of:

1. possession of a fire-arm and ammunition with intent by reason thereof to endanger life, or cause serious injury to property, or to enable any other person to endanger life or cause injury to property, and
2. possession of a fire-arm and ammunition under such

circumstances as to give rise to a reasonable suspicion that he did not have them in his possession for a lawful object.

These offences were identical with those in respect of which his passenger, James Maguire, was convicted at Belfast Crown Court on the 18th February 1987.

The claim of the plaintiff is for an order directing his release pursuant to s. 50 on the grounds that each of the offences in respect of which the warrants were issued is a political offence or an offence connected with a political offence. When that claim came before the High Court, the High Court was then bound by the majority judgment of this Court, delivered by the Chief Justice, in Russell v. Fanning, 1988 I.R. 505. In the High Court, in the course of delivering his judgment, with which the other members of the Divisional Court agreed, Hamilton P., for the reasons stated by the Chief Justice in the judgment he has just delivered, held that the offences with which the plaintiff is charged are not political offences within the meaning of s. 50.



(8)

and there was undoubtedly ample evidence on which that finding was justified. The offences with which the plaintiff is charged are therefore offences connected with a political offence, and he is accordingly entitled to a direction that he be released in accordance with s. 50 of the Act of 1965.

*Atwood*  
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*6. 4. 1990*

THE SUPREME COURT

Finlay C.J.  
Griffin J.  
Hederman J.  
McCarthy J.  
Blayney J.

(139/146-89)

CARRON

- v -

McMAHON

Judgment of McCarthy J., delivered the 6th day of April, 1990.

I have read the judgment of the Chief Justice and I fully agree with the order proposed and the reasons stated therefor.

In Russell -v- Fanning (1) for the reasons stated in my judgment therein, I did not agree with the conclusion of the majority of the Court, as I understand it, that the term "political offence" within the meaning of Section 50 of the Extradition Act 1965 cannot be construed so as to grant immunity to a person who by his own admission has the objective of achieving the re-integration of the national territory by force of arms. In Finucane -v- McMahon (2)

(1) (1988 I.R.) 505

(2) Supreme Court - unreported - judgment delivered 13.3.1990

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I restated these reasons; I adhere to these views as I have expressed them.

*Approved.*

*[Signature]*

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