

THE HIGH COURT**JUDICIAL REVIEW****[2016 No. 228 J.R.]****BETWEEN****JOSEPH LAVERY****APPLICANT****AND****DIRECTOR OF PUBLIC PROSECUTIONS****RESPONDENT****[2016 No. 346 J.R.]****BETWEEN****JOSEPH LAVERY****APPLICANT****AND****JUDGE DENIS MCLOUGHLIN****RESPONDENT****(No. 2)****JUDGMENT of Mr. Justice Richard Humphreys delivered on the 15th day of June, 2016**

1. On 5th November, 2015, when the applicant was before Cavan District Court on a criminal matter, Judge Clyne appointed Damien Rudden, Solicitor, to act for him by way of legal aid. On 13th November, 2015, Mr. Lavery instituted a first set of judicial review proceedings [2015 No. 619 J.R.] in which he sought to quash this decision, because he said he wished to represent himself.
2. On 30th November, 2015, I granted a stay "*pending determination of the within application*", as it was put in the order.
3. The applicant subsequently discharged Mr. Rudden. On 21st December, 2015, I refused leave, *ex tempore*, having heard from the Director of Public Prosecutions, because the matter was therefore essentially moot.
4. On 6th January, 2016, the applicant filed notice of appeal to the Court of Appeal against the refusal of leave [2016/8].
5. On 25th February, 2016, Judge Lucey adjourned the criminal proceedings against the applicant for trial in April, 2016.
6. On 11th April, 2016, the applicant commenced a second set of judicial review proceedings [2016 No. 228 J.R.], in which he challenged the order of 25th February, 2016, on the grounds that it was said to be in breach of the stay, on the premise that the stay continued until the appeal had been determined.
7. The Director has brought a motion to strike out the appeal which is listed for hearing on 20th June, 2016. Mr. Lavery is next due before Cavan District Court on 14th July, 2016.
8. On 11th April, 2016, I granted a further stay in the second judicial review [2016 No. 228 J.R.], until I had the opportunity to consider the matter on notice to the Director. The original stay was intended to be of a temporary nature until I had determined the first leave application. It was not my intention that the stay would continue following the refusal of leave. The stays no longer have a meaningful purpose now that I have decided the first judicial review and heard from both parties in the second judicial review. However, in order to remove any doubt on the matter, and bearing in mind that the Court of Appeal is now seised of this issue, it seems appropriate to continue the stays until 20th June, 2016, at which point they will stand discharged unless of course continued by the Court of Appeal, which will be dealing with the matter on that date.
9. Even assuming for the sake of argument that the original stay was technically in force pending determination of the appeal, it seems to me that no real harm was done by the order of the District Court of 25th February, 2016, fixing a date for trial.
10. I do not now see any basis to restrain that trial. But the applicant will have the opportunity to put to the Court of Appeal that that trial should be restrained; that can be done on 20th June, 2016. Continuing the stay until then will facilitate the applicant's access to that court in respect of the question of an ongoing stay.
11. The applicant has not demonstrated any real arguable case that his rights have been breached, or any arguable case that he has suffered harm, as a result of the order of 25th February, 2016. Therefore, it is appropriate to refuse leave in the second judicial review [2016 No. 228 J.R.].
12. Separately to these matters, the applicant was before the District Court on 19th May, 2016, in relation to a different criminal matter as was remanded on bail. He claims that he had not received a summons in the matter and he now seeks leave for *certiorari* of the order remanding him on bail, by way of a third judicial review [2016 No. 346 J.R.].
13. I have heard from Ms. Sunniva McDonagh S.C. (with Ms. Lily Buckley B.L. on behalf of the Director) who points out that Mr. Lavery was present on 19th May, 2016, and indeed signed a recognizance on that date, and therefore, has not demonstrated any arguable invalidity in the order of remand, even if, which is not accepted, he was not served with the summons. It seems to me that this argument must be correct. The applicant has not demonstrated how the order of the District Court of 19th May, 2016, is arguably invalid. Leave must also be refused in the third judicial review.

Order

14. I informed the parties on 13th June, 2016 of the orders being made, and the present judgment sets out more full reasons for those orders, which are as follows:

(i) that in 2015 No. 619 J.R., the stay on the prosecution of the applicant (if and insofar as it remains in force) will stand discharged on 20th June, 2016;

(ii) that in 2016 No. 228 J.R.:

(a) the application for leave to apply for judicial review be refused and

(b) the stay on the prosecution of the applicant will stand discharged on 20th June, 2016; and

(iii) that in 2016 No. 346 J.R., the application for leave to apply for judicial review be refused.