

THE HIGH COURT

2006 1468 JR

BETWEEN:

DAVID O'ROURKE

APPLICANT

AND

**THE JUDGES OF THE DISTRICT COURT and THE SUPERINTENDENT OF AN GARDA SÍOCHÁNA AT KEVIN STREET and THE
DIRECTOR OF PUBLIC PROSECUTIONS**

RESPONDENTS

Judgment of Mr. Justice Hedigan, delivered on the 30th day of June, 2009

1. The applicant in the present case is facing committal to prison on foot of a number of warrants which, having recently been re-issued, are outstanding against him.
2. The first name respondents have responsibility for the re-issuance of the warrants of execution, pursuant to which it is proposed to commit the applicant to prison.
3. The second named respondent is the officer at whose behest the application for the re-issuance of the said warrants was made.
4. The third named respondent is the authority responsible for the prosecution of criminal offences in Ireland. His statutory authority to carry out this function is derived from the Prosecution of Offences Act 1974.

I. Factual and Procedural Background

5. The applicant has over the past number of years been convicted of a number of criminal offences. On the 29th of June 2000 he was sentenced, in his absence, to 6 months imprisonment in respect of an offence contrary to section 56 of the Road Traffic Act 1961, namely driving without insurance. The offence in question occurred on the 31st of October 1999. For the sake of clarity, I will refer to this as 'the first section 56 sentence'.
6. On the 25th of September 2003, he was given sentences of 6 months and 3 months imprisonment respectively for offences contrary to section 17 of the Criminal Justice (Theft and Fraud Offences) Act 2001, namely handling stolen property, and section 13 of the Criminal Justice Act 1984, namely failure to surrender to bail. The offence of handling stolen property had occurred on the 3rd of February 2003, while the failure to surrender to bail had occurred on the 8th of August 2003. These two sentences were to run consecutively. I will refer to these as 'the section 17 sentence' and 'the section 13 sentence'.
7. On the 13th of October 2006, the applicant was again convicted of an offence contrary to section 56 of the Road Traffic Act 1961 and sentenced to 4 months imprisonment. The offence in question had occurred on the 9th of March 2004. I will call this 'the second section 56 sentence'.
8. The circumstances surrounding the applicant's committal in respect of these sentences are somewhat unusual. As I have already noted, he was not in court on the 29th of June 2000 when the first section 56 sentence was handed down. The committal warrant in respect of same was never executed against him nor was he made aware of it.
9. On the date of the section 17 sentence and the section 13 sentence, the applicant had already spent 3 months in prison since his arrest. When the sentence hearing concluded, the applicant departed from the District Court and returned home. He maintains that he genuinely believed that he was at liberty to do so since no attempts were made to stop him. I would have some reservations as to the veracity of this assertion.
10. During 2004, the applicant appears to have undergone something of a seachange in his personal development. He obtained stable employment from the 8th of October 2004 with a security company based in Tallaght. His supervisor has described him as "a very punctual and honest person who had a great working relationship with his fellow colleagues." His supervisor has further expressed a clear desire to re-engage the applicant as soon as he becomes available to work again.
11. In addition to this employment, the applicant has attended an I.T. training course and demonstrated a considerable aptitude to work with computers. The training administrator of the course in question has spoken highly of the applicant's punctuality, conscientiousness and general demeanour.
12. The applicant has also made extensive efforts to make amends for the pattern of criminal conduct which existed in his past. Since early 2006, he has been repaying the sum of €100 per week in respect of outstanding fines for road traffic offences committed prior to 2003.
13. As a further part of the applicant's transformation, and in an unusual move, he wrote during the summer of 2006 directly to the Minister for Justice, Equality and Law Reform. He explained his attempts to turn his life around and sought advice in relation to any warrants which might be in existence against him. The applicant says that his motivation in doing this was to ensure that there were no matters outstanding which might halt his continuing personal development.

14. The applicant received a response from the office of the Minister, advising him to contact his local Garda station. His letter evidently brought him to the attention of the authorities and on the 4th of October 2006, efforts were made to execute the outstanding warrants against him. While the applicant was not at home on that date, he directly contacted his local Garda station and was invited to attend to discharge the balance of €700 outstanding on the unpaid fines for the road traffic offences.

15. On the 9th of October 2006, the applicant attended at Kevin Street Garda station, bringing with him €700 to satisfy the outstanding balance of the fines. The applicant was then arrested and brought before the Bridewell District Court. After a number of days in custody, the applicant pleaded guilty to driving without insurance and the second section 56 sentence was passed.

16. During his time in custody prior to the second section 56 sentence, the applicant was served with the outstanding committal warrants in respect of the first section 56 sentence, the section 17 sentence and the section 13 sentence. These warrants had been renewed on a number of occasions for varying periods, most recently on the 10th of October 2006, by District Judge Martin. On that occasion, Garda Brendan Whitty gave evidence of previous attempts to execute the committal warrants.

17. Specifically, Garda Whitty asserted that it was clear from his investigations that the applicant had not resided at 20 Chamber Court, Dublin 8, the address which he had provided to the Gardaí when arrested in 2003. Attempts to execute the warrants at that address between 2003 and 2006 had therefore been unsuccessful. On Garda Whitty's evidence before District Judge Martin and before this Court, the applicant's mother had informed the Gardaí that the applicant did not reside at that address and had not provided any alternative address. The applicant maintains, however, that he did in fact reside at this address and that no effort whatsoever was made to execute the warrants. This assertion is supported by his mother, who contends that she never suggested to the Gardaí that the applicant was resident elsewhere.

18. Independent of the efforts which Garda Whitty has attested that he made, however, the applicant was stopped on 9 separate occasions while driving and provided an alternative address of 95 Lower Dorset Street, Dublin 1. There is no evidence to suggest that any effort was ever made to execute the committal warrants at this address or indeed to suggest that District Judge Martin was informed of these incidents at the re-issuance application.

19. In any event, the applicant remained in custody from the time of his arrest on the 9th of October 2006 until the 22nd of December 2006, on which date he was released on bail pursuant to an order of Peart J. in the High Court made on foot of these proceedings.

20. Leave to apply by way of judicial review was granted on the 11th of December 2006, and the applicant now seeks the following relief:-

(a) An order of *certiorari* quashing the decision of the District Court to re-issue the warrants on the 10th of October 2006;

(b) An injunction restraining the execution of the said warrants; and

(c) A declaration that the failure of the second and third named respondents to execute the warrants prior to the 9th of October 2006 was contrary to natural and constitutional justice and/or constituted a violation of the applicant's right to liberty.

II. The Submissions of the Parties

21. The applicant seeks relief on four main grounds. In summary, the applicant makes the following submissions:-

(a) That at all times he resided at 20 Chamber Court, Dublin 8 and that no effort whatsoever was made to serve him with the outstanding warrants at that address;

(b) That the re-issuance of the warrants was performed by the District Court judge without any, or any sufficient, evidence on which to do so;

(c) That there is no evidence that he could not be found or that any peculiar difficulties hampered the efforts of An Garda Síochána to locate him;

(d) That the Gardaí, in failing to execute the warrants prior to the 9th of October 2006 were guilty of unconscionable delay.

22. The second and third named respondents contend that the delay in apprehending the applicant in the present case was not such as to render unlawful the re-issuance of the committal warrants. In this regard, the second and third named respondents argue that the applicant is required to demonstrate that some form of prejudice has arisen against him. They maintain that the applicant has failed to do so.

23. The second and third named respondents further submit that the cause of the delay in this case was the attempts by the applicant to evade justice. They argue that, by providing a different address when stopped by Gardaí on the roadside, the applicant was consciously hampering their investigative efforts.

III. The Decision of the Court

24. It is important, at the outset, to determine the amount of time remaining on the committal warrants which form the subject matter of these proceedings. The first section 56 sentence was for 6 months imprisonment. The section 17 sentence was also six months imprisonment, following which the section 13 sentence of 3 months was to run consecutively. The second section 56 sentence was for 4 months imprisonment.

25. In the absence of specific directions to the contrary, it must be assumed that the first section 56 sentence and the second section 56 sentence were to run concurrently with the other sentences. On this basis, the applicant was liable to spend a total of 9 months in prison. Allowing for remission of one quarter of this sentence, the applicant ought to have been released after 6 months and 3 weeks. It is clear that the applicant has already spent a total of 5 months and 2

weeks in prison, meaning that if his application in the present case were to be unsuccessful, he would be liable to be returned to prison for a period of 5 weeks.

26. Order 26 rule 11 of the District Court Rules 1997, as amended, provides for the re-issuance of warrants. It states as follows:-

"11. Where a warrant, other than:-

- a warrant for the arrest of a person charged with an indictable offence;
- a warrant for the arrest of a person who has failed to appear in answer to a summons in respect of an offence;
- a bench warrant for the arrest of a person who has failed to appear in compliance with the terms of a recognisance; or
- a search warrant,

is addressed, transmitted or endorsed for execution, to any person and he or she is unable to find the person against whom the warrant has been issued or to discover where that person is or where he or she has goods, such person having the execution of the warrant shall return the warrant to the Court which issued the same (within such time as is fixed by the warrant or within a reasonable time, not exceeding six months where no time is so fixed) with a certificate [...] endorsed thereon stating the reason why it has not been executed, and the Court may re-issue the said warrant, after examining any person on oath if the Court thinks fit so to do concerning the non-execution of the warrant, or may issue any other warrant for the same purpose from time to time as shall seem expedient."

27. Committal warrants issued on foot of conviction and sentence do not fall within the categories expressly excluded from the terms of Order 26 rule 11 and must therefore be subject to its provisions. The District Court was thus required to be satisfied that there were adequate reasons before it on the 10th of October 2006 when it purported to re-issue the committal warrants, which justified such a move, and that these were certified in the prescribed manner. In *Brennan v. Windle* [2003] 3 IR 494, Hardiman J. considered the significance of this certificate evidence and stated the following at page 503:-

"A person who holds a warrant which has expired is not entitled, as of right, to have it reissued, but only on proof of particular matters. The certificate which, the Garda says, contained this proof is missing: neither the original nor any copy can be found despite the fact that, if it existed, both the gardaí and the District Court should have had a copy. That in itself might not be fatal but there is a complete absence of secondary proof that the relevant conditions had been met. Here again, the respondents rely on what they say is the presumptive validity of the reissued warrant. The factual averments in the applicant's affidavit state in effect that the preconditions were not met and this is answered only by a reference in Garda McCarron's affidavit to a certificate which, in fact, cannot be produced."

28. In considering the evidence in the present case, it is also important to remain mindful of the fundamental nature of committal warrants. In *Dunne v. DPP* (High Court, unreported, 6th June 1996), Carney J. provided an instructive consideration of this issue. Although his attention was directed primarily towards arrest warrants, his general remarks are nonetheless of assistance. He stated as follows:-

"A warrant of apprehension is a command issued to the Gardai by a Court established under the Constitution to bring a named person before that Court to be dealt with according to law. It is not a document which merely vests a discretion in the Guards to apprehend the person named in it; it is a command to arrest that person immediately and bring him or her before the Court which issued it. That it is a command to arrest rather than merely an authority or permission to arrest can be clearly seen from the terms of the warrant in the instant case."

29. In *Bakoza v. Dublin Metropolitan District Court* [2004 IEHC 126, Peart J. considered the level of pursuit that ought to be required by the District Court before agreeing to re-issue a warrant. In that case, the Court considered a delay of some two years in the execution of a warrant against a foreign national. Peart J. opined that it would have been reasonable for the Gardaí to make enquiries through social welfare services to discover whether or not the applicant had been claiming allowances. Through such a method, they might well have been able to gain a lead as to his whereabouts. In the course of the Court's judgment, the following colourful description of the obligation on the Gardaí was provided:-

"There must be a middle ground short of a national manhunt but in excess of a few unsuccessful knocks on the door."

30. The explanation for the failure to execute the warrants in the present case rests exclusively on the fact that the applicant was not resident at the address which he had previously given to the Gardaí. The Court is therefore obliged to consider whether the District Court ought to have been satisfied by this excuse. In this regard, the decision of Herbert J. in *Casey v. Governor of Cork Prison* [2000] IEHC 64 is of assistance. In that case, there was evidence that the applicant had moved from Limerick to Cork and back again without notifying the Gardaí. However, the applicant had also been in contact with the Gardaí in Limerick in relation to the investigation of a separate crime and had made a statement. Herbert J. held that while some explanation had been offered by the Gardaí for the lack of internal communication, it was not sufficient to excuse the delay involved. He stated:-

"In my judgment, administrative or communications failures must occur from time to time in connection with the execution of warrants: the system of enforcement of Court Orders is sufficiently complex to admit of such mishaps. However, in considering whether it amounts to a satisfactory explanation for delay, the duration of any such failure must be a critical factor to be taken into account. There must come a time in each case, depending upon the particular circumstances of that case, when delay if occasioned by such a failure passes from being reasonably explicable and not unfair to the convicted person to being no longer reasonable or capable of satisfactory explanation and manifestly unfair to the convicted person. Notwithstanding that the Applicant in the present

Application was at liberty throughout this entire period of seven or nine months, in my Judgment a delay of this magnitude occasioned by such a failure was altogether excessive and accordingly impermissible, was unfair to the Applicant, and constituted a denial of his right to fair procedures guaranteed by the Constitution of Ireland.”
(Emphasis added)

31. Applying the above principles to the present case, I am not satisfied that there was adequate evidence before District Judge Martin, upon which he was entitled to re-issue the committal warrants. The delay in executing these warrants was over three years in duration. During this time, the Gardaí's efforts to apprehend the applicant were confined to sporadic visits to his home address. However, he was also stopped on no less than nine occasions while driving his vehicle and provided another address on each occasion. No efforts were made to arrest him on any of these occasions, nor were efforts made to confront the applicant at the alternative address.

32. Finally, it is imperative that the District Court when coming to consider the re-issuance of warrants should be apprised of all the material facts. In the present case, there is no evidence to suggest that District Judge Martin was made aware of the striking behavioural development which the applicant had undergone. This development amounted to an exceptional circumstance which should have been put before the Court. Had District Judge Martin been aware of such a commendable reform in the applicant's conduct, it is entirely possible that he would have, in the proper exercise of his discretion, refused to reissue the warrants for his committal to prison.

IV. Conclusion

33. In light of the foregoing, I am of the opinion that the purported re-issuance of the committal warrants on the 10th of October 2006 was invalid and of no effect. In view of the exceptional circumstances of the present case, including the very short time he has left to serve on these warrants, I am of the view that it would not be in accord with the principles of natural and constitutional justice to allow the re-committal of the applicant to prison. It is to be hoped and there is every reason to believe that, at liberty, the applicant will continue the personal progress that he made prior to his arrest on the 9th of October 2006. I will therefore grant the relief sought.