

Judicial Communications Office

Wednesday 1 June 2011

COURT OF APPEAL GRANTS LEGAL AID FOR AARON WALLACE TO RECEIVE ADVICE ON THE MERITS OF AN APPEAL

Summary of Judgment

The Court of Appeal today granted legal aid to Aaron Wallace to enable him to obtain advice on the merits of an appeal. In so doing, the Court commented on the lack of clarity on this issue.

The appeal was heard by Lord Justice Higgins, Lord Justice Girvan and Lord Justice Coghlin. Lord Justice Girvan delivered the judgment of the Court.

Aaron Wallace was found guilty of the murder of Michael McIlveen who died on 8 May 2006. He sought leave to appeal against his conviction. His application was based on criticism of the trial judge's summing up. Leave to appeal was refused by Mr Justice Deeny on 18 February 2010.

Wallace indicated that he intended to pursue his application before the full Court of Appeal. In the meantime, Wallace dismissed his legal advisers and transferred his instructions to new solicitors. He brought a new application for legal aid to enable his new solicitor and counsel to consider relevant parts of the transcript of the Crown Court proceedings and to advise him on the merits of his appeal and grounds of appeal.

Article 29(4) of the Legal Aid (Northern Ireland) Order 1981 provides that a person who has been granted free legal aid for the preparation and conduct of his defence at the trial is also entitled to free legal aid in respect of "work reasonably undertaken and properly done by the solicitor assigned to that person in giving notice of appeal to the Court of Appeal or an application for leave to appeal ... and obtaining the opinion of counsel assigned to that person as to the appeal and application or matters connected therewith."

Lord Justice Girvan said that once Wallace had been granted a criminal legal aid certificate he had an entitlement to counsel's opinion in respect of his appeal rights and prospects. This opinion would generally form part of the material put before the judge who is considering the question whether leave to appeal should be granted: "The opinion is a material consideration at the

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leave stage". Lord Justice commented that in this case it appeared that no opinion was sought from or given by counsel. He heard evidence in court that the practice of practitioners varied in relation to the furnishing of an opinion pursuant to a criminal legal aid certificate. It was also said that it was unclear how the Legal Services Commission dealt with the costs of such an opinion.

Lord Justice Girvan said that "it is obviously very undesirable that there is a lack of clarity on this important issue". He added, however does not absolve counsel from the duty to provide such an opinion as the client is entitled to this under the 1981 Order. The judge said that the funding question should be resolved. In the absence of representation to the Court of Appeal on behalf of the Legal Services Commission, Lord Justice Girvan said the Court could only reach the tentative view that Article 29(4) of the 1981 Order appears to suggest that the entitlement to free legal aid for the giving of notice of appeal and obtaining the opinion of counsel is a freestanding right which arises after the conclusion of the trial, thereby giving rise to a separate funding issue. Lord Justice Girvan stated that in the interests of fairness Wallace was entitled to an opinion from counsel which should properly have been put before the single judge.

The Court of Appeal granted legal aid for a solicitor and two counsel for the limited purpose of enabling them to advise Wallace in respect of the merits of an appeal and to consider the documents and transcripts available.

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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 Courts and Tribunals Service website (www.courtsni.gov.uk).

ENDS

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