

THE HIGH COURT

2011 596 SS

IN THE MATTER OF THE CONSTITUTION AND AN APPLICATION UNDER ARTICLE 40

BETWEEN

IVAN PETER GAN

PLAINTIFF

AND

THE GOVERNOR OF ARBOUR HILL PRISON

DEFENDANT

JUDGMENT of Mr. Justice Ryan delivered the 7th April 2011

1. This is a further application by the applicant for an inquiry under Article 40 in respect of the legality of his detention in Arbour Hill prison. The title of the grounding affidavit says that there are new issues and issues of law not previously ruled on by this court. It seems that the applicant has made at least two previous applications which have been unsuccessful: see for example the judgment delivered on the 11th September, 2009 by McCarthy J.

2. The applicant was convicted on the 19th October, 2007, at Kilkenny Circuit Criminal Court of an offence of sexual intercourse with a mentally impaired person and was sentenced to five years imprisonment, which he is now serving in Arbour Hill Prison.

3. The applicant gives five reasons why he contends that his detention is unlawful, namely, (1) he is not the person who is identified in the prosecution documents used at his trial; (2) the warrants for his extradition were invalid; (3) his right to a fair hearing in the Court of Criminal Appeal has been impaired because of interference with legal correspondence, threats against him and witnesses and the same applies to previous court hearings; (4) that he has been supplied with food in prison to which he is allergic and which places his life in jeopardy; and (5) that a named person has interfered with him in an attempt to force him to withdraw his applications and pervert justice and he asks for her arrest.

4. The documents supplied with this application include a Deed dated the 21st February, 2008, whereby Peter Ivan Dunne changed his name to Ivan Peter Gan. This appears to be the basis on which the applicant claims relief on ground (1). The same point appears to arise on ground (2) concerning the extradition proceedings. The applicant was extradited first to face trial and then secondly, again from the United Kingdom, to serve the sentence that was imposed on him when he did not attend for the latter stages of his trial. It seems to me that these are and were matters for the Court of Trial and also for the Court of Criminal Appeal. They do not as I understand constitute a ground for granting an inquiry. The fact that an applicant executes a Deed Poll for the purpose of changing his name does not invalidate proceedings brought against him in his original name.

5. As to the point that the applicant's appeal has been jeopardised, I also think that that should be brought to the attention of the Court of Criminal Appeal.

6. Ground No. (4) deals with food. The applicant claims to be entitled to Kosher food but says that he does not receive that and he also claims to have an allergy to onions and that he has nevertheless been supplied with that food and he specifies two recent occasions namely, the 2nd February, and the 15th March 2011. I think that a prisoner is entitled to have his special dietary needs and requirements catered for in a reasonable and proper manner. I do not know whether he is entitled to demand Kosher food – there is nothing in the papers that I can see to suggest such an entitlement but I am not deciding that the applicant is not so entitled. There is simply nothing on which a judgment can be made on this point, nor is there any documentation or detail about communication with the prison authorities about it. This is a matter of internal prison administration and the applicant is entitled to apply to the Governor with a complaint or request and his reasonable requirements and he can also seek the assistance of the visiting committee. There is nothing in the documents about any steps he has taken in this regard. As to the supply of onions, the applicant does not say whether he thinks that was deliberate or accidental and I cannot accept that the erroneous supply of onions on isolated occasions thereby renders a prisoner's custody unlawful and entitles him to an inquiry under Article 40.

7. In the circumstances this application does not give rise to an entitlement to an inquiry under Article 40 and I refuse it accordingly.