

1988 No: 1266 S.P.

IN THE HIGH COURT

IN THE MATTER OF THE EXTRADITION ACT, 1965

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8/4/88
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APPEAL
Probert
8/4/88
BB

BETWEEN:

DERMOT FINUCANE

Plaintiff:

AND

JOHN PAUL McMAHON

Defendant:

AFFIDAVIT OF DERMOT FINUCANE

I, DERMOT FINUCANE, Unemployed, at present detained in Portlaoise Prison, in the County of Laois, aged twenty one years and upwards, do hereby make Oath and say as follows:

1. I am the Plaintiff in the above entitled proceedings and make this Affidavit from facts within my own knowledge save where otherwise appears and whereso otherwise appears, and I believe the same to be true and accurate.

2. I was born on the 29th day of October 1960 in Ireland and I am a citizen of Ireland.

3. I am the youngest of eight children. My first major experience of the present conflict in Northern Ireland began in August 1969.

Although prior to this date members of my family were attacked and beaten up, I did not know that this occurred because we were Catholics.

I was eight years old in August 1969 and so was not aware of what was going on. It was the era of the Civil Rights Movement.

We lived in Percy Street in Belfast which joined the Falls Road at one end and the Shankill Road at the other end. It was a religiously

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...ed street in which most of our neighbours were Protestants. One evening in August 1969 crowds were gathering on the Shankill Road and so our parents kept us indoors for safety. That night there was fierce gunfire and rioting. Many of the houses and buildings around us were attacked and set on fire. I remember sitting and praying with my family that we would be spared. The next morning we were warned by neighbours that it would be our turn that night if we did not get out. We took the warning, took what we could and moved out immediately. We lived with relatives and friends for a while before we eventually found accommodation in a two bedroomed flat. After a period we moved into a three bedroomed house on an unfinished Housing Estate in Belfast. We were told quite simply by the Housing Authorities to "find an empty house and move into it". Thousands of people were forced to flee from their homes in what has been described as the biggest mass movement of people in Western Europe since World War II.

4. The whole political situation in the six Counties in 1969 had erupted, a number of local defence Committees were formed to protect our areas, and barricades were set up.

5. The British Army was now in the streets and in August 1971 when I was not yet eleven years of age I witnessed for the first time British Soldiers attacking Nationalist areas, beating and arresting our neighbours. These beatings and arrests attended the introduction of Internment. Resistance to this was both immediate and widespread, and riots, shootings and eventually bombings became common as the IRA and local people fought back. Around this period, one of our friends and neighbours, fourteen year old Desi Realey was shot dead by the British Army during some stone throwing. My mother went to the morgue to identify the body. My own house along with hundreds of others was raided many times during this period. Eventually my brother John, then aged twenty was arrested and interned on the Prison Ship Maidstone, before being transferred to Magilligan Prison and then Long Kesh Prison. After his release in 1972 he was accidentally killed in a car crash while on active service.

RUC

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for the Irish Republican Army. My home continued to suffer harassment from British Soldiers who often ill-treated my brother Seamus. Once they even entered our home in front of all our family and threatened to kill him. The harassment and ill-treatment was quite widespread and not confined to my own family. In 1974 my brother Seamus became one of the youngest people to be Interned in the six Counties at the age of sixteen. Protests were organised in order to get him and other school-boy Internees free. He was held without charge or trial for two years before being released. The British and RUC continued to hound us and in 1976 Seamus was arrested along with five others and charged with having a pistol. All six of them received a fourteen year sentence. Two of the people arrested with them later died on Hunger Strike: Bobby Sands, M.P. and Joe McDonnell.

MOD - ill-treatment by army

? NIO on internment

RUC

? RUC

6. My brother Martin and I next became the focus of attention. They were trying to blackmail Martin into becoming an informer or agent, sometimes even phoning our home warning him to comply.

The pressure became so great that he eventually was forced to leave Northern Ireland for a while. They began to pick on me ^{to} and ^{and} E.A. etc.

RUC

... .. they would hit me and as that was not working, they began to arrest me and once I was even charged with throwing stones. Although innocent of the charge I was convicted and fined. I was sixteen years old.

? NIO powers of arrest

RUC

7. In September 1978 I was arrested at my home about 3.30 am. and taken to Castlereagh Interrogation Centre. I was seventeen at the time and I was held for three days. During this period I was systematically beaten and ill-treated by Detectives. They were trying to make me sign a confession saying I had guns and was a

member of the IRA. I refused to do this denying all the time their allegations. Threats were used and I was told they would kill me. At this time I was deeply worried and concerned about my father who had a bad heart. After three days I was released. I was in deep

~~shock~~ and physically exhausted. My solicitor saw me that night and advised me to see a specialist doctor in Derry. My father was very shocked and frightened at what had happened to me. When I was returning the next day from seeing the doctor my father had collapsed with a heart attack. He was being taken away by ambulance just as I arrived. Later that night we were notified by the hospital that he had died. I had been released less than thirty six hours from Castlereagh. Despite the death of my father the British Authorities continued to raid our homes and arrest members of my family. It was during the period, or near the time I was in Castlereagh that police doctors began to admit that ill-treatment and beatings were in fact taking place in Castlereagh Interrogation Centre and other places.

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8. When I had left school at the age of sixteen I managed to find employment with a small builder's firm. This was despite that fact that unemployment in West Belfast was notoriously high and religious discrimination was endemic. British Soldiers would often stop and threaten me as I was working. British Soldiers even went to my employer to question him about me. I was working in Loyalist areas and after I was threatened by the UDA and UVF I finally decided not to return. It was only at this time and in the context of all my previous experiences that I became involved with the Republican Movement. My involvement as a political activist was motivated by the stressing need to protect the Catholic Community from arbitrary rule. The arrests and abuse continued. I estimate our home has been raided 100 times or more, sometimes twice in the one night.

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RUC

9. I married in 1980 and moved into my own apartment. Throughout all this it was practically impossible to walk past a patrol without being abused. In February 1981 my front door was smashed in at 4.00 am. by British and RUC Personnel. After my home was searched I was arrested and taken to Castlereagh Interrogation Centre. My young wife was pregnant at the time. I was questioned, spat upon, verbally abused and threatened and subjected to inhuman and degrading treatment by the officers of the

RUC

RUC

RUC during this period of detention in Castlereagh. It was made clear that they would not release me and after five days of this treatment I was charged with killing a policeman. I was held on remand on this charge from 11th day of February 1981 to 28th day of May 1981 when the charges were withdrawn and I was released. The charge was a groundless device to deprive me of my liberty. During this period of detention my daughter Grainne was born on 3rd May 1981. This was during the Hunger Strike and four prisoners had already died.

RUC

10. On August 20th 1981, just after the death of Hunger Striker Michael Devine, I was arrested with two others in possession of two rifles. The police had rammed the car we were travelling in and then proceeded to open fire on it. The police arrested us after we ran behind a local garage. We were attacked and beaten by these policemen. We were taken to Castlereagh where it was stated that the rifles had been used to shoot a British Soldier ten minutes before our arrest. All three of us were charged with attempted murder, and possession with intent. On 14th day of June 1982 I was convicted at Belfast Crown Court by a judge sitting without a jury of possession of firearms with intent and was sentenced to eighteen years imprisonment.

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Solicitor.

11. The said offence was committed on behalf of the IRA by an active service unit and in order to further the aims and objectives of the IRA as I then conceived them to be. The said operation was directed against armed British Soldiers who were on active service.

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12. The offences of which I was convicted were politically motivated offences. This was given institutional recognition by the fact that I was arrested and tried as a terrorist before a single Diplock Judge sitting without a jury pursuant to the Provisions of the Northern Ireland "Emergency Provisions" Act 1978. Section 31 (1) of the said act provides as follows:

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"Terrorism" means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear:

"Terrorist" means a person who is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism:"

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13. In 1982 I commenced serving my sentence in the "H Blocks" of Long Kesh Prison. Long Kesh Prison is a prison specifically established for political prisoners and having its origins in the Internment Centre which was built in 1971. To Republicans, Long Kesh symbolises misrule in Northern Ireland. It is not an ordinary prison and is not operated as such viz; the existence of the compound system and special category status for certain political prisoners. The prison has been and is a battle ground for Republicans eg. The Hunger Strike. One of the political aims and objectives of those who control the prison policy of Long Kesh is to crush Republican Resistance. The clearest example of this was the conduct of the Prison Administration during the Hunger Strike. In its attempt to achieve the aim of crushing Republicanism, my fundamental right not to be discriminated against on the grounds of Religious and Political belief, has been violated and will continue to be violated if I am delivered to the six Counties.

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this warrant.
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For example, one of the charges in respect of which my extradition is sought is the murder of Prison Officer Ferris. All those who were recaptured after the escape have been charged and tried with the murder of Prison Officer Ferris even though the medical evidence established quite clearly that he died of a heart attack. If convicted a mandatory life sentence would be imposed. Such a sentence would inevitably involve serving at least fifteen to twenty years imprisonment. The first review of my indeterminate life sentence by the Life Sentence Review Board would not take place until at least ten years of my sentence had expired. This contrasts markedly to the treatment of Private

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Thain, the soldier convicted of murder who was released after having served just over two years imprisonment. I beg to refer to copies of the Judgment in the Crown Court and the Court of Appeal in the case of Regina v. Thain, which was referred to in 1985 NIJB Number 11 at Pages 31-76. The decision to release Thain is a clear and compelling example of the extent to which political prisoners serving indeterminate sentences are political hostages.

PRB

14. Furthermore, the Catholic, Gaelic, and Republican Ethos of Republican Prisoners is actively despised and undermined by the Prison Authorities. For example, in a recent Court Case an assistant Governor in Long Kesh Prison agreed that Gaelic Football has never been allowed to be played in any shape or form in Long Kesh prison. To play it or to attempt to play it would amount to an offence punishable under the Prison Rules with, Inter alia; Cellular confinement and substantial loss of remission. The Court refused to hold that this constituted discrimination and I beg to refer to a copy of the said Judgment upon which at the time of swearing hereof I have marked my initials "DFJ".

PRB

15. Political and Cultural censorship within the prison is rife and the use of the Irish Language during visits is absolutely prohibited. By stark contrast the assistant Governor in the case above conceded that it was permissible to conduct a visit in any language other than the Irish Language.

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16. Against this background I escaped from Long Kesh Prison in September 1983. During the escape I did not injure or harm any other prisoner or Prison Officer. As a Republican Prisoner of war it was my duty to escape and I was instructed by Republican Camp staff to escape.

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PRB

17 (a) If delivered to the six Counties my fundamental right not to be subjected to torture, inhuman or degrading treatment will probably be violated.

(b) Republican Prisoners remaining behind in H Block 7 (ie. the H Block from where the escape had been effected) were subjected to systematic inhuman and degrading treatment at the hands of Prison Officers. Officially it is recognised that at least thirteen and possibly more prisoners suffered dog bites when attacked by dogs under that control of Prison Officer dog handlers. No Prison Officer was disciplined or charged as a result of these well documented assaults which are supported by independent medical evidence in many cases.

(c) More particularly I would wish to draw the Court's attention to the following incident. When I was moved to the H Blocks of Long Kesh in or about 1981 I was placed in mixed wings, ie. Loyalists and Republicans. Both groups were agitating and protesting for segregation. Prisoners from both groups had at times attacked and injured each other. The Loyalists went on a form of Dirty Protest and were transferred to a separate block. The prison Work shops were still mixed and the attacks continued there. At this time, even though I was never involved in trouble with either prisoners or Prison Warders, I was taken from one of the Workshops by two Prison Warders. This would have been about April 1983. The Prison Warders were called S.O. Wright and P.O. Kerr. I was taken outside to an isolated spot and was told by Kerr that in the event of any of his men being injured during these attacks and protests I would be taken by them and executed. He asked did I understand, and I replied that I understood that I was being threatened. He said that he was not threatening me but telling me that they would execute me, not hurt or injure me but execute me. I took this very seriously and tried to highlight it through

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the Irish News and Republican News which both wrote about it at the time. I beg to refer to a copy clipping of the said newspapers upon which at the time of swearing I have marked my initials "DF2".

(c) On 17th February 1985 P.O. Kerr was killed in a shooting in which the IRA later claimed responsibility. His death has intensified the risk that the threat to have me killed would be carried out or at the very least that I would be subjected to torture, inhuman or degrading treatment.

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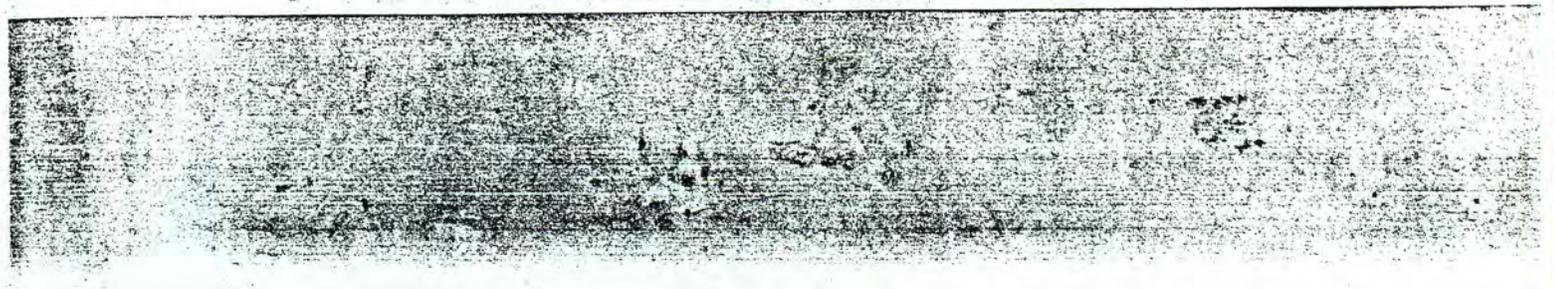
(d) A report of an enquiry by H.M. Chief Inspector of Prisons into the security arrangements at H.M. Prison, Maze relative to the escape on Sunday 25th September 1983 was submitted to the House of Commons (The Hennessy Report). In paragraph 2. 19 of the Report it is stated as follows:

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"At about this time Officer Ferris chased by Finucane, ran from the gate lodge shouting to the Officer at the Pedestrian Gate to secure it and sound the alarm. He had been stabbed three times in the chest. Before he was able to reach the gate he collapsed and later died. Finucane continued onto the Pedestrian gate where he stabbed two Officers who had just entered the prison. Officer * * *, the Officer on gate duty, had no time to sound the alarm or secure the gate before he too was stabbed."

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I did not stab any Prison Officer and as previously stated Officer Ferris died of a heart attack. However, official recognition of my involvement in his death and stabbing of other Prison Officers who are still serving in Long



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fresh must intensify the risk that Prison Officers will seek to exact revenge from me and to carry out the threat previously referred to.

(e) Death at the hands of servants and agents of the state in the six Counties may and in all likelihood would go unpunished by the state. The threat by S.O. Wright and P.O. Kerr was taken seriously by me at the time as evidenced by the contemporaneous Newspaper accounts of these threats. A consistent pattern has been established over the years that those responsible for the Prima Facie unauthorised deaths of civilians have either gone unprosecuted or unpunished. In such a situation the official defacto condonement of such Prima Facie unlawful killing renders it probable that my rights will be violated if returned to the six Counties.

(f) A list of some of these deaths is included in Appendix A of a Report entitled "Shoot to Kill: International Lawyers Enquiry into the lethal Use of Firearms by the Security Forces in Northern Ireland". I beg to refer to a copy of the said Appendix upon which at the time of swearing hereof I have marked my initials "DF3".

(g) The most notorious of these deaths were those of Cervaisu McKerr, Eugene Tomau, Sean Burns, and Michael Tighe which formed the subject matter of the Stalker Enquiry. It will be recalled that the Attorney General announced in Parliament that despite evidence of serious criminal offences by RUC Officers there would be no prosecutions "in the public interest".

(h) State executions have continued in recent months of acquiring an international dimension with the killing of three unarmed Irish civilians in Gibraltar by the SAS. Controversy also surrounds the death of Mr McAnespie who was shot by the British Army in Aghnacloy whilst on his way to a Gaelic Football match. McAnespie had also been the subject of previous death threats by state agents.

18. (a) The offences in respect of which the nineteen warrants were issued against me were either political offences or offences

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connected with a political offence.

- (b) None of the offences referred to in the various warrants had as their purpose the subversion of the Constitution or the usurpation of the organs of the state established by the Constitution.
- (c) The offence for which I was convicted and sentenced did not have as its objective the subversion of the Constitution or the usurpation of the organs of the state established by the Constitution. The offence was directed against armed and uniformed British Soldiers. The purpose of this offence was confined to attempting to end British Rule in Northern Ireland.
- (d) Nor did the offences connected with the escape have as their purpose the subversion of the Constitution or the usurpation of the organs of the state established by the Constitution. The primary objective of the escape was to free Republican Political prisoners.
- (e) The aim and objectives of the IRA's use of force as I see them to be are confined to ending British Rule in Northern Ireland. I deny that the IRA is an organisation committed to undermining by force the organs of the state established by the Constitution. I further deny that it was ever my intention, desire, aim or objective to undermine in any shape or form by force the organs of the state established by the Constitution.
- (f) It has never been, as I have conceived it, an aim or objective of the IRA to overthrow or usurp by force the organs of the state. I have never shared or would share such objectives nor would I take steps to further such aim or objective.

19. The escape from Long Kesh Prison occurred in 25th day of September 1983. Those who were subsequently tried were returned

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for trial on the 8th day of February 1985. The trial ended on the 12th day of October 1987 and Judgment was reserved. As at the date of swearing hereof Judgment has not yet been delivered.

20. Moreover the Kennedy Report referred to above has attributed a specific role and specific offences to me which I deny. Whereas the authors of this report deleted the name of Prison Officers the names of prisoners were printed. It is not obvious why this discrimination was necessary. In view of the conscious decision to exclude the names of Prison Officers and the equally conscious decision to include my name and attribute a specific role to me and I conclude that there has been a conscious and deliberate attempt by the authorities to embarrass me in the conduct of my defence and prejudice my right to a fair trial.

21. In the above circumstances I therefore believe that my Constitutional right to a fair trial within a reasonable time would be infringed if my delivery to Northern Ireland is ordered.

Sworn this 7th day of April 1988

by the said DERMOT FINUCANE
at PORTLAOISE PRISON
in the Co. of LAOIS

DERMOT FINUCANE

Before me a Commissioner for Oaths and I know the Dependent

E. H. McCourt

COMMISSIONER FOR OATHS

Signed on behalf of the Applicant
on the 8th day of April 1988 by
MAGNUS THURLOWE Solicitors for the Applicant.

