



THE HIGH COURT
JUDICIAL REVIEW

[2026] IEHC 495

Record No. 2025/556 JR

BETWEEN

C. MCL.

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 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 while still a child but was not charged until much later. Each consequently lost, or was at imminent risk of losing, procedural and other protections afforded to children under the Children Act, 2001 (the “2001 Act”). Separate judgments are being delivered in the related proceedings brought by S.B. and P.M. ([2026] IEHC 494 and [2026] IEHC 493 respectively) and this judgment should be read in conjunction with the judgments in those cases. P.M., in particular, contains a more detailed review of the case-law which it is unnecessary to repeat in this judgment.

2. A further feature common to the 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 remained under 18 when their cases came before it¹. It did so notwithstanding the Director of Public Prosecutions’ (“DPP”) recommendation that they be tried on indictment. The Applicant contends that, but for the delay, there was at least a real prospect that the Children Court would also have accepted jurisdiction in his case.
3. The central question is whether blameworthy prosecutorial delay breached the Applicant’s constitutional right to trial with due expedition and, if so, whether the prejudice caused by that breach is sufficiently grave 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 child-specific regime under the 2001 Act. The Applicant relies on the loss of the s. 75 procedure, statutory anonymity and reporting protections, private proceedings, and the child-specific sentencing framework. He also relies on the possibility that, had his case remained in the Children Court, he might have been dealt with without a conviction under the Probation of Offenders Act, 1907 (the “1907 Act”).

¹I 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.

5. The Applicant was born on the 14th of November, 2006 and was 15 years of age at the time of the alleged offences. He was charged on the 5th of November, 2024, nine days before his eighteenth birthday. The relevant complaint is therefore not that he was charged only after reaching 18, but that the proceedings were not progressed sufficiently early to permit him to be brought before the Children Court and the question of jurisdiction to be determined while he remained a child.
6. The High Court granted leave on the 23rd of June, 2025 and made an interim order restricting publication or broadcast of identifying material. That protection has continued. Pending determination of the final form of any reporting-restriction order, publication of identifying details should remain prohibited.

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. The charges arise from an incident on Henry Street, Dublin, on the 22nd of February, 2022, when it is alleged that a group of young persons attacked an injured party following an altercation involving the throwing of eggs.
8. CCTV footage was obtained shortly after the incident. The Applicant was identified from footage on the 24th of August, 2022. He attended a voluntary cautioned interview with his father on the 10th of February, 2023. He was arrested and interviewed under caution on the 2nd of March, 2023, during which he made what the prosecution materials describe as partial admissions. The precise content and significance of those admissions must be approached with care, but they formed part of the evidential basis upon which the prosecution later proceeded.
9. The Applicant remained within the Garda Youth Diversion Programme process until he was deemed unsuitable for admission on the 12th of April, 2024. The investigative file was sent to the DPP on the 21st of July, 2024. Directions for trial on indictment subsequently issued, and the Applicant was charged on the 5th of November, 2024.

10. An attempt was made on the 11th of November, 2024 to secure an urgent Children Court listing before the Applicant's eighteenth birthday. That attempt did not result in the jurisdictional question being determined before he turned 18 on the 14th of November, 2024. His first appearance following charge was on the 19th of November, 2024, by which time he was no longer a child for the purposes of the 2001 Act.
11. The book of evidence was served on the 4th of February, 2025, when the Applicant was sent forward for trial to the Dublin Circuit Criminal Court with S.B. and P.M. The criminal proceedings were listed in the Circuit Court on the 20th of March, 2025.
12. The Applicant commenced these judicial review proceedings seeking, among other reliefs, an order restraining his further prosecution on the grounds of prosecutorial delay and the resulting loss of protections under the 2001 Act. Bolger J granted leave on the 23rd of June, 2025.

SUBMISSIONS

13. The Applicant submits that the investigating and prosecuting authorities owed him a heightened duty of expedition because he was a child. He 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 and the subsequent authorities concerning persons aged out of the child justice system.
14. He contends that the investigation was substantially advanced by August, 2022, when he was identified, and certainly by March, 2023, when he had been interviewed under caution. He submits that the delay thereafter, including the period spent in the Garda Youth Diversion Programme and the later transmission of the file to the DPP, has not been satisfactorily explained.
15. The Applicant places particular emphasis on the comparator cases. He says that the Children Court accepted jurisdiction in the cases of co-accused arising from the same

incident who remained under 18, notwithstanding the DPP's recommendation that they be tried on indictment. He submits that no material distinction in alleged participation or culpability has been identified and that the comparator evidence therefore demonstrates more than an abstract possibility of summary jurisdiction.

16. The Applicant further relies on the loss of anonymity and reporting protections, child-specific sentencing options and the possibility of an outcome under the 1907 Act that would not involve a conviction. He also advances an equality argument under Article 40.1 of the Constitution, contending that the different procedural course followed in his case resulted solely from delay for which he was not responsible.
17. Overall, the Applicant submits that the delay was blameworthy, that it caused real and irreparable prejudice and that prohibition is the only effective remedy.
18. The DPP opposes prohibition. It is submitted that, although the delay may have been substantial, the threshold for restraining a criminal prosecution is exceptionally high and has not been met. The DPP relies on *Doe (No. 1)*, *(No. 2)* and *Doe (No. 3) v. DPP* [2025] IESC 17 ('*Doe*') and *Brophy v. DPP* [2026] IESC 7.
19. The DPP contends that the loss of a s. 75 hearing does not establish that the Children Court would have accepted jurisdiction. Each jurisdictional decision is individual and requires consideration of the child's age, maturity, the facts alleged and any other relevant circumstances. The fact that other co-accused remained in the Children Court does not establish that the same decision would have been made for the Applicant.
20. The DPP further submits that any sentencing consequences can be addressed by the Circuit Court, which must impose an individualized and proportionate sentence by reference to the Applicant's age, maturity and culpability at the time of the alleged offences. The loss of anonymity may, if necessary, be addressed by an appropriately framed reporting-restriction order of the kind recognized in *Gilchrist*.

- 21.** As to the 1907 Act, the DPP submits that the argument depends on multiple counterfactual assumptions: that the Applicant would have come before the Children Court while still a child; that the court would have accepted jurisdiction; and that, following a plea or conviction, it would have applied the 1907 Act. It is also submitted that a discharge-type jurisdiction remains available under s. 100 of the Criminal Justice Act, 2006, although it is not identical to the jurisdiction under the 1907 Act.
- 22.** The DPP relies on the scale of the multi-suspect investigation, the volume of CCTV footage to be examined, the diversion process, Garda workload and operational commitments. It submits that the serious public interest in prosecuting alleged group violence outweighs the prejudice demonstrated.

ANALYSIS AND DECISION

- 23.** I must determine whether blameworthy delay on the part of the investigating or prosecuting authorities caused prejudice of sufficient gravity to warrant restraint of the further prosecution. The analysis has two stages: first, whether the delay was blameworthy; and secondly, whether the resulting prejudice, assessed in light of the seriousness of the charges and the public interest in prosecution, justifies prohibition.

Blameworthy Delay

- 24.** In an aged-out case, the critical period is the period preceding the accused's eighteenth birthday, because the possibility of being dealt with in the criminal process as a child is lost once the relevant court process has not occurred before that date. Later progress cannot restore access to the s. 75 procedure, although it remains relevant to the overall chronology and remedy.
- 25.** The Applicant was identified on the 24th of August, 2022 and interviewed in February and March, 2023. By March, 2023, the principal evidential steps concerning his alleged participation had substantially crystallised. He was not charged until the 5th of November,

2024, approximately 20 months after the second interview and only nine days before his eighteenth birthday.

26. The multi-suspect nature of the investigation and the extent of the CCTV evidence explain some of the time taken. The Garda Youth Diversion Programme also formed part of the process. Those matters do not, however, satisfactorily explain the full period between the March 2023 interview and the Applicant's eighteenth birthday, or why the file was not sent to the DPP until the 21st of July 2024. In *M.S. v. DPP* [2018 IEHC 285, McDermott J. commented that the diversion programme should generally take four to six weeks.
27. I take account of the attempt made on the 11th of November, 2024, to secure an urgent listing before the Children Court. That attempt was appropriate but came too late to remedy the preceding lack of expedition. By then, only three days remained before the Applicant's eighteenth birthday, and the loss of the opportunity for the jurisdictional question to be determined while he remained a child was a foreseeable consequence of the earlier delay.
28. The investigating and prosecuting authorities owed a heightened duty of expedition in a case involving a child. No sufficient cogent explanation has been provided for the time taken at the relevant stages. I am therefore satisfied that the delay was excessive and blameworthy and that it constituted a breach of the Applicant's constitutional right to trial with due expedition. It does not follow that the prosecution must be restrained; the Court must assess the prejudice caused by the breach and conduct the balancing exercise required by *Donoghue*.

Prejudice

29. The loss of access to the s. 75 procedure is established. The Applicant also lost the statutory anonymity and other child-specific protections that would have applied while he remained a child. The issue is the nature and weight of that prejudice and whether it is sufficient to justify prohibition.

30. *Doe* and *Brophy* make clear that loss of the protections of the 2001 Act amounts to some prejudice but will not ordinarily justify prohibition where serious charges are involved and no further prejudice of exceptional gravity is demonstrated. The High Court must be cautious before reconstructing the outcome of a hypothetical s. 75 hearing, and it cannot assume that the Circuit Court would impose an inappropriate sentence.
31. The comparator evidence gives the Applicant's case greater force than a case based on abstract speculation. The Children Court accepted jurisdiction in the cases of all co-accused allegedly involved in the same incident who remained under 18. That provides some inferential support for the proposition that a similar decision might have been made in the Applicant's case.
32. The inference cannot, however, be taken too far. A decision under s. 75 is individual to the child concerned and requires consideration of age, maturity, the alleged facts and any other relevant circumstances. It is unknown how he intends to plead. The Applicant was close to his eighteenth birthday when charged. Moreover, the papers describe him as having made partial admissions during the March, 2023 interview, but the record and materials in evidence do not permit a reliable comparison between his alleged participation and that of each child co-accused. Nor is it the function of a court in judicial review proceedings to supplant its view of the evidence for that of the Judge whose role it is to assess that evidence.
33. I am therefore satisfied that the comparator evidence establishes only a reasonable possibility that the Children Court would have accepted jurisdiction. It does not establish, on the balance of probabilities, that this would have occurred. A finding that acceptance of jurisdiction was more likely than not would go beyond what the evidence supports and would be inconsistent with the caution expressed in *Doe* and *Brophy*, bringing me into the realm of speculation.
34. 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

the proceedings. Assessing the nature and scale of such prejudice requires consideration of the difference between proceedings before the Circuit Criminal Court and proceedings before the Children Court under s. 75, assuming the Children Court had accepted jurisdiction and the charges had been dealt with summarily.

35. On this assumption, the Applicant has lost the benefit of summary disposal and the 12-month maximum custodial sentence associated with it. That is a real increase in potential sentencing exposure and amounts to some prejudice. It does not, however, follow that the Applicant will receive a more severe sentence than would otherwise have been appropriate.
36. If convicted, the Circuit Court must impose an individualised and proportionate sentence, taking account of the Applicant's age, maturity and culpability at the time of the alleged offences and of any relevant parity considerations. His culpability does not increase merely because he has since reached adulthood. I cannot assume that the Circuit Court will impose an inappropriate or disproportionate sentence.
37. The claim based on the 1907 Act involves yet further assumptions. Even if summary jurisdiction had been accepted, it cannot be assumed that the Children Court would have applied the 1907 Act and dealt with the Applicant without a conviction. There is no evidence that such an outcome occurred in the comparator cases. The loss of that possibility is therefore too speculative to carry substantial weight in the prohibition balance. The availability of a distinct discharge-type jurisdiction under s. 100 of the Criminal Justice Act, 2006 is also relevant, although it is not identical to the 1907 Act procedure. In its recent decision in *DPP v. Galvin* [2025] IEHC 35, the Supreme Court again highlighted the difficulties in speculating in relation to the loss of protections available under the 1907 Act.
38. An Article 40.1 argument does not alter the conclusion. As *Brophy* explains, the different procedural regimes for children and adults reflect the statutory boundary between those groups and the distinct purposes of the child justice system. The consequences of blameworthy delay remain relevant as prejudice, but the difference in treatment does not, without more, constitute unlawful inequality.

39. Any prejudice arising from loss of statutory anonymity can, if necessary, be addressed by a reporting-restriction order of the kind recognised in *Gilchrist*. Such an order does not restore the s. 75 procedure, but it may mitigate the separate prejudice caused by identification.
40. The alleged offences are serious. They concern group violence in a public place and significant injury to the injured party. There is strong public interest in the adjudication of those allegations. 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.
41. Balancing the prejudice established against the seriousness of the charges and the public interest in prosecution, I am not satisfied that the prejudice is of sufficient gravity to warrant prohibition. The Applicant lost access to the s. 75 procedure and, on the alternative assumption, the opportunity for summary disposal. Those are real losses. They do not, however, amount to the exceptional and irremediable prejudice required to restrain further prosecution.

CONCLUSION

42. 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 and breached the Applicant's right to trial with due expedition, the prejudice demonstrated is not of sufficient gravity to outweigh the strong public interest in prosecution of the serious offences alleged.
43. The Applicant's position is strengthened by the comparator evidence, but that evidence establishes only a reasonable possibility that the Children Court would have accepted jurisdiction. Even on the alternative assumption that the charges would have been dealt with summarily, the increased sentencing exposure and other losses do not justify prohibition.

44. The interim reporting restriction will remain in force pending further order. In light 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 loss of statutory anonymity. I will hear the parties as to the necessity, scope, duration and form of any continuing order, the court by which it may be varied or discharged and any other consequential orders, including costs.

APPENDIX: CHRONOLOGY OF EVENTS

Date	Event
14 November 2006	Applicant born.
22 February 2022	Alleged incident on Henry Street, Dublin. The Applicant was aged 15.
24 August 2022	Applicant identified from CCTV footage.
10 February 2023	Applicant attended a voluntary cautioned interview with his father.
2 March 2023	Applicant arrested and interviewed under caution; the papers describe partial admissions.
12 April 2024	Applicant deemed unsuitable for admission to the Garda Youth Diversion Programme.
21 July 2024	Investigative file sent to the DPP.
5 November 2024	Applicant charged with violent disorder and assault causing harm.
11 November 2024	Attempt made to secure an urgent Children Court listing before the Applicant turned 18.
14 November 2024	Applicant turned 18.
19 November 2024	First court appearance following charge.
4 February 2025	Book of evidence served; Applicant sent forward for trial to the Dublin Circuit Criminal Court.
14 February 2025	Applicant's solicitors wrote to the DPP raising delay and potential judicial review.
20 March 2025	Matter listed before the Dublin Circuit Criminal Court.
23 June 2025	Bolger J granted leave to seek judicial review and made interim reporting restrictions.
25 June 2025	Leave order perfected.
1 July 2025	Return date in the judicial review proceedings.

20 February 2026	Statement of Opposition and verifying affidavit filed.
25 June 2026	Judicial review hearing.