THE HIGH COURT

[2017 No. 2 SSP]

IN THE MATTER OF AN INQUIRY PURSUANT TO

ARTICLE 40.4.2 OF THE CONSTITUTION OF IRELAND

BETWEEN

JULIAN MYERSCOUGH

APPLICANT

AND

THE GOVERNOR OF ARBOUR HILL PRISON

RESPONDENT

JUDGMENT of Ms. Justice Faherty delivered on the 20th day of January, 2017

1. This is inquiry under Art. 40.4.2 of the Constitution concerning the lawfulness of the applicant's detention in Arbour Hill prison. The application was initiated by letter from the applicant from Arbour Hill dated 11th January, 2017 and an inquiry was directed by this court on 17th January, 2017, together with an order that the applicant be produced and that the grounds for his detention be certified. A hearing took place on 17th January, 2017.

2. Before considering the substance of the present inquiry, it is apposite to set out the background to the within inquiry, albeit the applicant says that his complaints as to the unlawfulness of his detention are wholly unconnected to two previous inquiries under Art. 40.4.2. in respect of his detention.

3. The background is comprehensively set out in the Court of Appeal judgment of Edwards J. dated 25th November, 2016 in *Myerscough v. The Governor of Arbour Hill Prison* [2016] IEHC 357.

It reads as follows:

> "5. The appellant is the subject of a European arrest warrant dated the 1st of October 2015 issued by a judicial authority in the United Kingdom, namely a judge at Ipswich Crown Court. The appellant was convicted by that court of thirteen offences of making indecent images of a child, and three offences of breaching a Sexual Offences Prevention Order, and was on bail pending being sentenced for those crimes. The appellant failed to turn up to court on the 30th of September 2015 when he was required to do so, and was subsequently discovered to have boarded a car ferry from Holyhead to Dublin. In consequence of his absconding the aforementioned European arrest warrant was issued seeking the rendition of the appellant to the United Kingdom so that he might be sentenced for the crimes of which he has been convicted.
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> 6. The appellant was arrested in this jurisdiction on foot of that European arrest warrant and, as was his entitlement, he contested his proposed surrender to the United Kingdom before the High Court which, in this jurisdiction, is the executing judicial authority in all European arrest warrant cases.
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> 7. The appellant was successful in resisting his surrender in respect of the three counts of breaching a Sexual Offences Prevention Order, but was unsuccessful in doing so in respect of the thirteen counts of making indecent images of a child. Accordingly, on the 29th of February 2016 the High Court (Donnelly J.) ordered his surrender to the United Kingdom pursuant to section 16(1) of the European Arrest Warrant Act 2003 (the Act of 2003) so that he might be sentenced upon his return on those thirteen counts.
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> 8. As is usual the executing judicial authority also made a number of ancillary orders. In particular it was ordered that the appellant be remanded in custody pending his surrender in accordance with s. 16 of the Act of 2003. Having been so remanded, the appellant was expressly advised by the court, as the Act of 2003 requires, of his right to seek an inquiry under Article 40.4.2o at any time before his surrender. In addition, the court gave the directions that it was required to give under s.16 (4) (c)(i) & (ii) of the Act of 2003 as amended.
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> 9. Following the making of the s.16 (1) order on the 29th of February 2016 the appellant applied to the High Court judge concerned (Donnelly J.), pursuant to s. 16 (11) of the Act of 2003 as amended, for a certificate that her order or decision involved a point of law of exceptional public importance and that it was desirable in the public interest that an appeal should be taken to the Supreme Court. That application was refused on the 11th of March 2016.
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> 10. According to the default statutory rules the appellant was required to be surrendered not later than the expiration of twenty five days (being the s.16(3) fifteen day period plus the s. 16(3A) ten day period) beginning on the date of the making of the surrender order. Therefore barring some court intervention the appellant was to be surrendered on or before the 25th of March 2016.
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> 11. On the 21st of March the appellant applied to the High Court (Haughton J.) for an inquiry under Article 40.4.2o of the Constitution into the lawfulness of his detention at Arbour Hill prison where he was being held. The specified grounds on which that inquiry was being sought were that s.(16)11 of the Act of 2003 as amended was repugnant to the Constitution and that he had been denied a right of appeal against the order and judgment directing his surrender. In the circumstances Haughton J. adjourned the application to 22nd March, and directed that the respondent and notice parties be put on notice of the application and the grounds thereof. He then gave directions as to the exchange of affidavits and submissions in respect of the issues in the case and the matter was further adjourned to facilitate the carrying out of these directions.
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> 12. However, in circumstances where the clock was arguably continuing to run in terms of the twenty five day period, the respondent decided as a matter of prudence to return to the High Court on the following day (the 23rd of March 2016) and to apply for a stay on the s.16(1) surrender order, and also a stay on the requirement to comply with the directions given by Donnelly J under s.16(4)(c)(i) & (ii) of the Act of 2003 as amended, 'pending the final determination of the related proceedings ' (i.e. the Article 40.4.2 inquiry, which was under record no 2016 No 344SS) 'or further Order herein in

the meantime '.

13. As this was during the Easter vacation the application was made at a vacation sitting to Twomey J who was the duty High Court judge on the day. It appears from evidence contained in paragraph 7 of an affidavit sworn on the 26th of October 2016 in the present proceedings by Hugh Dockery, who is a solicitor in the Chief State Solicitor's office, who was present in court on that day, that Twomey J. canvassed with counsel from both sides ' the issue of the duration of the stay'. Mr Dockery states that '[h]aving concluded that it was not possible to ascertain the date on which the Article 40 proceedings would be determined, he [i.e. the judge] indicated that he would grant a stay until further Order'.

14. The curial part of Twomey J's order as perfected was, to the extent relevant, in the following terms:

> 'IT IS ORDERED that
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> 1. such part of the said Order made herein dated the 29th day of February 2016 (Donnelly, J.) pursuant to Section 16(1) of the European Arrest Warrant Act 2003 (as reflected in the paragraph numbered '(i)' on page 2 of the said Order) be stayed pending further Order herein
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> 2. such part of the said Order of the High Court made herein dated the 29th day of February 2016 (Donnelly, J.) pursuant to Section 16(4)(c) of the European Arrest Warrant Act 2003 (as reflected in the paragraphs numbered '(a)' and '(b)' on page 2 of the said Order) be stayed pending further Order herein.'

15. The Article 40.4.2 inquiry, Haughton J's directions having been complied with, was ultimately assigned to Mc Dermott J who, having conducted it, determined for the reasons set out in a reserved judgment delivered by him on the 14th of June 2016 [see Myerscough v. The Governor of Arbour Hill Prison [2016] IEHC 333] that the impugned provision was not unconstitutional and that the appellant's detention was lawful.

16. In addition to the constitutional issue, the appellant had also sought to argue in those proceedings that the Order of Twomey J granting the aforementioned stays was in fact an order made in the context of the Article 40 inquiry and one that he had no jurisdiction to make. The consequence of that, according to the appellant, was that time had continued to run and had indeed run out rendering his continued detention unlawful. McDermott J rejected that argument holding that the stays were properly granted in the European arrest warrant proceedings.

17. In rejecting the appellant's argument based on the alleged unlawfulness of the stays, McDermott J stated (*inter alia*):

'50. The application for the stay was made with very little notice to the applicant. It was an urgent application insofar as the time limit on the order for surrender was running. Both sides were heard on the application.

51. I am satisfied that where an application for an inquiry under Article 40 of the Constitution is initiated, as a matter of law the applicant should not be surrendered. The length of time which an application under Article 40 may take is not determinable at the time of the making of the application. Section 16(6) is understandably not subject to time limits having regard to the nature of the jurisdiction under the Constitution and the various types of application and grounds for same that may be initiated (including challenges to the constitutionality of a statute). In the circumstances the High Court had jurisdiction to ensure that the applicant's position was secured and that no action could be taken on foot of the order to surrender pending the determination of the Article 40 application. In the circumstances it appears to me that it was in the interests of justice that the stay be granted and the applicant's rights be fully protected pending the determination of the inquiry (see *The State (Quinn) –v- Ryan* [1965] I.R. 70).2

18. The Order of McDermott J in the aforementioned Article 40.4.2o proceedings ('the first Article 40.4.2o proceedings') was made on the 14th of June 2016, and following its perfection on the 24th of June 2016 the appellant had up to fourteen days thereafter to appeal against it, if he had wished to do so.

19. On the 24th of June 2016 the present proceedings were initiated ('the second Article 40.4.2 proceedings') on behalf of the appellant. The Minister for Justice and Equality (the Minister) had taken no step to secure the lifting of the stays granted by Twomey J up to that point. Although it is not disposed to in any affidavit, it was suggested in submissions by counsel on behalf of the respondent that in not doing so the Minister was likely to have been mindful of the Supreme Court's 'unqualified condemnation' of precipitous state action in *The State (Quinn) v. Ryan* [1965] I.R. 70, a case to which McDermott J had also alluded in his judgment of the 14th of June 2016.

20. On this occasion the application was made to McDermott J seeking a new inquiry under Article 40.4.2 of the Constitution into the lawfulness of the appellant's detention was advanced on the basis that the stays granted by Twomey J had in fact expired on the 14th of June 2016 when it was said the first Article 40.4.2 proceedings had concluded. Once again it was being contended that time had run out, and on this occasion it was said to have run out arguably on the 15th of June 2016 but at the very latest on the 17th of June 2016. Therefore, it was contended, the appellant was not being detained in accordance with law.

21. In his certified return the respondent stated that he holds the appellant in custody in Arbour Hill Prison pursuant to a High Court committal warrant dated 29th February, 2016, as well as the High Court order dated 23rd March, 2016 (which is the order containing the stays) and the Order of 14th June, 2016, as perfected on the 24th June 2016.

22. The High Court considered that the second Article 40.4.2o proceedings raised a net issue as to the correct interpretation of the Twomey J's Order of the 23rd of March 2016. In an ex tempore judgment delivered on the 27th of June 2016 McDermott J. concluded that that Order was still extant, and that time had not in fact continued to run. Accordingly, he was satisfied that the appellant was still in lawful detention.

23. The appellant has not appealed the judgment and Order of McDermott J of the 14th of June 2016 in the first Article 40.4.2 proceedings. However, he has now appealed to this Court against the judgment and Order of McDermott J of the 27th of June 2016 in the second Article 40.4.2 proceedings."

4. In the course of his judgment, Edwards J. went on to dismiss the applicant's appeal, finding, *inter alia*, that the stays in issue in

the applicant's second Art. 40 application (having been granted to facilitate the bringing of an inquiry under Art. 40.4.2., a right guaranteed under Irish and EU law) were lawfully granted in order to comply with Irish domestic statute law. The Court thus upheld McDermott J.'s finding that the applicant was in lawful detention. The order of the Court of Appeal as perfected on 17th January, 2017 was before this court.

The applicant's complaints in the within proceedings

5. The applicant's first complaint in the within proceedings is that the endorsement by the High Court (MacEochaidh J.) on 2nd October, 2015 of the European Arrest Warrant (EAW) had no legal basis as there was no evidence before the High Court upon which the EAW could be endorsed, which the applicant says is required by the European Arrest Warrant 2003, as amended (Act of 2003).

6. As to the circumstances in which a EAW may come before the High Court for endorsement, s.10 of the Act of 2003, as amended, provides:

> "Where a judicial authority in an issuing state… issues a European Arrest Warrant in respect of a person –
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> (a) against whom that State intends to bring proceedings for an offence to which the European Arrest Warrant relates,
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> (b) who is the subject of proceedings in that state for an offence to which the European Arrest Warrant relates,
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> (c) who has been convicted of, but not yet sentenced in respect of, an offence in that state to which the European Arrest Warrant relates, or
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> (d) on whom a sentence of imprisonment or detention has been imposed in that state in respect of an offence to which the European arrest warrant relates,
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> that person shall, subject to and in accordance the provisions of this Act be arrested and surrendered to the issuing state".

7. The applicant asserts that (a) above is not applicable to him as he had been brought before the courts in the U.K. Further, he asserts that (b) can be "easily dismissed" as he has not been sentenced. He thus submits the basis on which the warrant issued from the issuing authority must therefore be (c), and in this regard he points to the European Arrest Warrant itself which issued on 1st October, 2015. It states, in relevant part,:

> "(b) Decision on which the warrant is based.
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> 1. Arrest warrant or judicial decision having the same effect:
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> Type: Conviction
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> 2. Enforceable judgment(s): On the 30th [September] 2015 at Ipswich Crown Court, *MYERSCOUGH* was convicted of 13 counts of Making Indecent Images of a Child and [3counts] Breach of a Sexual Offences Prevention Order. The court was adjourned for sentencing but *MYERSCOUGH* failed to appear following the recess. A warrant was subsequently issued for his arrest."

8. The applicant contends that he was not convicted and asserts that the accepted facts show that he fled the U.K. before the jury delivered their verdict, albeit the jury did deliver their verdict. He contends that the delivery of the jury's verdict was not "a judicial decision" and no decision was made by the U.K. trial judge accepting the jury's decision. While the applicant acknowledges that the endorsing judge in this jurisdiction might accept the assertion of conviction in the European Arrest Warrant at face value, he argues that that would be to disregard Art. 8 (2) (c) of the Framework Decision which requires that a European Arrest Warrant shall contain "evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect". The applicant thus "presumes that there must be prima facie evidence for fundamental elements" and contends that such evidence is lacking in his case and was lacking on 2nd October, 2015. He says that what is contained in the European Arrest Warrant is merely an assertion and is not evidence. The applicant further submits that the U.K. domestic warrant, which was eventually delivered subsequent to the European Arrest Warrant, said nothing about a conviction. Nor, the applicant says, did the notes provided by the U.K. prosecuting counsel to the Central Authority make mention of his conviction. He submits that a jury delivering their verdict is not a judicial decision. He further submits that there was no "certificate of conviction". He asserts that in this State a person cannot be detained on a mere assertion and accordingly his detention was unlawful *ab initio* given that there was no basis upon which the High Court, for the purposes of endorsing the European Arrest Warrant, could be satisfied that in relation to a European arrest warrant there has been compliance with the provisions of the Act, as required by s. 13(2) of the Act of 2003. He contends that in this circumstance the warrant cannot be executed.

9. Counsel for the respondent contends that insofar as the applicant advances the argument that he has not been convicted, this is similar to the argument canvassed by him in the course of his extradition proceedings which was addressed by Donnelly J. in the course of her judgment dated 25th February, 2016. She stated:

> "As regards the issue of what is being put forward as the conviction or the lack of conviction, in my view, this is an issue which is entirely in (sic) imagination of the Respondent. There is a clear statement on the warrant that he is being convicted by a jury, he makes a simple bare assertion in his affidavit to the following effect, he says:
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> 'Further, I have not been convicted as alleged in the warrant. This is not a pedantic objection, either I have been convicted or I have not. No certificate of finding has been produced.'
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> That was what he based this on in the first place. There is no requirement to have a certificate of finding, that has never been the law, that has been clear from Altaravicius, as concerned a domestic warrant but there is certainly no requirement to provide the documentation to back up that matter".

10. This issue was also adverted to by McDermott J. in his judgment of 14th June, 2016, in respect of the first Art. 40 proceedings wherein he notes the findings of Donnelly J.

11. Counsel for the respondent further submits that even if the applicant did not fall under s. 10 (c) of the Act of 2003, his circumstances clearly fell within subsection (b) thereof in that a trial has taken place in the issuing state and a verdict was delivered. Moreover, counsel contends that, as can been seen from the contents of the European Arrest Warrant, a warrant had been issued by Ipswich Crown Court for the applicant's arrest, clearly a decision of the trial judge. Thus, whether or not the applicant was convicted, (and counsel is not conceding that he was not), the European Arrest Warrant proceeded on the basis that the trial judge in the U.K. had issued a bench warrant for the applicant's arrest. The respondent also submits that insofar as the applicant seeks to rely on the fact that the U.K. bench warrant did not accompany the European Arrest Warrant, there was no need for it to do so. In this regard reliance is placed on the decision of the Supreme Court in *Minister for Justice v. Altaravicius* [2006] IESC 23. Counsel also points to the provisions of s. 4 (A) of the Act of 2003 which provides:

> "It shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown."

Furthermore, counsel submits that the time for the argument which the applicant now makes regarding evidence of his conviction has long passed.

In response to the respondent's arguments, the applicant disputed that his circumstances were covered by s. 10 (b) of the Act of 2003 and argued (as understood by the court) that any sentencing would constitute a wholly new procedure and his position is that he has not yet been convicted.

12. The court is satisfied that the information which what was before the High Court on 2nd October, 2015 for the purposes of the endorsement of the European Arrest Warrant complied with the requirements of the Act of 2003. In the European Arrest Warrant, which is under the signature of the relevant issuing judicial authority in the U.K., there is a clear statement that the applicant was convicted. Furthermore, I take on board the respondent's argument that the applicant's complaint that he was not convicted was addressed in the course of the extradition proceedings before Donnelly J. and that this particular argument was rejected, clearly after an analysis by the learned Judge of all submissions made. I am further satisfied that the argument the applicant is now making was implicitly rejected by McDermott J. in his judgment of 14th June, 2016 in respect of the applicant's first *habeas corpus* application. That decision was not appealed. Furthermore, as pointed out by counsel for the respondent, it remains the case that "The Decision on which the [European Arrest] warrant is based" refers to a warrant having been issued by the U.K. trial court for the applicant's arrest after he failed to appear for sentencing.

13. I also find that the applicant's argument that his sentencing constitutes a wholly new procedure is not supported by the jurisprudence of the Irish courts. (*The State (deBurca) v. O'huadaigh* [1976] IR 85 refers).

14. All in all, I am satisfied that the relevant judicial authority of the issuing State has provided information, in the European Arrest Warrant, not only that the applicant was convicted on 30th September, 2015, at Ipswich Crown Court, but that following his failure to appear after the adjournment for sentencing, a warrant subsequently issued for his arrest. I am satisfied that the content of part (b) of the European Arrest Warrant constitutes relevant evidence of the type envisaged by the Supreme Court in *Altaravicius* as would meet the requirements of the Act of 2003 and the Framework Decision. In that case, Murray J. stated:

> "The judicial authority of the issuing State has stated in the European Arrest Warrant that such a warrant was issued, the date it was issued, the Court by which it was issued and its reference number. That information is evidence of the existence of an enforceable warrant against the person in question. In reality what the Framework Decision requires is that information is given as to the existence of an underlying domestic warrant or judgment, where this exists, including information concerning the nature or type of warrant of judgment. This has been complied with". (Emphasis added)

15. In *Altaravicius*, Denham J. addressed the issue as follows:

> "The Act of 2003 sets out what should be in the European Arrest Warrant. The whole process is hinged on the European Arrest Warrant. It is a development from international co-operation at governmental level to international co-operation between the judiciary. It is part of a growth in the European Union of the concepts of mutual trust and judicial co-operation.
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> 12. Neither the Framework Decision nor the Act of 2003, as amended, explicitly requires the production of the domestic warrant. Indeed, to the contrary, the system established is for a single warrant, the European Arrest Warrant. There is a presumption that the requesting State will comply with the Framework Decision. This presumption lies 'unless the contrary is shown': see s. 4A of the Act of 2003, as amended. While it is open to a respondent to adduce evidence, to raise grounds, to show that the requesting State has not complied with the Framework Decision, under the Framework Decision and the Irish Statutory scheme there is a presumption that what is set out in the European Arrest Warrant is accurate and that the requesting State is acting in good faith."

16. I find nothing in the applicant's arguments which puts the presumption referred to in s. 4(A) of the Act of 2003 in issue.

17. It is also to be noted that notwithstanding the applicant having sought two prior Art. 40 inquiries, it would appear that the specific illegality now being canvassed by the applicant, namely that there is lack of *evidence* of conviction or of any of the processes covered by s. 10, was not advanced in those inquiries notwithstanding that it was open to the applicant to do so. I accept that this factor of course could not operate to refuse the applicant relief if the court had found substance in the complaint put forward, but the court has not found merit in the complaint, for the reasons stated above.

18. The applicant argues that there are two further independent bases which render his detention illegal, unrelated to the foregoing arguments.

19. The first of these relates to a document apparently generated on 9th November, 2016 by the Prison Service which the applicant appended to his Art. 40 application. This is entitled "Prisoner Information Management System – Certificate of Imprisonment". While the applicant asserts that the said document shows the accurate, legally supported "ins and outs" of the applicant, including his appearances in court at various dates between 2nd October, 2015, and 29th February, 2016 (no further dates having been entered on the document), he contends that the document clearly includes a statement that he has been sentenced and, moreover, gives the commencement date of sentence as 3rd November, 2015 and a remission date of 25th December, 2020. The applicant contends that the 3rd November, 2015 date as the date of sentence appears to be supported in that there was a committal hearing on that date. This certificate (which is signed) goes on to certify that the applicant "[w]as committed to Cloverhill Remand Prison on 02/10/2015 and is due for release on 25/12/2020". The applicant emphasises that he has not been sentenced, either in the U.K. or in

this jurisdiction. He submits however that the entries on the certificate must be "a conscious decision and not the automatic actions of a computer". He contends that from the contents of the document, the last entry being 29th February, 2016, it appears that no notice was taken by the Governor (assuming he had them) of the High Court stays and orders made post 29th February, 2016. The applicant further says that if the orders which were made post 29th February, 2016 were not communicated to the Governor, then the Governor had no legal justification in holding him and he should have been released.

20. Furthermore, he submits that this certificate of imprisonment, which states that he has been sentenced, and which states, effectively, that he is being held because he has been sentenced, is an entirely contradictory scenario to declarations that he is being held under various European Arrest Warrant orders. The applicant thus queries the status of the "Certificate of Imprisonment." He submits that if equal weight is attributed to the certificate as that attributed to the Governor's certified return in the second Article 40 proceedings (referred to in the applicant's written application) wherein the Governor stated that he held the applicant in custody pursuant to a High Court committal warrant dated 29th February, 2016, and the High Court orders dated 23rd March, 2016 and 14th June, 2016 (the latter as perfected on 24th June, 2016), then it means that there are two different reasons for the applicant's detention, one of which (the sentencing) has no legal support whatsoever. All of this, the applicant contends, points at best to administrative bungling and at worst to "a feeble and transparent attempt" to justify his detention. Given the contradictory nature of the basis of his detention, he submits that the situation is hopelessly confused such that the basis of his detention cannot be truly assessed or legally established. Such doubt, he says, should not lead to an *ex post facto* fashioning of a new justification for his detention but to his release. His case is that since there is therefore no sound basis for his detention 25 days from 29th February, 2016, or perhaps from 3rd November, 2015 (the date of the imposed sentence as set out in the certificate of imprisonment), he should be released.

21. Counsel for the respondent submits to the court that the "Certificate of Imprisonment" relied on by the applicant is a purely administrative document. She submits that the dates thereon are entered only for the purposes of allowing the computerised administrative management of prisoners to operate. It is submitted that this requires that all computerised "fields" must be active. The respondent's position is that as the document has its genesis in a computerised management system, the "fields" on the system cannot be left blank, thus requiring dates to be entered against, *inter alia*, the "sentence start date field" and "remission date field". Counsel states that her instructions are that the dates entered in respect of the applicant are purely arbitrary dates in order to ensure that the computerised system functions. She submits that the certificate in question is not a committal warrant.

22. In the first instance, it seems to the court somewhat extraordinary that the Prison Service cannot design or have designed a more effective computerised management system. That being said, the court does not find that the manner of the respondent's administrative management of prisoners goes to the legality of the applicant's detention. I so find in circumstances where the respondent's certified return in the second Art. 40 proceedings, as referred to by the applicant in his written submissions, and by Edwards J. in the decision of the Court of Appeal already referred to, states that the basis of the applicant's detention is pursuant to a High Court committal warrant dated 29th February, 2016, as well as the High Court orders dated 23rd March, 2016, and the order of 14th June 2016, as perfected on 24th June 2016. I also so find in circumstances where, for the purposes of the within proceedings, the respondent has certified (on 17th January, 2017) that he holds the applicant in custody pursuant to the High Court committal warrant of 29th February, 2016, as well as the subsequent High Court orders referred to above. Clearly, these High Court orders are the legal basis on which the applicant is being detained.

23. The applicant advances a third basis for the illegality of his detention. He asserts that a perusal of the High Court committal warrant (Donnelly J.) shows "a crude" alteration to the date of the order, from 25th February, 2016 to 29th February, 2016. The applicant asserts that it appears that the warrant was issued, signed and perfected on 25th February, 2016. He submits that in this circumstance, he has "an extra four days". His argument is that if the committal warrant was signed on 25th February, 2016, then the applicable 25 days for the purposes enforcing the warrant, as provided for in the Act of 2003, were spent before any stays on the order were applied for by the respondent. Accordingly, the applicant contends that his detention was unlawful from 20th March, 2016 (three days before the respondent applied for a stay).

24. I am satisfied that there is no merit in the applicant's complaint. The order of Donnelly J. bears the date 29th February, 2016. The court has the benefit of the transcript of Donnelly J.'s judgment of 25th February, 2016, as provided by the respondent. It is clearly recorded that following delivery of judgment on that date, Donnelly J. acceded to an application made on behalf of the applicant by his counsel to adjourn final orders to 29th February, 2016. I am thus satisfied that there is no basis in the complaint made by the applicant regarding the legality of his detention by reason that the stays which were put on the committal warrant were out of time. In any event, the issue of the legality of the stays vis-a-vis the applicant's detention have been well litigated in the prior Art. 40 applications.

25. In all the circumstances of this case, I do not find merit in the complaints advanced by the applicant. I am satisfied that he is in lawful detention.