



**THE HIGH COURT
JUDICIAL REVIEW**

**[2026] IEHC 493
Record No. 2025/372 JR**

BETWEEN

P.M.

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

**JUDGMENT of Ms Justice Siobhán Phelan delivered on the 20th day of
July, 2026**

INTRODUCTION

1. These proceedings were heard with two related applications arising from the same underlying incident which occurred on the 22nd of February, 2022. The three proceedings have broadly similar histories. Each applicant was a minor at the time of the alleged offences and was identified and investigated at a relatively early stage but

was not charged until much later. By then, each had either reached or was approaching the age of 18 and consequently lost, or was on the cusp of losing, the procedural and other protections afforded to children under the Children Act, 2001 (the ‘2001 Act’). Judgments are being delivered today in the two related matters *S.B. v. D.P.P.* [2026] IEHC 494 and *CMcL v. D.P.P.* [2026] IEHC 495 and this judgment falls to be read together with the judgments in each of these two cases.

2. A further feature common to the three proceedings is that the Children Court accepted jurisdiction under s. 75 of the 2001 Act in the cases of four other young persons allegedly involved in the same incident who were still under 18 when charged.¹ It did so notwithstanding the Director of Public Prosecution’s (DPP) recommendation that they be tried on indictment. Each of the three applicants in these related judicial review proceedings contends that, but for having aged out, there was at least a real prospect that the Children Court would also have accepted jurisdiction in his case. Because they were adults when brought before the District Court, they could not avail of the s. 75 procedure and the prosecution’s position prevented summary disposal under the ordinary adult procedure. It is unclear whether, apart from age and maturity, there was any basis for distinguishing their alleged culpability from that of the co-accused who remained under 18.
3. The central question in each of the three proceedings is whether blameworthy prosecutorial delay resulted in a breach of the applicant’s constitutional right to trial with due expedition and, if so, whether the resulting prejudice warrants prohibition of the trial. That question has two related components. The first is whether the delay was blameworthy, having regard to the heightened duty of expedition in cases involving children and to the early availability of CCTV footage and witness evidence. The second is whether the delay caused prejudice of sufficient gravity to outweigh the public interest in prosecution.
4. The principal prejudice alleged in all three proceedings is that each applicant ‘aged out’ of the child-specific regime under the 2001 Act before being charged or brought before the court. It is contended that, as a result, each lost the opportunity to have the Children

¹ The Applicant pleads three co-accused but DPP concedes the correct number of co-accused remaining before the Children Court is four.

Court consider summary disposal under s. 75, together with the anonymity and reporting protections and the child-specific sentencing and disposal framework that might otherwise have applied.

5. As there are factual differences among the three proceedings, and because the parties' positions on any appeal may not be identical, I have decided to deliver separate judgments. The applicable legal principles are nevertheless common to all three.
6. The Applicant was born on the 24th of July, 2006 and was 15 years of age at the time of the alleged offences. He had reached the age of 18 by the time the DPP's direction for trial on indictment issued on the 17th of September, 2024. That direction issued approximately two and a half years after the evidential investigation into his alleged involvement had, on his case, effectively concluded.
7. The High Court leave order imposed an interim prohibition on publication or broadcast of identifying material until the return date, which order has been continued. This judgment considers the possibility of a *Gilchrist*-type order and the prohibition on publication or broadcast of identifying material is being maintained pending further order.

BACKGROUND

8. As in the two related proceedings, the charges against the Applicant arise from an incident on Henry Street, Dublin, on the 22nd of February, 2022. It is alleged that, following an altercation involving the throwing of eggs, a group of young persons attacked LM (the 'injured party'). The Applicant is charged with violent disorder and assault causing harm arising from that incident.
9. The principal early investigative steps concerning the Applicant were taken in February and March, 2022. CCTV footage was collected and witness statements were obtained, and the Applicant was identified from CCTV footage on the 10th of March 2022. On the 18th of March, 2022, he attended a voluntary cautioned interview with his mother, during which he admitted that he had been present at the scene but denied any criminal

involvement. On the 12th of April, 2024, he was deemed unsuitable for admission to the Garda Youth Diversion Programme in respect of the alleged offences.

10. The DPP's direction for trial on indictment issued on the 17th of September, 2024. Following a short delay in locating the Applicant, he was charged on the 28th of September, 2024, approximately two months after reaching the age of 18. He faces charges of violent disorder contrary to s. 15 of the Criminal Justice (Public Order) Act, 1994 and assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997.
11. On the 18th of October, 2024, the Applicant appeared before the Children Court with five co-accused (this may in fact be six), all of whom had been minors at the time of the alleged incident. The prosecution's position was that the charges against each arose from the same incident and were identical in nature. The investigating Garda informed the court that the DPP recommended trial on indictment in the cases of the three (although the DPP concedes four) co-accused who remained under 18 but directed trial on indictment in the cases of the Applicant and the two other co-accused who had reached 18.
12. The Children Court accepted jurisdiction in the cases of the co-accused who remained under 18. The Applicant and the other accused who had reached 18 were remanded for service of a book of evidence and were subsequently sent forward for trial on the 10th of February, 2025.
13. Despite the early investigative steps, the book of evidence was not served until the 10th of February, 2025, when the Applicant was sent forward for trial on bail to the Dublin Circuit Criminal Court. The book of evidence includes the memorandum of the Applicant's voluntary cautioned interview. During that interview, CCTV footage was shown to him, and he was asked why he had put up his hood and approached the scene of the fight. He said that he had gone over to see what was happening. The interviewing Garda also stated that the CCTV showed him leaving the incident with '*all other people involved.*'
14. The Applicant's Statement of Grounds was filed on the 19th of March, 2025. Gearty J granted leave on the 12th of May, 2025, and the originating notice of motion was made

returnable for the 24th of June, 2025. A stay of the prosecution was granted and subsequently continued pending the determination of these proceedings.

15. In Opposition papers filed in February, 2026, the DPP relies on the established principles governing prohibition on grounds of prosecutorial delay. It is contended that a prosecution should ordinarily proceed unless it would be clearly unfair; that delay is not, by itself, sufficient to justify prohibition; and that matters capable of being addressed at trial should ordinarily be left to the trial judge rather than determined by way of judicial review. The DPP attributes the time taken to the complexity of an investigation involving multiple suspects, extensive CCTV footage and an identification process that continued in respect of other suspects after the Applicant had been identified. Reliance is also placed on the Garda members' other operational duties. The DPP contends that any delay was not blameworthy.
16. The DPP further contends that violent disorder and assault causing harm are serious offences and that there is a strong public interest in their prosecution. Although the DPP accepted in oral submissions that the overall period was excessive, it did not concede that the delay was legally blameworthy. The DPP maintained that the time taken was sufficiently explained by the complexity of the investigation and operational pressures. It is contended that the loss of the protections available under the 2001 Act is not decisive. The DPP submits that some of the alleged prejudice can be mitigated: a parent may attend court; probation reports and community sanctions remain available; and any loss of anonymity may be addressed by a *Gilchrist*-type order. The DPP further relies on the exceptional nature of judicial review relief restraining an ongoing prosecution and maintains that the relevant matters can be addressed by the trial judge. The opposition is verified by a short affidavit sworn by Garda Kelly McKiernan.
17. A full chronology is appended. It shows that a substantial part of the delay occurred during the referral of the Applicant to the Garda Youth Diversion Programme. The initial recorded referral steps were taken in September, 2023; the decision that he was unsuitable for admission to the Programme was made on the 12th of April, 2024 and received by the investigating Garda on the 24th of April, 2024. The Applicant contends that the referral should not have been pursued because he had not admitted criminal conduct and was therefore not a suitable candidate for diversion.

SUBMISSIONS

18. Although separately represented, each of the three applicants relies on the same basic legal framework. Each seeks to prohibit his pending prosecution on the ground that blameworthy prosecutorial delay breached his constitutional right to trial with due expedition and caused him to lose protections afforded by the 2001 Act. The manner in which those arguments are developed differs among the three proceedings.
19. The Applicant relied on authorities including *B.F. v. DPP* [2001] 1 I.R. 656, [2001] IESC 18 and *Donoghue v. DPP* [2014] 2 I.R. 762, [2014] IESC 56. It was submitted that those decisions establish that the State authorities owe a heightened duty of expedition in the investigation and prosecution of alleged offences involving children. The Applicant submitted that the approach in *Donoghue* requires the Court to determine, first, whether there was blameworthy prosecutorial delay and, secondly, whether the prejudice caused by that delay, considered with all other relevant circumstances, outweighs the public interest in prosecution.
20. On the first limb, the Applicant argued that the delay was unexplained and unjustified. He submitted that it was not excused by the investigating Garda's workload, references to other investigations or general operational pressures, including the Dublin riots. Criticism was directed at the time taken in the Garda Youth Diversion Programme. The first recorded referral step occurred in September, 2023, but the decision was not made until April, 2024. The Applicant relied on *M.S. v. DPP* [2018] IEHC 285, in which McDermott J. observed that the diversion process should generally take four to six weeks. He further contended that the referral should not have been pursued because he had never accepted criminality and was therefore not a suitable candidate. Other periods of file processing were also said to be unexplained, in circumstances where the evidential investigation concerning his alleged participation had substantially concluded in March, 2022.
21. On the second limb, the Applicant relied on the prejudice said to arise from the loss of protections under the 2001 Act. If the prosecution proceeds, he will be tried as an adult and will not have access to the child-specific procedures and sentencing or disposal options that might otherwise have applied. Emphasis was placed on the loss of the s. 75 procedure, under which the District Court, sitting as the Children Court, may determine

whether a child charged with an indictable offence should be dealt with summarily. The Applicant relied on *The People (DPP) v. L.E.* [2020] IECA 101 and on the fact that the s. 75 procedure does not confer on the DPP a power equivalent to the requirement for prosecutorial consent in the ordinary adult procedure. It was submitted that s. 75 is therefore an important procedural protection that may result in charges involving children being dealt with summarily even where comparable charges involving adults would proceed on indictment.

22. The Applicant submitted that there was a strong evidential basis for concluding that, but for his having aged out, the charges against him would have been dealt with summarily. He relied on the fact that the Children Court accepted jurisdiction in the cases of the co-accused who remained under 18. It was contended that no distinction had been identified between the Applicant and those co-accused in terms of their alleged participation or culpability. In that regard, reliance was placed on the memorandum of the Applicant's cautioned interview. Although CCTV footage was shown to him, the interview record does not indicate that any specific act of violence or other conduct suggesting a greater degree of culpability was put to him.
23. Counsel for the Applicant submitted that the present case is distinguishable from *Doe (No. 1)*, *Doe (No. 2)* and *Doe (No. 3) v. DPP* [2025] IESC 17. The Supreme Court held in *Doe* that the loss of the s. 75 procedure is not ordinarily a matter of great weight in an application for prohibition, in part because the High Court is not generally well placed to speculate as to whether the Children Court would have accepted summary jurisdiction. The Applicant contended that the present case is different because the Children Court accepted jurisdiction in the cases of co-accused arising from the same incident who remained under 18. Relying in part on *DPP v. Furlong* [2022] IECA 85, he submitted that the Court could infer from those comparator cases that there was a real prospect that the Children Court would also have accepted jurisdiction in his case.
24. The Applicant submitted that the loss of the s. 75 procedure exposed him to a materially higher maximum sentence. On the violent-disorder charge, he now faces, on conviction on indictment, a sentence of up to 10 years' imprisonment. By contrast, if the Children Court had accepted jurisdiction and dealt with the charge summarily, the maximum custodial sentence would have been 12 months. The Applicant relied on para. 134 of

Doe, where O'Malley J. stated that, where charges would have been brought while the accused remained a child, the Director should acknowledge that she would not then have had a right to veto summary disposal and should give serious consideration to consenting to such disposal, unless the facts make summary disposal inappropriate. It was pointed out that the DPP had recommended trial on indictment at the October 2024 hearing, before the Supreme Court delivered judgment in *Doe*.

25. The Applicant submitted that, when the public interest in prosecuting the alleged offences of violent disorder and assault causing harm was balanced against the prejudice caused by the loss of protections under the 2001 Act, the balance favoured prohibition. He relied in particular on the loss of the s. 75 procedure, the increased sentencing exposure and the difference between his procedural position and that of the co-accused who remained under 18.
26. Counsel for the DPP addressed the three proceedings together in oral submissions, although separate written submissions had been filed. The DPP opposed prohibition in this case and submitted that the Applicant was not entitled to restrain the prosecution even if blameworthy delay were established. While accepting the two-stage approach in *Donoghue v. DPP*, the DPP emphasised that delay alone is insufficient and that prohibition is an exceptional remedy requiring serious prejudice and truly exceptional circumstances.
27. It was contended on behalf of the DPP that there is no exceptional prejudice demonstrated in this case where the main alleged prejudice is the loss of s.75 hearing and the lost chance of a s.75 summary disposal. The DPP relied on *Doe v. DPP* to contend that loss of a s.75 hearing is not decisive and was given limited weight by the Supreme Court in *Doe*, where the difficulty for the High Court in speculating on what result a s.75 hearing would have produced was emphasised. It was accordingly submitted that there is no evidence of actual prejudice in this case. It was stressed that the Applicant had not provided evidence of what arguments would have been made at a s.75 hearing or of personal circumstances warranting leniency.
28. The DPP submitted that the alleged prejudice was speculative, because the Applicant had not shown that the Children Court would have accepted summary jurisdiction or made the same jurisdictional decision as in the cases of the three younger co-accused.

It was argued that each accused had to be assessed individually and that similarity in age or alleged involvement did not establish that the same outcome would follow. Paragraph 5 of the Statement of Opposition, filed on the 20th of February, 2026, pleads that the DPP considered whether to consent to summary disposal, having regard to the Applicant's loss of the s. 75 procedure, and decided that such disposal was inappropriate.

- 29.** The DPP contended that a fair trial remained possible, as there was no suggestion that evidence had been lost, that witnesses were unavailable or that the defence had been impaired. It was further submitted that, if the Applicant were convicted, the Circuit Court would be required to take account of his age and maturity at the time of the alleged offences and his level of culpability. The sentencing court could therefore impose an individualised and proportionate sentence reflecting the fact that he was a child at the time. On that basis, the DPP submitted that the loss of access to the Children Court procedure did not give rise to irremediable prejudice sufficient to justify prohibition.
- 30.** The DPP emphasised that violent disorder and assault causing harm are serious offences and that there is a strong public interest in the adjudication of allegations of group violence. Relying on *Doe v. DPP* [2025] IESC 17 and *Brophy v. DPP* [2026] IESC 7, the DPP submitted that the loss of child-specific procedures following delay did not, without more, justify prohibition and that the Applicant had not demonstrated prejudice of the exceptional gravity required to restrain the prosecution.

ANALYSIS AND DECISION

- 31.** The issue in each of the three proceedings is whether blameworthy delay on the part of the investigating or prosecuting authorities caused prejudice of sufficient gravity to warrant restraint of the further prosecution. Each applicant contends that the delay caused him to lose protections available to children under the 2001 Act and thereby breached his constitutional right to trial with due expedition. As in the two related proceedings, I must determine whether the delay was blameworthy and, if so, whether the resulting prejudice, assessed in light of the seriousness of the charges and the public interest in prosecution, justifies the exceptional remedy of prohibition.

Blameworthy Delay

- 32.** In an aged-out case of this kind, the critical period is that preceding the accused's eighteenth birthday, because reaching that age before the relevant court process results in the loss of access to the child-specific regime. Later progress in the prosecution cannot restore access to the s. 75 procedure, although it remains relevant to the overall chronology and may bear on other forms of prejudice. *Cash v. DPP* [2017] IEHC 234 and *Dos Santos v. DPP* [2020] IEHC 252 establish that, for the purpose of assessing the delay that caused him to age out, the relevant period runs from the date of the alleged offences to his eighteenth birthday, when that prejudice crystallised.
- 33.** The principal evidential steps concerning the Applicant's alleged participation were substantially complete by March, 2022. A significant feature of the subsequent chronology is the referral to the Garda Youth Diversion Programme, notwithstanding the Applicant's position that he had not admitted or accepted responsibility for criminal conduct and was therefore not a suitable candidate. I do not consider it necessary to determine whether the referral was inappropriate in principle. Even if the referral was appropriate, the period between the initial recorded submission in September, 2023 and the decision in April, 2024, has not been satisfactorily explained.
- 34.** The continuing identification of other suspects and consideration of their suitability for the Diversion Programme may explain some of the time taken in the broader investigation. They do not, however, adequately explain why the Applicant's case was not progressed with sufficient expedition to bring him before the Children Court while he remained under 18. Beyond general references to workload and operational pressures, no specific explanation has been provided for the relevant periods of inactivity. Of particular significance, the file was not sent to the DPP until the 21st of July, 2024, only three days before the Applicant's eighteenth birthday.
- 35.** The DPP accepted at the hearing that the delay was excessive. In my view, the delay was also blameworthy. The Applicant was identified and interviewed in March, 2022, when he was 15, yet the file was not sent to the DPP until three days before his eighteenth birthday, and no satisfactory explanation has been provided for the time taken at several intervening stages. Having regard to the heightened duty of expedition

in cases involving children, I am satisfied that the first stage of the test is met and there has been inordinate delay in this case which cannot be excused.

Prejudice

- 36.** The delay in this case constituted a breach of the Applicant's constitutional right to trial with due expedition. It does not follow, however, that the prosecution must be restrained. The Court must proceed to assess the prejudice caused by that breach and conduct the balancing exercise required by *Donoghue*. The case law now provides considerable guidance on the nature and gravity of the prejudice required before a prosecution may be restrained in an aged-out case. The most relevant recent authorities are the decisions of the Supreme Court in *Doe v. DPP* [2025] IESC 17 and *Brophy v. DPP* [2026] IESC 7.
- 37.** A central feature of the Applicant's case is the different procedural course followed in respect of the co-accused who remained under 18 and those, including the Applicant, who had aged out. Unlike the applicants in some earlier cases, the Applicant relies on comparator evidence from co-accused allegedly involved in the same incident, whose cases remained in the Children Court after it accepted jurisdiction. As the Supreme Court explained in *Brophy v. DPP*, however, the difference in procedure results from the statutory distinction between children and adults and does not, without more, constitute unequal treatment in the legal sense. The question remains whether the consequences of the blameworthy delay caused prejudice of sufficient gravity to warrant prohibition.
- 38.** In *Doe*, the Supreme Court held that, even where blameworthy delay is established, the loss of protections under the 2001 Act, though amounting to some prejudice, will not ordinarily justify prohibition where serious charges are involved and no further prejudice is demonstrated. The seriousness of a charge is not determined solely by the sentence likely to be imposed; the public interest also lies in the proper administration of criminal justice (para. 126). The Supreme Court stated that prohibition in cases of culpable delay involving serious offences will be granted only in truly exceptional circumstances where the delay has caused prejudice beyond the norm (para. 128). The threshold is therefore a demanding one.

39. In *Doe*, O'Malley J. addressed the significance of the loss of a s. 75 hearing in an application for prohibition. At para. 133, she stated:

“It is particularly difficult to assess the significance of such a loss of opportunity without knowing what the applicant might have put forward in such a hearing, including their intention to plead guilty or otherwise, and it is in the nature of judicial review proceedings like these that the applicant may not want to reveal their position fully. But if an applicant does disclose a wish to plead guilty, it seems to me that the inevitable result must be that the judicial review application will fail. This is because the High Court can never assume that the Circuit Court would not impose the appropriate sentence, whatever that might be. In principle, if it becomes apparent to a sentencing court that the case should be dealt with by way of a non-custodial sentence, or a sentence of less than 12 months, then that is the sentence that should be imposed.”

O'Malley J. continued:

“It is for these reasons that I do not think that the unavailability of s. 75 is a major consideration in terms of grounding an order of prohibition. It is, nonetheless, a loss, to some extent, to an accused who has aged out...”

The Applicant contends that the present case differs because there is comparator evidence from co-accused arising from the same incident. The weight to be attached to that evidence is considered below.

40. The Supreme Court also considered the operation of s. 75 further in *Brophy v. DPP* [2026] IESC 7 in a challenge to its constitutionality. The Court accepted that an accused who had aged out might have lost the possibility of summary disposal in the Children

Court. It emphasised, however, that any sentencing court must impose a sentence appropriate to the offence of which the accused is convicted and to the individual offender. Matters such as the accused's age and maturity at the time of the alleged offence and his resulting level of culpability remain relevant if he is later sentenced as an adult. Although that does not restore the lost s. 75 procedure or the child-specific range of disposals, trial in the Circuit Court does not necessarily result in a sentence greater than that which would otherwise have been appropriate. The sentencing judge must be presumed to impose the appropriate sentence for the offence committed by the accused, taking account of the fact that he was a child at the time of the alleged offence; culpability for that offence does not increase as the offender ages.

41. As held in *Doe* (at para. 115):

“It is essential to stress that where the decision is to send the matter forward to the Circuit Court, the assessment of gravity and appropriate sentence carried out in the District Court in no way dictates the outcome of the very different assessment to be carried out in the Circuit Court. If the person is convicted or pleads guilty, the Circuit Court judge is obliged to pass sentence in accordance with the fundamental principle applicable to sentencing - the sentence must be proportionate to the offence and to the circumstances of the offender. At that stage, the court will have considerably more information than was outlined to the District Court, in relation to the gravity of the offence and also the culpability and personal circumstances of the accused.”

42. The significance of this passage is the clear statement that the Circuit Court's sentencing jurisdiction must be exercised by reference to the Applicant's own culpability and circumstances, including his age at the time of the alleged offences. The passage establishes that, if the Applicant is convicted or pleads guilty, the Circuit Court must determine the appropriate sentence by reference to the gravity of the offence and his individual culpability and circumstances, including the fact that he was a child at the time of the alleged offences. It does not, however, restore the lost opportunity for a jurisdictional decision under s. 75.

43. This position was confirmed in *Brophy v. DPP*. At para. 93, the Supreme Court stated that the loss of the opportunity for a decision under s. 75 was not generally a matter to which great weight should be given in an application for prohibition, because the High Court is not ordinarily well placed to speculate as to what the Children Court's decision would have been. At para. 112, O'Malley J. explained that the processes prescribed by the 2001 Act ultimately pursue the same fundamental objectives as the procedures applicable to adults: the determination of guilt or innocence and, following a finding of guilt, the imposition of an appropriate sentence. The procedures and available outcomes differ because they are designed to reflect the developmental differences between children and adults. Those differences may affect how a person experiences, understands and participates in the criminal process and the suitability of particular sentencing options.
44. From a sentencing perspective, the 2001 Act provides child-specific options that are not designed for adults. O'Malley J. observed in *Brophy* that the unavailability of those options to adults does not amount to unlawful discrimination, because the options reflect the distinct circumstances and developmental needs of children. Separately, *Doe* establishes that prejudice arising from the loss of anonymity may, where appropriate, be addressed by a *Gilchrist*-type order. The principal remaining prejudice relied upon in this case is therefore the increased sentencing exposure arising from the loss of the 12-month maximum custodial sentence that would have applied if the Children Court had accepted jurisdiction and dealt with the charges summarily.
45. Although I cannot exclude the possibility that the Children Court would have declined jurisdiction in the Applicant's case, I do not accept the DPP's submission that there is no evidence capable of supporting a contrary conclusion. There is some inferential evidence that, had the Applicant remained a child when the matter came before the Children Court, summary jurisdiction might have been accepted. The charges arose from the same incident as those involving the co-accused whose cases remained in the Children Court, despite the DPP's recommendation that they be tried on indictment. That comparator evidence supports at least a reasonable possibility of a similar decision in the Applicant's case, provided that his alleged participation or culpability was not materially greater and that differences in age or maturity would not have led the Children Court to a different conclusion.

46. No evidence before this Court has been identified as demonstrating that the Applicant's alleged conduct was more culpable than that of the co-accused whose cases remained before the Children Court. That observation must, however, be qualified by the fact that I have not viewed the CCTV footage.
47. The interview record does not show that the Applicant was accused of striking the injured party, kicking him or engaging in any other specific act of violence that distinguished his alleged conduct from that of the co-accused whose cases remained in the Children Court. The interview record provides some, but necessarily limited, support for the Applicant's contention that his alleged participation was not materially more serious than his minor co-accused. I am also conscious that a decision under s. 75 is made based on an outline of the alleged facts and the relevant statutory considerations, rather than following a trial of the evidence. In the absence of the CCTV itself and of affidavit evidence addressing the comparative culpability of the accused, I am not able to make a positive finding that his alleged participation was equivalent to that of the child co-accused and this is not my proper role in judicial review proceedings of this nature in any event. Taken together, however, these matters support a reasonable possibility that, had the Applicant remained a child, the Children Court might have accepted jurisdiction.
48. Against that, the Children Court's decision under s. 75 is individual to the child concerned. Section 75(2) requires the Court to take account of the child's age and level of maturity and permits it to consider any other relevant facts. There is no evidence before me concerning the respective maturity of the Applicant and the co-accused whose cases remained in the Children Court. Those co-accused were necessarily younger than the Applicant when the jurisdictional decisions were made, and the difference in age might have been associated with a difference in maturity. Those matters would have required an individual assessment and might have led the Children Court to reach a different decision in the Applicant's case.
49. Based on the comparator evidence, it seems to me that the Applicant has established a reasonable possibility that the Children Court would have accepted jurisdiction had he remained a child when charged. A finding of anything more than a possibility or reasonable possibility would go beyond what the evidence supports, particularly in light

of the caution expressed by the Supreme Court in *Doe* and *Brophy* concerning attempts by the High Court to reconstruct the jurisdictional decision the Children Court might have made.

50. Having concluded that the evidence establishes a reasonable possibility that the Children Court would have accepted jurisdiction, it is appropriate for me to consider whether such loss of opportunity or possibility constitutes sufficient prejudice to warrant prohibition of proceedings. The question on this hypothesis is whether the loss of summary disposal—and the resulting exposure to the greater sentencing jurisdiction of the Circuit Court—constitutes prejudice of a nature and degree sufficient to warrant prohibition.
51. On this hypothesis, the Applicant has lost the benefit of summary disposal and the 12-month maximum custodial sentence applicable to that procedure. I accept that this amounts to some prejudice. That prejudice does not, however, determine the application. It must be weighed with all other relevant factors, including the length and nature of the blameworthy delay, the Applicant's age at the time of the alleged offences, the seriousness of the charges and the public interest in the proper administration of justice, in deciding whether the exceptional remedy of prohibition is warranted.
52. The alleged offences in this case differ from those considered in *Doe*. They are not sexual offences and the nature and potential consequences of identification do not arise in precisely the same way. Nonetheless, violent disorder and assault causing harm are serious charges, particularly where the allegation concerns group violence against the injured party in a public place.
53. Any prejudice arising from the loss of anonymity does not, in the circumstances of this case, warrant prohibition, because it may be addressed by an appropriate *Gilchrist*-type reporting-restriction order. The remaining material prejudice alleged is the Applicant's increased sentencing exposure. On the working hypothesis that, if charged while still a child, the Children Court would have accepted jurisdiction and dealt with the charges summarily, the maximum custodial sentence would have been limited to 12 months. If convicted on indictment, the Applicant is now liable to be sentenced in the Circuit Court under its broader sentencing jurisdiction.

- 54.** Notwithstanding that increased sentencing exposure, the Circuit Court must, if the Applicant is convicted, impose an individualised and proportionate sentence for any offence proved. In doing so, it must take account of the fact that he was a child at the time of the alleged offences, together with his age, maturity and level of culpability at that time. His culpability does not increase merely because he has since reached adulthood. Although the loss of the 12-month maximum constitutes some prejudice, I am not satisfied that it creates a real risk of irremediable prejudice sufficient to warrant prohibition.
- 55.** The increase in the potential maximum sentence, without evidence of a real risk that the Circuit Court will impose an inappropriate sentence, is not prejudice of sufficient gravity to justify restraining the further prosecution.
- 56.** Accordingly, although there was blameworthy prosecutorial delay, I am not satisfied that the resulting prejudice is of sufficient gravity to outweigh the strong public interest in the prosecution of these serious charges. A fair trial remains possible as there is no suggestion that evidence has been lost, that witnesses are unavailable or that the defence has otherwise been impaired. The loss of anonymity may, if necessary, be addressed by an appropriate reporting-restriction order. If the Applicant is convicted, the sentencing court will be required to take account of his age, maturity and culpability at the time of the alleged offences, together with the fact that, through delay for which he was not responsible, he lost access to the s. 75 procedure. Although that loss and the associated increase in sentencing exposure amount to some prejudice, they do not justify the exceptional remedy of restraining the further prosecution.

CONCLUSION

- 57.** For the reasons set out above, I will refuse the relief seeking to restrain the Applicant's further prosecution. Although the delay was excessive and blameworthy, the Applicant has not demonstrated prejudice of sufficient gravity to outweigh the strong public interest in the prosecution of the serious offences alleged.
- 58.** A reporting-restriction order was not specifically sought in the relief for which leave was granted. The Statement of Grounds did, however, seek such further or other relief

as the Court considered appropriate. Considering para. 148 of *Doe*, I am satisfied that the Court has jurisdiction, in an appropriate case, to make a reporting-restriction order of the kind recognised in *Gilchrist* to mitigate prejudice arising from the loss of the statutory anonymity that would have applied had the Applicant been tried as a child. Any such order should permit variation or discharge in circumstances corresponding, so far as appropriate, to those contemplated by s. 93 of the 2001 Act. I will hear the parties as to the necessity, scope, duration and precise form of any reporting-restriction order, the court by which it may be varied or discharged, and any other consequential orders, including costs.

APPENDIX – CHRONOLOGY OF EVENTS

Date	Event
24 July 2006	Date of birth of the Applicant
24 July 2021	Applicant attains age of 15 years
22 February 2022	Alleged incident giving rise to charges
23 February 2022	CCTV obtained from Boots Pharmacy
1 March 2022	CCTV obtained from Ilac Shopping Centre and Gino's; Arnott's CCTV obtained
3 March 2022	CCTV obtained from Racy's
4 March 2022	CCTV obtained from Dealz
9 March 2022	Statement of injured party taken; Garda bulletin issued
10 March 2022	Applicant identified on CCTV
18 March 2022	Applicant attends for voluntary cautioned interview
24 July 2022	Applicant attains age of 16 years
30 January 2023	Medical report requested
26 April 2023	Medical report received
24 July 2023	Applicant attains age of 17 years
19 September 2023	JLO skeleton file submitted; clarifications requested
13 December 2023	Further JLO submission; clarifications requested
1 January 2024	Further JLO submission; clarifications requested

Date	Event
27 February 2024	JLO office receives file
12 April 2024	Applicant deemed unsuitable for diversion programme
24 April 2024	JLO decision received by investigating Garda
12 May 2024	File submitted to Garda Sergeant for onward transmission
19 June 2024	File submitted to Garda Inspector
21 July 2024	File submitted to Director of Public Prosecutions
24 July 2024	Applicant attains age of 18 years
17 September 2024	Directions issued for trial on indictment
28 September 2024	Applicant charged and granted bail
18 October 2024	First court appearance. There were six (or seven) defendants. Three (or four) were children. In those cases the court accepted jurisdiction notwithstanding that the DPP recommended trial on indictment. The three adult co-accused, including the Applicant, did not have a s. 75 hearing but were remanded for service of a book of evidence in circumstances where the DPP had directed trial on indictment.
10 February 2025	Book of Evidence served; Applicant returned for trial.
20 March 2025	Matter listed in Circuit Criminal Court.
14 May 2025	Leave granted to apply for Judicial Review
29 May 2025	Matter listed for arraignment
24 June 2025	Judicial review return date; proceedings adjourned on application of DPP.
1 July 2025	Judicial review proceedings adjourned on application of the DPP.

Date	Event
24 July 2025	Applicant attains age of 19 years
11 November 2025	Judicial review proceedings adjourned on application of the DPP.
17 February 2026	Judicial review proceedings adjourned on application of the DPP.
20 February 2026	Statement of Opposition filed.
24 February 2026	Opposition papers received
10 March 2026	High Court mention; hearing date fixed
5 June 2026	Judicial review hearing listed