

THE HIGH COURT

[2017 No. 9 SSP]

IN THE MATTER OF APPLICATION

PURSUANT TO ARTICLE 40.4.2. OF THE CONSTITUTION OF IRELAND

AND

IN THE MATTER OF AN APPLICATION FOR HABEAS CORPUS

BETWEEN

STEPHEN MANNING

APPLICANT

AND

THE GOVERNOR OF CASTLEREA PRISON

RESPONDENT

JUDGMENT of Mr. Justice Binchy delivered on the 18th day of May, 2017

1. This is an application made in writing by the applicant and dated the 11th May 2017 whereby he seeks an inquiry into the lawfulness of his detention on the grounds that his detention in Castlereagh prison is unlawful. The applicant is currently detained in Castlereagh prison pursuant to an order made by Judge Ó Donnabháin on 4th May, 2017 following upon the affirmation of an order of the District Court (dated 24th January, 2017) at Castlebar Circuit Court on 4th May, 2017.

2. At Castlebar District Court on 24th January, 2017, the applicant was charged with an offence of engaging in threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace might have been occasioned, contrary to s. 6 of the Criminal Justice (Public Order) Act, 1994 as amended by s. 22 of the Intoxicating Liquor Act, 2008. The applicant was convicted of an offence under s.6 on that date at Castlebar District Court, and sentenced to a period of imprisonment of two months. It was this conviction and order that was affirmed by the Circuit Court on 4th May, 2017.

3. The applicant does not claim that there is any invalidity of the order of the Circuit Court on its face and, having reviewed the order, I am satisfied that the order is good on its face and does not indicate any invalidity.

4. In its decision in the case of *Ryan v. Governor of Midlands Prison* [2014] IESC 54, the Supreme Court stated:-

"Thus the general principle of law is that if an order of a court does not show an invalidity on its face, in particular if it is an order in relation to post conviction detention, then the route of the constitutional and immediate remedy of habeas corpus is not appropriate. An appropriate remedy may be an appeal, or an application for leave to seek judicial review. In such circumstances the remedy of Article 40.4.2 arises only if there has been an absence of jurisdiction, a fundamental denial of justice, or a fundamental flaw."

It is not alleged that either the District Court or the Circuit Court did not have jurisdiction to try the charges brought against the applicant. Accordingly, this application is concerned only with whether or not, on the grounds alleged by the applicant, there has been a fundamental denial of justice or a fundamental flaw of some other kind that would justify the granting of an order of *habeas corpus*.

5. The applicant makes his application on the following grounds:-

- (1) "The Circuit Court hearing was terminated improperly and unlawfully in circumstances where I had not entered a defence, and where the judge dismissed prosecution witnesses before I had finished cross-examining them."
- (2) "The District Court proceedings were also artificially terminated on foot of an unlawful contrivance in circumstances where no defence had been entertained and a scheduled hearing was moved without notice."
- (3) "I am entitled to legal aid and was granted the same in the District Court – but then only allowed one hour to secure the same: that the District Court judge declared he was continuing the trial "regardless": that five subsequent legitimate applications (three oral and two written) were either ignored or refused by various judges and Courts Service staff."
- (4) "That proofs of serious prosecutorial misconduct including criminal acts were brought to the attention of the trial judges but all of my applications, notices and requests in this vein were ignored or refused."
- (5) "That the prosecution unlawfully, and with scienter, interfered with key DAR evidence, which is an act of criminal damage, in an attempt to interfere with, obstruct, or pervert the course of justice."
- (6) "That no regard whatsoever has been afforded to the fact that an application is before the Supreme Court regarding the progression of this case and the conduct of the parties involved."
- (7) "That the following fundamental rights have been denied to me throughout:
 - The right to a fair hearing before an independent or impartial Tribunal.
 - The right to be tried in my presence and to have legal aid assigned.
 - The right to access evidence, and call witnesses, with adequate time and facilities."

6. The applicant relies on Articles 38.1 and 40.1 of the Constitution, Articles 6 and 13 of the European Commission (sic) on Human Rights, Articles 47 and 48 of the EU Charter of Fundamental Rights, Article 1 of the Council of Europe, Articles 2 and 14 of the United Nations Covenant on Civil and Political Rights and Articles 8 and 10 of the United Nations Universal Declaration of Human Rights.

7. In his first ground the applicant complains that the Circuit Court hearing was terminated improperly and unlawfully in circumstances where he had not entered a defence and he further complains that the Circuit Judge dismissed prosecution witnesses before he had finished cross-examining the witnesses. These are complaints that are most appropriately dealt with by way of judicial review, and not by way of article 40 application, as the Supreme Court has made clear in *Ryan*.

8. Ground number two is concerned with the conduct of proceedings in the District Court. The applicant is detained pursuant to the order of the Circuit Court, and not the order of the District Court, albeit that the order of the Circuit Court affirmed the order of the District Court. The decision of the Circuit Court to affirm the order of the District Court is taken only after a full rehearing of the evidence. Accordingly, whatever may have transpired in the District Court is not relevant to this application.

9. In ground number three the applicant states that he was granted legal aid in the District Court. While his chief complaint in relation to the District Court hearing is that he was only allowed one hour to obtain legal aid, and by implication, to prepare his defence to the charges on the day, that complaint clearly could have no application to the Circuit Court hearing, for which he would have had ample time to prepare himself.

10. Ground number four constitutes no more than an expression of dissatisfaction on the part of the applicant that the trial judge did not accept such evidence as he may have adduced or submissions that he may have made and does not therefore constitute a ground for directing an inquiry into the detention of the applicant. Inquiries of this kind are not intended to be a retrial of the proceedings that resulted in the conviction of an applicant.

11. The applicant's complaint in relation to DAR evidence in ground number five is not understood. The proceedings before the Circuit Court would have been determined on the basis of the evidence before the court and it is not necessary, in the conduct of an appeal hearing, to have available the DAR of the hearing at first instance.

12. As regards ground number six, it is unclear from the applicant's application as to the nature of his proceedings before the Supreme Court. However, the fact that such proceedings may be ongoing can have no bearing on the lawfulness of the applicant's detention. The order of the Circuit Court remains valid unless and until it is set aside by a higher court.

13. Finally, the complaints of the applicant as set forth in the first and third sub paragraphs of ground number seven of his application are of such a general nature that they could not possibly form a ground for investigation into his detention. As regards the second sub paragraph, the applicant does not complain that he applied for legal aid in the Circuit Court, or that such application was refused. As noted above, he says he was granted legal aid in the District Court. In any case, applications for legal aid fall to be dealt with by the judge to whom the application is made, whose decision is final. A refusal of such application cannot form the basis of an Article 40 application.

14. For all of these reasons, I dismiss the application.