



**THE HIGH COURT
JUDICIAL REVIEW**

[2026] IEHC 494

Record No. 2025/324 JR

BETWEEN

S.B.

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 incident on Henry Street, Dublin, on the 22nd of February, 2022. The three proceedings have broadly similar histories. Each applicant was a child at the time of the alleged offences and was identified and investigated while under 18, but was not charged until much later. By the time the relevant jurisdictional question arose, each had reached the age of 18 and could no longer avail of the child-specific procedures and protections under the Children Act 2001 (the ‘2001 Act’). Separate judgments are being delivered in the related proceedings concerning PM and CMcL ([2026] IEHC 493 and [2026] IEHC 495 respectively) and this judgment should be read together with them. To avoid unnecessary repetition, I have not included the review of the case-law in PM in this judgment. The applicable legal principles are common to the three cases, but the individual chronologies and evidential positions differ.
2. A 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 co-accused arising from the same incident who remained under 18. It did so notwithstanding the DPP’s recommendation that they be tried on indictment.¹ The Applicant contends that, but for the delay which caused him to age out, there was a real prospect that the Children Court would also have accepted jurisdiction in his case.
3. The central questions are whether the delay was blameworthy, having regard to the heightened duty of expedition in cases involving children, and, if so, whether the prejudice caused by that delay is of sufficient gravity to outweigh the public interest in prosecution and warrant the exceptional remedy of prohibition.
4. The principal prejudice alleged is the loss of access to the s. 75 procedure, together with statutory anonymity and reporting protections and the child-specific sentencing and

¹ I am proceeding based on four underage co-accused being dealt with summarily in the Children Court even though the Applicant says three in bringing these proceedings. Three appears to be incorrect having regard to the fact that seven names were included on the charge sheets and the DPP refers to four such co-accused in Opposition papers. By proceeding thus, I adopt the position most favourable to the Applicant.

disposal framework. The Applicant also relies on the difference between his procedural position and that of the four co-accused who remained children.

5. The Applicant was born on the 16th of August, 2005. He was 16 years and approximately six months old at the time of the alleged offences. He was identified from CCTV footage on the 24th of August, 2022, interviewed under caution on the 2nd of February, 2023, turned 18 on the 16th of August 2023 and was charged on the 7th of November, 2024. The interval between interview and charge was approximately 21 months; the interval between the alleged incident and charge was approximately 32 months.
6. An interim order prohibiting publication or broadcast of material likely to identify the Applicant was made at the leave stage. That restriction remains in force pending further order. The parties will be heard as to the necessity, scope and form of any continuing reporting-restriction order.

BACKGROUND

7. The Applicant is charged with 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. It is alleged that, following an altercation involving eggs being thrown at or near a homeless man, a group attacked LM (the ‘injured party’) on Henry Street, causing significant injury.
8. CCTV and witness evidence were gathered in the weeks following the incident. The Applicant was identified from CCTV footage on the 24th of August, 2022. On the 2nd of February, 2023, he attended a voluntary cautioned interview with his mother. He identified himself in the footage. The prosecution materials describe him as having admitted that he was in the group attacking the injured party and was not merely on its outskirts, while denying that he personally assaulted the injured party.
9. That evidential position is material to the comparator analysis. It may distinguish the Applicant from PM, whose interview account admitted presence and approach to the scene

but denied criminal involvement and did not place him within the attacking group. The distinction does not establish that SB's alleged culpability was greater than that of the four co-accused who remained children, but it demonstrates that equivalence with PM or with the child co-accused cannot simply be assumed.

10. The Applicant turned 18 on the 16th of August, 2023. The Garda Youth Diversion Programme process was not commenced until September, 2023, after he had aged out, and was not completed until April, 2024. Directions for trial on indictment were issued by the DPP on the 17th of September, 2024. The Applicant was charged on the 7th of November, 2024, approximately 21 months after interview and almost 15 months after his eighteenth birthday.
11. The book of evidence was served and the Applicant was sent forward for trial to the Dublin Circuit Criminal Court on the 4th of February, 2025. The criminal proceedings were listed in that court on the 20th of March, 2025.
12. The Applicant thereafter commenced judicial review proceedings seeking to restrain the prosecution on grounds of prosecutorial delay and loss of the protections afforded by the 2001 Act. Leave was granted in April, 2025, together with interim anonymity and reporting protections.

SUBMISSIONS

13. The Applicant relies on *B.F. v. DPP* [2001] 1 I.R. 656, [2001] IESC 18 and *Donoghue v. DPP* [2014] 2 I.R. 762, [2014] IESC 56 for the proposition that the State authorities owe a heightened duty of expedition in the investigation and prosecution of alleged offences involving children. He submits that the delay was excessive, unexplained and blameworthy.
14. The Applicant points to the period between identification in August, 2022 and interview in February, 2023, the period between interview and his eighteenth birthday in August, 2023,

and the subsequent diversion and prosecutorial processes. He submits that the essential evidence concerning his alleged participation had crystallised by February, 2023 and that no adequate explanation has been given for the failure to progress the case while he remained a child.

15. The Applicant relies principally on the loss of the s. 75 procedure. He submits that the comparator evidence takes his case beyond abstract speculation because the Children Court accepted jurisdiction in the cases of four co-accused arising from the same incident who remained under 18, notwithstanding the DPP's recommendation that they be tried on indictment.
16. The Applicant also relies on the loss of anonymity and reporting restrictions, private proceedings and child-specific sentencing measures. He further submits that he lost the possibility of being dealt with without a conviction under the Probation of Offenders Act 1907 (the "1907 Act") and advances an equality or parity argument based on the different procedural course followed in the cases of the child co-accused.
17. The Applicant seeks to distinguish *Doe (No. 1)*, *Doe (No. 2)* and *Doe (No. 3) v. DPP* [2025] IESC 17 ("*Doe*") and *Brophy v. DPP* [2026] IESC 7 ("*Brophy*") on the basis that there is actual comparator evidence from the same incident. He nevertheless accepts that each s. 75 determination is individual and that prohibition remains an exceptional remedy.
18. The DPP accepts that the overall period was substantial but denies that it gives rise to prejudice sufficient to justify prohibition. Reliance is placed on the scale and complexity of a multi-suspect investigation, the CCTV and identification process, the Garda Youth Diversion Programme, Garda workload and other operational demands.
19. The DPP submits that the comparator evidence does not establish that the Children Court would have accepted jurisdiction in the Applicant's case. Each child had to be assessed individually by reference to age, maturity, alleged conduct and any other relevant facts. The DPP further contends that the Applicant's alleged presence within the attacking group may be material to that individual assessment.

20. Relying on *Doe* and *Brophy*, the DPP submits that the loss of a s. 75 hearing and other child-specific protections does not ordinarily justify prohibition in a serious case. If convicted, the Circuit Court must impose an individualised and proportionate sentence having regard to the Applicant's age, maturity and culpability at the time of the alleged offences. Any loss of anonymity may be addressed by a reporting-restriction order of the kind recognised in *Gilchrist v. Sunday Newspapers Ltd* [2017] 2 I.R. 284, [2017] IESC 18.
21. The DPP also submits that the loss of a possible disposition under the 1907 Act is speculative. It depends not only on the Children Court accepting jurisdiction, but also on the Applicant being convicted or pleading guilty and the court then choosing that particular outcome. The DPP relies additionally on the sentencing and discharge powers available in the adult criminal process.

ANALYSIS AND DECISION

Blameworthy Delay

22. The first question is whether the delay was blameworthy. In an aged-out case, the critical period is the delay preceding the accused's eighteenth birthday, because the loss of access to the child-specific regime crystallises when the relevant procedure is not completed before the accused reaches 18: see *Cash v. DPP* [2017] IEHC 234 and *Dos Santos v. DPP* [2020] IEHC 252. In this context, it bears note that the period of relevant delay in this case is shorter than either PM or CMcL because the Applicant was older at the date of the events in question and aged out sooner. This means his case is necessarily weaker.
23. The Applicant was identified on the 24th of August, 2022 and interviewed on the 2nd of February 2023, when he was 17. By the time of that interview, the principal evidence concerning his alleged participation consisted of CCTV identification and his own account. He then remained a child for a further six and a half months, yet no charge was brought

and no completed jurisdictional process occurred before his eighteenth birthday on the 16th of August, 2023.

24. The broader investigation involved several suspects and substantial CCTV material. Those matters explain some of the time taken. They do not adequately explain why the Applicant's case was not progressed with sufficient expedition after his identification and interview, particularly when the foreseeable consequence was the loss of access to the Children Court regime.
25. The diversion process does not provide an adequate explanation. It was commenced only after the Applicant had turned 18 and took approximately seven months to complete. Nor do general references to workload and operational pressures explain the material periods of inactivity with the specificity required in a case involving a child.
26. I am therefore satisfied that the delay was excessive and blameworthy and constituted a breach of the Applicant's constitutional right to trial with due expedition. That finding does not determine the application. It remains necessary to identify the prejudice caused by the breach and to conduct the balancing exercise required by *Donoghue*. The lesser period of delay in this case could, on the facts of a given case, prove relevant in any balancing exercise carried out.

Prejudice

27. The Applicant certainly lost access to the s. 75 procedure and to other protections that would have applied had the relevant proceedings occurred while he remained a child. The question is what weight should be attached to those losses and whether they warrant prohibition of further prosecution.
28. *Doe* establishes that loss of the s. 75 procedure amounts to some prejudice but will not ordinarily be a matter of great weight in grounding prohibition. The High Court is not generally well placed to reconstruct the decision the Children Court might have made. *Doe* also confirms that the sentencing court must impose the appropriate sentence and that

anonymity prejudice may, where necessary, be addressed by a *Gilchrist*-type order. *Brophy* confirms that child-specific procedures and outcomes are designed for children and that an accused's culpability does not increase merely because he has aged.

29. The comparator evidence gives the Applicant's case greater factual substance than a wholly abstract claim. The Children Court accepted jurisdiction in the cases of four co-accused arising from the same incident who remained under 18. That supports the conclusion that summary jurisdiction in the Applicant's case was a realistic possibility.
30. The comparator evidence does not, however, establish that the same decision would probably have been made. A s. 75 determination is individual to the child concerned and requires consideration of age, maturity, the alleged facts and any other relevant circumstances. The mere facts that the charges arose from the same incident and were the same or similar do not establish identical alleged participation or culpability.
31. The Applicant's interview account requires particular consideration. The prosecution materials place him within the attacking group rather than merely at the scene, although he denied personally assaulting the injured party. That allegation may distinguish him from PM and CMcL and may also distinguish him from one or more of the child co-accused. At the same time, no specific blow or individually more serious act of violence is identified in the material summarised before this Court. The evidence therefore supports comparison, but not equivalence.
32. I am satisfied that the comparator evidence establishes a possibility that the Children Court would have accepted jurisdiction in the Applicant's case. A stronger conclusion would require assumptions about the respective conduct, age and maturity of the accused and about the material and submissions that would have been placed before the Children Court and in respect of which I have no evidence before me. It would accordingly involve speculation of the kind which was counselled against by the Supreme Court in *Doe* and which is not appropriate in judicial review proceedings where the Court is not a trier of fact.

33. Having concluded that the evidence establishes a possibility that the Children Court would have accepted jurisdiction if the Applicant remains underage when charges were being pursued before the Court, I will consider what the loss of opportunity or possibility might represent in terms of prejudice to be weighed in deciding whether to prohibit his trial.
34. The Applicant has lost the possibility of the benefit of summary disposal and the 12-month maximum custodial sentence applicable to it. He has also lost the possibility of child-specific sentencing measures and, subject to the court's discretion, the possibility of an outcome under the 1907 Act. Those losses amount to some real prejudice but it is not a prejudice to which I can attach much weight.
35. The 1907 Act point, for example, requires an assumption not only that the Children Court would have accepted jurisdiction, but that the Applicant would have pleaded guilty or been convicted and that the court would then have selected a disposition avoiding conviction. There is no evidence that this occurred in the cases of the child co-accused. I therefore attach only very limited weight to that additional possibility. The Supreme Court's concern about speculation expressed in the *Doe* echoes a similar concern expressed in the context of a constitutional challenge to the disapplication of the 1907 Act in excise cases in *DPP v. Galvin* [2025] IESC 35. Assessing prejudice by reason of loss of the possibility of an order under the 1907 Act on such a speculative basis has been ruled out by the Supreme Court.
36. The loss of the 12-month maximum is a real increase in potential sentencing exposure. It does not follow, however, that the Applicant will receive a more severe sentence than would otherwise have been appropriate. If convicted, the Circuit Court must impose an individualised and proportionate sentence having regard to his age, maturity and culpability at the time of the alleged offences. It may also consider parity with co-accused where legally and factually appropriate. I cannot assume that the Circuit Court will impose an inappropriate sentence.
37. The different procedural course followed in the cases of the child co-accused adds weight to the Applicant's prejudice argument, but it does not establish unlawful unequal treatment.

As explained in *Brophy*, the statutory distinction arises from the boundary between children and adults. The legal significance of the delay is that it caused the Applicant to lose access to the child-specific procedure; the comparator evidence informs the weight of that loss but does not create a permanent entitlement to s. 75 treatment.

38. In view of the decisions in *Brophy* and *Doe*, I consider it to be now established that any prejudice arising from the loss of statutory anonymity does not require prohibition. It may, where appropriate, be addressed by a reporting-restriction order of the kind recognised in *Gilchrist* and discussed in *Doe*. Accordingly, insofar as some prejudice has been established, it is not prejudice of a kind which carries much weight. The Applicant remains entitled to a fair trial on the evidence, with rights of defence intact and in circumstances where his age at the time of the alleged incident is a factor which the Circuit Criminal Court is obliged to take into account as a relevant factor.

Balancing Exercise

39. The alleged offences are serious. They concern group violence in a public place and significant injury to the injured party. There is a strong public interest in the adjudication of those allegations.
40. There is no suggestion that evidence has been lost, that witnesses are unavailable or that the defence has otherwise been impaired. A fair trial remains possible. The prejudice consists principally of the loss of the child-specific process, increased potential sentencing exposure and loss of statutory anonymity; it is not prejudice affecting the Applicant's ability to defend the charges.
41. Balancing the prejudice caused by the blameworthy delay against the seriousness of the charges and the public interest in prosecution, I am not satisfied that the prejudice reaches the exceptional level required to restrain the prosecution. That conclusion remains the same even on the alternative assumption that the Children Court would have accepted jurisdiction and dealt with the charges summarily.

CONCLUSION

- 42.** For the reasons set out above, I will refuse the relief seeking to restrain the Applicant's further prosecution. The delay was excessive and blameworthy and breached his constitutional right to trial with due expedition, but the resulting prejudice is not of sufficient gravity to outweigh the strong public interest in the prosecution of the serious offences alleged.
- 43.** The comparator evidence establishes that the Applicant lost an opportunity for summary jurisdiction, but it does not establish that the Children Court would probably have accepted jurisdiction. He was older and his alleged presence within the attacking group is a potential point of distinction from PM and CMcL. I do not assume equivalence between their respective positions.
- 44.** If the Applicant is convicted, the Circuit Court must sentence him by reference to his age, maturity and culpability at the time of the alleged offences and may consider relevant parity issues. The loss of the 12-month maximum and other child-specific possibilities amounts to some prejudice, but not irremediable prejudice sufficient to justify prohibition.
- 45.** I will hear the parties as to the necessity, scope, duration and form of any continuing reporting-restriction order, the court by which it may be varied or discharged, and any other consequential orders, including costs. Pending that determination, the existing prohibition on publication or broadcast of identifying material will remain in force.

APPENDIX: CHRONOLOGY OF EVENTS

Date	Event
16 August 2005	Applicant born.
22 February 2022	Alleged incident on Henry Street. Applicant aged 16 years and approximately six months.
24 August 2022	Applicant identified from CCTV footage.
2 February 2023	Applicant attended a voluntary cautioned interview with his mother. He identified himself in the footage; the prosecution materials place him within the attacking group, while he denied personally assaulting the injured party.
16 August 2023	Applicant turned 18 and ceased to be a child for the purposes of the 2001 Act.
September 2023	Garda Youth Diversion Programme process commenced after the Applicant had turned 18.
12 April 2024	Applicant deemed unsuitable for admission to the Garda Youth Diversion Programme.
17 September 2024	Directions issued for trial on indictment.
7 November 2024	Applicant charged with violent disorder and assault causing harm, approximately 21 months after interview and almost 15 months after turning 18.
4 February 2025	Book of evidence served; Applicant sent forward for trial to the Dublin Circuit Criminal Court.
20 March 2025	Criminal proceedings listed in the Dublin Circuit Criminal Court.
April 2025	High Court granted leave for judicial review and made interim anonymity/reporting protections.
20 May 2025	Originating notice of motion returnable.