

**THE HIGH COURT
JUDICIAL REVIEW**

[2018 No. 612 JR]

BETWEEN

AIMEE CULLY [AKA AMY CULLY]

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 25th day of May, 2020

Background

1. On 16 May 2018, the applicant appeared in the District Court on four separate and distinct charges: -

- (i) Charge Sheet No. 18742464 – Garda Alan O’Dowd;
- (ii) Charge Sheet No. 18742431 – Garda Alan O’Dowd;
- (iii) Charge Sheet No. 18742212 – Garda Alan O’Dowd; and
- (iv) Charge Sheet No. 18824039 – Garda Eoin Martin.

All of these charges were listed for the first time on the said date.

2. The applicant was represented by Ms. Niamh McKernan, Solicitor of John Shanley Solicitors, 7 Arran Quay, Dublin 7. Having dealt with a number of preliminary issues, Ms. McKernan applied for a legal aid certificate in respect of the prosecution initiated by Garda Eoin Martin ((iv) above). There was no application made in respect of the prosecutions initiated by Garda O’Dowd ((i)-(iii) above). However, the District Judge stated that he was going to grant certificates in respect of all the charges. The following day, 17 May, the applicant’s Solicitor’s office received the legal aid (District Court) certificates in respect of the applicant, totalling four separate certificates in respect of the four prosecutions that were before the Court.
3. The applicant’s case is that she was granted four certificates, having only applied for one. This may seem a somewhat unusual case to be making but it has to be seen against the background of, firstly, the provisions of Regulation 7(4) of the Criminal Justice (Legal Aid) Regulations, 1965 (S.I. 12/1965) which states: -

“Where two or more certificates for free legal aid are granted to a person and the cases in relation to which they are granted are heard together or in immediate succession, one certificate only shall (unless the Court, being satisfied that there is good reason for so doing, otherwise directs) be deemed, for the purposes of these Regulations, to have been granted to the person.”

The second matter is that under the District Court legal aid system the “Day 1” fee of €201.50 is paid for the first appearance in court under a certificate for free legal aid. A further fee of €50.39 is paid for each subsequent appearance under a certificate. Given the provision of Regulation 7(4) set out above, this would mean, unless the court otherwise directed, that the fee payable in respect of each of the charges would be

€50.37 and €12.59 for each subsequent appearance. The professional work involved in dealing with each charge includes an initial consultation, correspondence with the relevant prosecuting Gardaí, the viewing of disclosure received and taking further instructions in light of the disclosure. It is not for the court to comment on the level of these fees but I very much doubt that a credible case could be made that these fees are reasonable remuneration for the professional work and responsibility involved.

Application for judicial review

4. The applicant was granted leave to seek, by way of judicial review, the following relief: -

“An order of *certiorari* quashing the decision of the District Judge made on 16 May 2018 to grant the applicant a legal aid (District Court) certificate on foot of the prosecutions initiated by Garda Alan O’Dowd on Case Numbers 2018/84202, 2018/84215 and 2018/84207, when no application for a certificate was made in respect of these prosecutions.”

Consideration of issue

5. Though the application can be seen against the background of the level of remuneration under the District Court Legal Aid Scheme, in fact, the central issue is the statutory provision under which certificates of legal aid are granted by the District Court. Section 2(1) of the Criminal Justice (Legal Aid) Act, 1962 provides: -

“If it appears to the District Court –

- (a) that the means of the person before it are insufficient to enable him to obtain legal aid, and
- (b) that by reason of the gravity of the offence with which he is charged or of exceptional circumstances it is essential in the interests of justice that he should have legal aid in the preparation and conduct of his defence before it,

the said District Court... shall, on *application being made* to it in that behalf, grant a certificate, in respect of him for free legal aid...” (*Emphasis added*)

6. In my view, this statutory provision is clear. Before a legal aid certificate can be granted, there has to be an application. In this case, there is no dispute but that an application was only made in respect of one of the charges. No application was made in respect of the other three. It follows from this that the District Judge was incorrect in granting certificates in respect of the charges in which no application was made.

7. The respondent submitted to the Court, mindful of the level of remuneration in the background, that the provisions of Regulation 7(4) do give court discretion not to treat two or more certificates as one certificate. I do not accept this submission as it presupposes that there had been an application for certificates in the first place. This was not the case here.

Conclusion

8. By reason of the foregoing, I am satisfied that the applicant is entitled to the relief sought herein. As this judgment is being delivered electronically, I invite the parties to make submission on the consequential order, including the matter of costs.