

THE HIGH COURT

2018 No. 377 JR

Between:

X

Applicant

– and –

THE DIRECTOR OF PUBLIC PROSECUTIONS AND

THE COMMISSIONER OF AN GARDA SÍOCHÁNA

Respondents

JUDGMENT of Mr Justice Max Barrett delivered on 3rd May, 2019.

1. Mr X has been charged with failing/refusing without reasonable cause to comply with a notice issued pursuant to s.31(9) of the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 requiring him to attend at a Garda station to have a DNA sample taken. Mr X attended the District Court in April 2018 to answer the summons against him. The District Court is properly seised of the matter and vested with the requisite jurisdiction to deal with Mr X's case (*DPP (McTiernan) v. Bradley* [2000] 1 IR 420; *DPP (Ivers) v. Murphy* [1999] 1 IR 98).

2. In this application Mr X seeks an order of prohibition in respect of the pending District Court trial. He contends that he does not come within the any category of persons to whom the Act of 2014 applies. He is entitled to make that contention; but it ought to be made before the District Court in the first instance. The Supreme Court has repeatedly made clear, e.g., in *Byrne v. DPP* [2011] 1 IR 346 and *Kearns v. DPP* [2015] IESC 23, that the constitutional right to a fair trial falls typically to be vindicated via the criminal trial/appeals processes. Additionally, as MacMenamin J. notes in *Wall v. DPP* [2013] 4 IR 309, 396: "*It is...now well established that the onus rests on an accused who seeks judicial review to prohibit a trial to prove that circumstances exist which give rise to a real risk that the accused would not receive a fair trial, which cannot be avoided by appropriate rulings and directions on the part of the trial judge....The risk must be...real...and the unfairness of the trial must be unavoidable.*" Mr X, with respect, does not come close to discharging the said onus. He made this application a day before his District Court trial commenced and there is nothing at all to suggest that he will not receive a fair trial before the District Court. One consequence of the foregoing is that it would be entirely inappropriate for this Court now to step onto the District Court 'pitch' and give a pre-trial view on the legal points made before this Court concerning the Act of 2014.

3. Finally, the court notes that an order of prohibition in respect of a criminal trial can only be granted in exceptional circumstances (*DC v. DPP* [2005] 2 IR 281). No such circumstances present here. Such is the nature of exceptionality that these types of circumstances are unlikely often to present; and even if they did present (and here they do not), the court would still retain a discretion as regards whether or not to grant, in the particular circumstances of the case before it, the order of prohibition sought. Thus while one cannot state that an order of prohibition in respect of a criminal trial will never issue, the hurdle of exceptionality is such as to make it ever difficult for an applicant to vault successfully.

4. The court respectfully declines to grant the reliefs sought.