THE HIGH COURT

JUDICIAL REVIEW

[2016 908 J.R.]

BETWEEN

VINCENT TAYLOR

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 10th day of November, 2017.

Background

1. The applicant was charged with assault causing harm, contrary to s.3 of the Non-Fatal Offences Against the Person Act, 1997, on the 29th November, 2015.

2. The offence is a so-called "hybrid offence" which may be prosecuted either summarily in the District Court or on indictment in the Circuit Court. Further, the offence is a "scheduled offence" within the meaning and for the purposes of s. 2 of the Criminal Justice Act, 1951 so that the District Court may try, summarily, a person charged with that offence if, *inter alia*, the district judge is of the opinion that the facts proved or alleged constitute a minor offence fit to be so tried.

3. On 5th April, 2016 the applicant was brought before a sitting of Kilkenny District Court and charged with the offence. A medical report on the injured party's injuries was awaited and the case was adjourned to 3rd May, 2016.

4. On 3rd May, 2016 the District Court judge heard the alleged facts of the case and also had available to him a medical report prepared by Dr. David Maritz. The district judge then accepted jurisdiction to deal with the case and it was adjourned to 7th June, 2016.

5. Following a further adjournment, the case was adjourned to 21st June, 2016. On that date, the applicant pleaded guilty before the District Court judge who directed the preparation of a probation and welfare report and a victim impact statement. The matter was adjourned to 13th September, 2016 for sentence.

6. On the adjourned date, the District Court judge was made aware of the contents of the victim impact statement and he indicated that he was no longer prepared to accept jurisdiction and adjourned the case to 18th October, 2016 for service of a book of evidence. Subsequently, the District Court judge returned the applicant for trial before the Circuit Criminal Court, South Eastern Circuit, County of Kilkenny.

7. The respondent consented to the applicant being sent forward to the Circuit Court on a signed plea of guilty. The applicant did not sign any such plea.

8. On 5th December, 2016 the applicant was granted leave to apply by way of application for judicial review for the following reliefs:-

> (i) An order of *certiorari* quashing the decision of the learned District Court judge for the City and County of Kilkenny, made on 18th October, 2016 to return the applicant for trial before the Circuit Criminal Court, South Eastern Circuit, County of Kilkenny;
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> (ii) An order of prohibition, prohibiting a trial currently pending before the Circuit Criminal Court, South Eastern Circuit, County of Kilkenny, in which the applicant is accused of assaulting a named individual on 29th November, 2015, causing him harm contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997;
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> (iii) An injunction restraining the respondent from proceeding with the prosecution and/or trial of the applicant in respect of the alleged offence;
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> (iv) A stay on the proceedings pending determination of the application for judicial review;
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> (v) Further and other relief.

Issue to be determined

9. There is, essentially, one issue which this Court has to determine; namely, whether a District Court judge is entitled, after a plea of guilty has been entered, to change his decision to deal with the case summarily and to direct that the applicant be tried on indictment.

Submissions of the applicant

10. The applicant submits that the critical factor in this case was the entering of a guilty plea. Following this, the only matter for the District Court was one of sentence. In support of this, the applicant relied upon the Supreme Court decision of *Ciaran Feeney v. District Justice John Clifford* [1989] I.R. 668. Counsel for the applicant, Mr. Michael Delaney S.C., accepted that there were numerous authorities dealing with situations where a District Court judge could change his/her mind to deal with a case summarily but what distinguished these decisions from the instant case was the entering of a guilty plea.

11. Further, the applicant submitted that what prompted the District Judge to change his mind where the contents of a victim impact statement, a document which would only be opened to the court in the course of a sentencing hearing. Such a hearing would only take place following the entry of a guilty plea or a conviction.

Submissions of the respondent
12. Mr. Kieran Kelly B.L., on behalf of the respondent, did not attach as much significance as did the applicant to the entering of a guilty plea. He argued, based on a number of authorities, that if the district judge formed the view the case was not one which should be tried summarily then he/she was under a legal duty to send the matter forward to the Circuit Court on indictment. It was submitted that such was the case even in circumstances where a guilty plea had been entered.

13. The respondent further submitted that no prejudice would arise for the applicant if the matter proceeded in the Circuit Court and that any issues that might arise could be dealt with by appropriate rulings and directions from the trial judge.

Decision
14. It seems to me that a starting point in deciding this matter should be a review of the Supreme Court decision in *Feeney v. District Justice Clifford*, referred to above. The facts of this case were that the applicant appeared before the respondent District Court judge charged with four scheduled offences. Facts relating to the offences were outlined by the prosecuting garda and the respondent decided that the offences were minor and fit to be tried summarily. The applicant acceded to the jurisdiction of the District Court and pleaded guilty to each offence. The respondent was informed that the applicant was currently serving two sentences of imprisonment, the longer of which would not expire for some seventeen months. The respondent was of the opinion that the charges before him merited a sentence of two years imprisonment. As he had no power to impose a two year sentence to commence on the expiry of the existing sentences he thereupon declined jurisdiction and adjourned proceedings for service of a book of evidence.

15. The Applicant sought, by way of judicial review, an order of prohibition against the District Judge from proceeding to a preliminary hearing of the charges and from sending the applicant forward for trial. He sought an order of mandamus compelling the District Judge to deal with the matter on the basis of the convictions recorded by him.

16. The decision of the Supreme Court was given by McCarthy J. at p.678:-

> "I cannot but sympathize with the learned respondent. Having heard "all" the facts, including the criminal record of the appellants, he was well entitled to conclude that the maximum penalty he could lawfully impose fell short of what was appropriate, and he sought to remedy the situation. In doing so he has identified what seems to be a serious omission in criminal procedure. Once there has been a plea of guilty to what appears to be, on the facts alleged, a minor offence fit to be tried summarily, there can be no going back on the conviction that necessarily follows the plea of guilty; the district justice cannot hold the plea in some form of forensic limbo, until he has heard the evidence material to penalty; yet there must be many such instances…"

17. It seems to me that this decision of the Supreme Court deals directly with the issue raised in this case.

18. In the course of arguments, the court was referred to a number of decisions where a district judge changed his/her mind having decided initially to deal with an offence summarily. I refer particularly to *Gormley v. Judge Bryan Smyth and the Director of Public Prosecutions* [2010] 1 I.R. 315. In this case the applicant was charged with two offences in the District Court, both of which may be tried summarily or on indictment. Prior to the receipt by the second named respondent of the file from An Garda Síochána, a member of An Garda Síochána indicated to the Court, in error, that the second named respondent was consenting to summary disposal of the charges. The District Court judge accepted jurisdiction to hear the matter. Subsequently, a solicitor for the second named respondent indicated to the District Judge that in fact the second named respondent was directing a trial on indictment. The applicant opposed this direction on the grounds that the District Court judge had accepted jurisdiction and that the second named respondent did not have the power subsequently to direct the District Court judge to send the matter forward for trial on indictment.

19. In the course of giving the judgment of the Court, Geoghegan J. stated at p.329:-

> "14. However the Director was in a position, up until the applicant was acquitted or convicted, to reconsider his decision and to fall back on the indictable charge if he saw fit to do so provided that this power was not exercised in such a way as to constitute an abuse of the right of the defendant to a fair trial."

20. The earlier decision of *Feeney v. District Justice John Clifford* was not referred to in this case but it is clear that the decision of the court in *Gormley v Judge Bryan Smyth and Anor* is consistent with that earlier decision.

21. Similarly, what was at issue in *Shane Sweeney v. District Judge Lindsay and Director of Public Prosecutions* [2013] IEHC 2010 was that the applicant had "intended to plead guilty" but had not in fact entered such a plea. In giving judgment Peart J., having referred to the passage quoted above from *Feeney v. District Justice James Clifford* above, stated:-

> "28. It seems to me that in such circumstances, the applicant's case would be finally concluded, except for sentence."

> "31. The decision on the present application in my view turns on what occurred up to the time when the trial of the co-accused commenced. At para. 4 of her affidavit sworn to ground this application for leave to seek judicial review Ms. Corcoran avers that when both cases were first called at the District Court on 3rd February, 2012 she "advised the first respondent that the applicant intended to plead guilty to the charge…"

She goes on in that paragraph to state that the first respondent then proceeded to hear the case against the co-accused, Mr. Ward in respect of whom she had been informed intended to enter a plea of not guilty.

22. I am satisfied, having regard to *Feeney v. District Justice James Clifford* and subsequent decisions both of the High Court and Supreme Court that the applicant is entitled to the reliefs sought herein. Therefore, I will make:-

> (1) An order of *certiorari*, quashing the decision of the learned district judge, made on 18th October, 2016, returning the applicant for trial to Kilkenny Circuit Court in respect of the charge which is the subject of that decision.

> (2) An order of prohibition, prohibiting the trial of the applicant, currently pending for the Circuit Criminal Court, South Eastern Circuit, County of Kilkenny.

I will hear submissions from the parties in respect of further issues including that the applicant has entered a guilty plea to the offence charged and thus awaits sentence in the District Court.