



18 October 2017

## PRESS SUMMARY

**In the matter of an application by Jason Loughlin for Judicial Review (Northern Ireland)**  
**[2017] UKSC 63**  
*On appeal from [2015] NIQB 33*

**JUSTICES:** Lady Hale, Lord Kerr, Lord Wilson, Lord Carnwath, Lord Hughes

### BACKGROUND TO THE APPEAL

This case concerned the circumstances in which sentences passed on offenders who have given assistance to prosecuting authorities should be referred back to the sentencing court under section 74 of the Serious Organised Crime and Police Act 2005 (the “**2005 Act**”).

In August 2008 Robert and David Stewart, former members of a loyalist paramilitary organisation in Northern Ireland, arrived unexpectedly at a police station in Northern Ireland. They informed police about their involvement in offences including a murder in October 2000. They also supplied police with information concerning the alleged involvement of others in those offences. On foot of the information which they provided, the Stewarts entered into agreements with the prosecuting authorities to provide information and assist with ongoing investigations. They also undertook to provide truthful evidence at trial and to plead guilty to the offences they had committed. These agreements stated that failure to comply with the terms could result in any sentence received being referred back to the sentencing court for review pursuant to section 74 of the 2005 Act.

In recognition of their assistance, the tariff for their life sentences was reduced by 75% and they both served 3 years in prison.

A number of people were charged with different offences as a result of the information given by the Stewarts. Following a long trial, only one person was convicted but this was not because of evidence given by the Stewarts. Jason Loughlin was one of those acquitted. He applied for a judicial review of the decision of the prosecutor not to refer the case of the Stewarts back to the sentencing court. His application succeeded before the Divisional Court. The prosecutor appealed to this court against the Divisional Court's decision.

### JUDGMENT

The Supreme Court allows the appeal and dismisses the application by the Respondent, Mr Loughlin, for judicial review. Lord Kerr gives the judgment with which all other members of the panel agree.

### REASONS FOR THE JUDGMENT

Section 74 of the 2005 Act requires that, before deciding to refer a sentence passed on an assisting offender back to the original sentencing court a prosecutor must be satisfied that the assisting offender had knowingly failed to comply with the terms of the agreement made with the prosecuting authorities and that a reference was in the interests of justice [11-12].

The Court rejected the Respondent's argument that the prosecutor was required to carefully examine every conceivable aspect of the Stewarts' accounts. This would have placed an impossible logistical burden on the prosecutor [15-16].

The prosecutor considered that it would not be in the interests of justice to refer the decision back to the sentencing court. She identified five factors relevant to her decision: (i) the nature and extent of assistance provided; (ii) the time which had elapsed since the original sentence had been passed; (iii) whether the imposition of a revised sentence might be considered oppressive; (iv) the potential damage to public confidence in the justice system if a referral was not made; and (v) the prospects of a successful application to the reviewing court. Having analysed these factors in relation to the Stewarts, the prosecutor concluded that the case should not be referred [17-19].

The Divisional Court had considered the key question to be whether circumstances had changed since the original sentence had been passed, suggesting that (i) the prosecutor must first consider whether there had been a change of circumstances; and (ii) if such a change had occurred, unless there were countervailing circumstances, she was bound to conclude that it was in the interests of justice that the case be referred [21-22].

The Court rejected this conclusion. To require the prosecutor to refer a sentence back where there had been a change of circumstance would entail a reference in any instance of deviation by the assisting offender from the agreement. The requirement that the referral be in the interests of justice would then have no meaningful content. Consideration of the interests of justice involves an open-ended deliberation - section 74(4) does not impose any constraints on how the prosecutor should approach the question [29-31].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>