

## THE HIGH COURT

## JUDICIAL REVIEW

[2010 No. 1215 JR]

BETWEEN

WILLIAM FITZGERALD

APPLICANT

AND

JUDGE SEÁN Ó'DONNABHÁIN

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

**JUDGMENT (*Ex Tempore*) of Mr. Justice Twomey delivered on the 19th day of March, 2019****Introduction**

1. This is a judicial review by the applicant ("Mr. Fitzgerald") of a decision of the Circuit Court of the 11th of March, 2010.
2. On the 6th of April 2017 the Supreme Court granted leave to Mr Fitzgerald to seek judicial review of:
  - (i) the decision if any to commit [Mr. Fitzgerald] for contempt of court on the 11th day of March 2010;
  - (ii) the orders of the Circuit Court of the same date convicting [Mr. Fitzgerald] of offences under the Public Order Act, 1994.
3. The grounds upon which the Supreme Court permitted the reliefs to be sought are:
  - (i) that the [Circuit Court] failed to afford to [Mr. Fitzgerald] fair procedures in determining that he was in contempt of Court and Ordering him to be committed, and
  - (ii) the proceedings before the [Circuit Court] on the 11th March 2010 did not comply with the requirements of natural and constitutional justice in that he was not afforded an opportunity on that day to secure the attendance of a witness and/or the Court did not determine whether or not another witness had been the subject of a witness summons.

**Was he committed to jail for contempt of court?**

4. If Mr. Fitzgerald, who was not represented before this Court, is to be successful in the first aspect of his case he must prove on the balance of probabilities that he was committed to jail for contempt of Court on the 11th March 2010.
5. However, no evidence has been provided by Mr. Fitzgerald that at the hearing in the Circuit Court he was in fact found guilty of contempt or jailed for contempt. Significantly, there is no evidence before this Court of any conviction or of the handing down of any sentence.
6. On the basis of the evidence before this Court it seems clear that Mr Fitzgerald was removed from court as he was, in the opinion of the judge, behaving in a disruptive manner. Whether the judge was correct in this opinion, is not a matter for this judicial review.
7. Mr. Fitzgerald puts particular emphasis on his claim that during this alleged disruption, the word 'contempt' was used by the Circuit Court judge. However, the use of that word does not mean that there was a conviction by that court of contempt. Indeed, as previously noted, there is absolutely no evidence before this Court that the Circuit Court convicted Mr. Fitzgerald of contempt.
8. As regards removing Mr. Fitzgerald from the court room, there can be no doubt that this is something the judge is authorised by law to do as is clear from the Supreme Court judgment of *Tracey v. District Judge McCarthy* [2019] IESC 14.
9. After having been removed from court, Mr. Fitzgerald claims that he was held in the Garda station for an hour.
10. If Mr. Fitzgerald was being unlawfully detained at that time, Article 40 of the Constitution provides the remedy for such unlawful detention.
11. Based on Mr. Fitzgerald's own submissions it seems that he sought to contact the Central Office of the High Court at this time to pursue a remedy pursuant to Article 40. However, within a very short time of seeking to pursue that remedy, he was no longer in unlawful detention and so it seems his Article 40 application was never pursued.
12. For the foregoing reasons this Court concludes that Mr. Fitzgerald has not established, on the balance of probabilities, that he was committed for contempt of court by the Circuit Court and so his judicial review of such a decision, is refused.

**Absence of natural justice**

13. The second aspect to Mr. Fitzgerald's judicial review proceedings, is his judicial review of his conviction by the Circuit Court of offences under the Public Order Act, 1994. This is based upon the Circuit Court's alleged failure to afford Mr. Fitzgerald natural and constitutional justice by not affording him the opportunity to secure the attendance of a witness and/or that the Circuit Court did not determine whether another witness had been the subject of a witness summons.
14. This relates to two possible witnesses to his trial before the Circuit Court, Superintendent Maher and a companion of Mr.

Fitzgerald's, Mr. Donal Daly. As regards Superintendent Maher, the only witness summons exhibited by Mr. Fitzgerald in relation to Superintendent Maher is one dated 26 November 2009, which was the date when the matter was first listed for hearing in the Circuit Court. However, this first hearing was adjourned and the hearing proceeded on the 11th of March, 2010. Yet, there is no evidence of Superintendent Maher having been summonsed to attend the Circuit Court on the 11th of March, 2010.

15. As regards Mr. Daly, Mr. Fitzgerald complains that he notified the Circuit Court judge at the start of the hearing that Mr. Daly was not available until later in the day. The judge nonetheless asked him to begin the case.

16. Crucially, there is no evidence that when Mr. Fitzgerald was making his closing submissions that he sought an adjournment to enable Mr. Daly give evidence or indeed that he sought the issue of a bench warrant so as to ensure that Superintendent Maher would be before the court.

17. Indeed, Mr. Fitzgerald avers that:

"I am now aware that I should have sought an adjournment to allow time for my companion to present himself [...] and that I should have sought a bench warrant to have Supt. Maher brought before the court."

18. Based on this sworn evidence, Mr. Fitzgerald is now complaining that he did not receive natural justice by virtue of his own failure first to seek an adjournment of the proceedings and secondly to seek a bench warrant (or indeed to initiate other steps) to ensure that Superintendent Maher attended the hearing.

19. However, the purpose of judicial review proceedings is not to remedy the acts and omissions of an applicant. It is not the job of the Circuit Court to run the applicant's case by adjourning proceedings without a request for an adjournment or to issue bench warrants for witnesses that are not in court or indeed to check to see if a witness has been subject to a witness summons.

20. For this reason, this Court refuses to grant Mr. Fitzgerald the orders he seeks in this aspect of his judicial review proceedings.

#### **Unofficial recording of the proceedings**

21. Finally, it should be mentioned that Mr Fitzgerald sought to introduce unofficial audio recordings of the Circuit Court proceedings, taken by a companion of his during the hearing.

22. However, there was no evidence before this Court that the Circuit Court permitted the audio recording of the proceedings and for this reason this Court will not permit those proceedings to be entered as evidence in this judicial review.

23. In any case it should be noted that the transcript of this audio which Mr. Fitzgerald sought to have admitted as evidence in these proceedings, was not a true transcript of the proceedings since in part it contains a narrative summary of what was said rather than a direct transcript of the proceedings.

#### **Conclusion**

24. In all the circumstances and for the foregoing reasons this court refuses all the reliefs sought by Mr. Fitzgerald.