

# Judicial Communications Office

Tuesday 13 September 2011

## **COURT OF APPEAL GIVES REASONS FOR REVERSING A RULING TO STAY PROCEEDINGS**

### Summary of Judgment

The Court of Appeal today gave its reasons for its decision on 23 March 2011 to reverse a decision to stay proceedings against a man charged with rape.

SR was charged with the rape of the complainant on 21 February 2009. His trial commenced on 1 February 2010 but the jury had to be discharged because of something said by the complainant in her evidence. A new trial date had to be vacated as both Crown counsel withdrew from the case. In June 2010 the Court was informed that the complainant would be unable to attend to give evidence due to ill health. A report stated that she met the diagnostic criteria for post-traumatic stress disorder. The Recorder of Belfast made a ruling that it would not be open to him to fix a date for the trial until the complainant was competent to take part as her evidence was central to the prosecution. He stated that no trial would be possible before June 2011.

SR applied to stay the proceedings on the basis that the continuation was a breach of his rights to a fair trial under Article 6 of the ECHR and it constituted an abuse of process. The Recorder noted that none of the delays were caused or contributed to by SR. He said that in light of the medical position there was no certainty as to when, if at all, the trial could take place. He stated that at the earliest SR would have these matters hanging over him for at least 2 years and 3 months from the date on which he was interviewed. He noted that this was not a case of great complexity and there had been no contribution to the delay by the prosecution authorities, but nevertheless found that SR's Article 6 right to a fair trial within a reasonable time had been breached. He ordered that the proceedings be stayed as an abuse of process.

The prosecution sought leave to appeal against the Recorder's ruling on the grounds that the decision was wrong in law and not reasonable. The Lord Chief Justice, delivering the judgment of the Court of Appeal, stated that the purpose of the reasonable time guarantee was to protect people against excessive delay and in criminal matters especially to avoid a person who has been charged remaining too long in a state of uncertainty about his fate. He referred to case law which sets out how the court should approach an assessment of whether there has been a breach of the guarantee. This requires the court to consider the period of time that has elapsed. If the period which has elapsed is one which, on its face, gives ground for real concern the court should then look into the detailed facts and circumstances of the particular case. The state should also be asked to explain and justify any lapse of time which appears to be excessive.

The Court of Appeal, applying these principles to this case, did not consider that the period of 20 months between February 2009 and the Recorder's ruling of November 2010 was a

# Judicial Communications Office

period which would normally give rise to a real concern. The Lord Chief Justice added, however, that the Court would expect the majority of such cases to be disposed of well before such a period had elapsed. He stated that the reason for the delay from June 2010 was the unavailability of the complainant (the chief prosecution witness) because of her medical condition. The Lord Chief Justice noted that the complainant's evidence would play a central role in the proof of the case and her unavailability on medical grounds is a matter relating to the complexity of the trial which ought to be taken into account when determining whether there has been a breach of the reasonable time guarantee. He said that if it had been taken into account in this case, as the Court of Appeal considered it should have been, he was entirely satisfied that the high threshold necessary to establish a breach would not have been crossed.

The Court of Appeal noted that the Recorder had stayed the proceedings as an abuse of process. The Lord Chief Justice referred to the stated principles that an application to stay for abuse of process cannot succeed unless, exceptionally, a fair trial is no longer possible owing to prejudice to the defendant occasioned by the delay which cannot fairly be addressed in the normal trial process. The presence or absence of an explanation or justification for the delay is relevant only insofar as it bears on that question. The Lord Chief Justice said that in this case there was no suggestion that a fair trial would not be possible at a later date. The Court of Appeal was satisfied that there was nothing exceptional which required departure from the normal rule and in those circumstances a basis for a stay as an abuse of process was not made out.

The Court of Appeal concluded that the ruling to stay the proceedings was wrong in law and it reversed the ruling.

## 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 Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).

**ENDS**

If you have any further enquiries about this or other court related matters please contact:

Alison Houston  
Judicial Communications Officer  
Lord Chief Justice's Office  
Royal Courts of Justice  
Chichester Street  
BELFAST  
BT1 3JF

Telephone: 028 9072 5921  
Fax: 028 9023 6838  
E-mail: [Alison.Houston@courtsni.gov.uk](mailto:Alison.Houston@courtsni.gov.uk)