Neutral Citation Number: [2006] IEHC 297

THE HIGH COURT

[2006 No. 426 SS]

BETWEEN

FRANK WARD

PLAINTIFF

AND

THE GOVERNOR OF PORTLAOISE PRISON

DEFENDANT

Ex tempore Judgment of Mr Justice Macmenamin delivered on the 31st day of July 2006

1. In view of the fact that this is a matter of some importance, I think it is important now to deliver judgment. In order to put this judgment in context it is necessary to recite something of the history of what has occurred to date. By order of the High Court on the 4th of May, Mr Justice Lavan directed that the applicant be produced before the court to certify in writing the grounds of his detention. The proceedings were returned before Mr Justice Quirke and a hearing took place on the 8th of May 2006 being in the nature of an inquiry under Article 40.

2. At that stage a return to the Article 40 was handed in to court consisting mainly of a certificate signed by the assistant governor of the Portlaoise Prison, Mr Pat O'Toole to which was scheduled a copy of the warrant which Mr O'Toole indicated was the basis for the applicant's detention. That warrant was a warrant at committal of Her Honour, Circuit Judge Catherine Delahunt dated the 24th of April 2006.

3. Mr Justice Quirke refused the applicant's application for relief under Article 40.4.2 of the constitution and delivered a written *extempore* judgment setting out the basis for that determination. The applicant appealed Mr Justice Quirke's order to the Supreme Court. This appeal came on on the 21st of June 2006. As in the High Court, the applicant represented himself. The Supreme Court delivered its reserve judgment the following week on the 30th of June 2006.

4. Mr Ward's appeal was dismissed in relation to the grounds identified in the course of that judgment. However, the court remitted to the President of the High Court five grounds dealt with at paragraph 10 of the Supreme Court judgment. Those grounds relate, broadly, to two matters.

5. The first of these was the return on behalf of the Governor and, second, the issue of the time since the applicant was placed in custody. The first of these arose because the applicant contended that he had not been granted an opportunity of having sight of the return in the High Court and, therefore, had been deprived of making any submissions thereon.

6. The second was in regard to the period of time which arose since the applicant was placed in custody originally in the year 2003. It is only fair to point out that since that time a number of procedural steps have taken place and that also orders of the High Court have been made on applications which were brought by the applicant on issues which are not directly germane to these proceedings.

7. This matter came before the President of the High Court having been remitted from the Supreme Court. At that stage it was indicated that the respondent proposed to rely on a new certificate to which was scheduled the District Court warrant dated the 12th of October 2004 which obviously is distinct from that of Judge Delahunt's order and what was stated to be a newly authenticated copy of Judge Delahunt's warrant from the Circuit Court.

8. It was indicated that the latter document, that is, the warrant from the Circuit Court, was the same document as before, save that it now carried the signature of the County Registrar of the Dublin Circuit Court and also the seal of the Circuit Court. The respondents contend that both warrants on their face mandate the detention of the applicant. When the matter came before the President, Mr Justice Finnegan, he stated that the time of delay alleged to have occurred since date of arrest and date of trial was a matter which more properly should be dealt with by way of judicial review rather than by Article 40 application. As it was not possible to hear the matter on that occasion, the matter was adjourned and the matter next came before me on the 19th of July 2006 at which point the applicant represented himself.

9. It was indicated at that stage by counsel acting for the respondent that there would be no objection to the court assigning the applicant legal representation under the Attorney General's scheme. That was done and Garrett Sheehan and Partners Solicitors were assigned to represent the applicant and thereafter junior and senior counsel were retained on behalf of the applicant. Those acting for the applicant in these proceedings were Ms Aileen Donnelly, senior counsel and Ms Marian Berry and those appearing on behalf of the respondent were Mr Paul O'Higgins and Mr Mícheál O'Higgins. I should mention in passing that I am particularly grateful to counsel on both sides for the submissions which have been put before the court. They have considerably expedited the work of the court and, indeed, in my view, have had the effect of reducing what very likely would have been a two or three-day case to being one which could be dealt with within the compass of one day.

10. The matter was adjourned on the 19th of July 2006 until the 26th of that month. On that occasion the applicant was represented by solicitor and counsel. It had not been entirely clear as to what were the wishes of the applicant regarding the disposition of the two matters prior to that date. However, on that date Ms Donnelly, senior counsel, on behalf of the applicant, submitted that the issues which arose in the Article 40 application were discrete ones and should be dealt with as soon as possible. The court, therefore, acceded to this application and put the matter in for hearing with agreement of the parties for today, that is, the 31st of July 2006.

11. In the interim period two further certificates have been served upon the applicant. The first of these was signed by the assistant governor of Portlaoise Prison, Mr Pat O'Toole. However, he did not endorse either his signature or his initials on the warrants attached to that certificate and, therefore, a fresh certificate had to be prepared. The final certificate is that of the Governor of Portlaoise Prison, Mr Dooley. And the latter document has, it has been said, been prepared as a precaution and will only become relevant if required.

12. The respondents contend that the certificate signed by Assistant Governor O'Toole, a sufficient answer to the plaintiff's claim for release under Article 40. It is now necessary to touch on the Supreme Court order for remittal of these proceedings. In its order of the 30th of June 2006, that court set out in its final paragraph:

> "And it is ordered that the issues set out in paragraph 10 of the judgment herein relating to (i) the return on behalf of the governor and (ii) the time since the applicants was placed in custody be remitted to the High Court for a full hearing."

13. The applicant's case is that it can only be that the Supreme Court was remitting the return, which is the only issue this court must consider in the inquiry as constituted before it on the 21st of June 2006. It is submitted that it is not conceivable that the court could have remitted any other return for it is submitted there was no other return in being.

14. In essence the applicant says that the parameters of the Article 40 inquiry had already, therefore, been set in stone. The applicant had made his complaint; the respondent had made his justification and the court had given his determination. The applicant states that it cannot be argued that the Supreme Court order gave the respondent liberty to put forward a justification for the applicant's detention on a basis materially different from that relied upon before the Supreme Court. The applicant contends that if the respondent recognised the difficulties presented in seeking to rely on the certificate of the Assistant Governor of the 8th of May 2006 exhibiting, as it did, what is stated to be an invalid circuit court order, it was inappropriate to circumvent the applicant obtaining relief under Article 40 in the manner in which the respondent has attempted to do so. The court, it is submitted, must be permitted to conduct its inquiry into the grounds for detention which the State submitted originally to this court and on appeal to the Supreme Court.

15. I now want to turn and make a few observations on the question of Article 40 procedure insofar as it arises in relation to this case. The first point that I would like to make is that the question of the procedure which is employed here is clearly described in the constitution. The integrity of the procedure has been fully described by Mr Justice Walsh in the decision of the Supreme Court in the State *Christopher Ahern v. the Governor of Limerick Prison* 1983 ILRM at page 17.

16. In the course of that judgment, that judge pointed out that it is outside the competence of any rule-making authority to make any rules whatever to regulate this procedure. And further stated that it is questionable whether the method of a conditional order followed by the procedure of an order absolute is an appropriate procedure.

17. The applicant's submission is that the actions of the respondent in attempting to substitute a new certificate with what is stated to be a fundamentally altered warrant is an action which is not permitted in the procedure set out in Article 40.4.2.

18. As is mandated under Article 40.4.2 of the constitution, the respondent must "certify in writing the grounds of the applicant's detention".

19. In the State, *Hughes v. Lennon*, O'Byrne J made clear the effect of the requirement of certification where he said that, "It throws upon the gaoler the onus of establishing the legality of the detention and it imposes on the court or any judge thereof before whom the applicant is brought the duty of ordering the release of the person detained unless satisfied as of the legality of the detention". That quotation is taken from the State, *Hughes v. Lennon* 1935 IR 162.

20. The applicant says that the authority upon which the respondent relies to justify the detention must a *fortiori* be attached to the return before the court and that the authority or warrant must be a specific document relied upon to detain the applicant at the time of imprisonment. In that regard a considerable amount of well-established authority is cited going back as far as the 17th century. The applicant says that if the court is not satisfied that the applicant is being detained in accordance with law, the High Court, after having given the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless that satisfied that he has been detained in accordance with law.

21. I do not think that this *extempore* judgment is an appropriate way to consider at length any distinction which may arise between the procedures which were prescribed under Article 6 of the Constitution of 1922 on the one hand and that which arises under Article 40.4.2 on the other. However, it is clear that the obligation on this court must be to give the person in whose custody the prisoner is detained an opportunity of justifying the detention. As well as the documents to which reference has been made, an affidavit has been sworn by Governor Dooley in which he makes reference to the certificate initially provided by Assistant Governor O'Toole.

22. He states his belief that the applicant's contention that a certificate must be signed by a governor and not by any person below the rank of governor is misconceived. He avers that Deputy and Assistant Governor grades are expected to carry out the duties and functions of a Governor on a frequent basis and that is the basis upon which candidates are promoted to such senior management positions. He states that where an Assistant Governor, Deputy Governor carries out a specific task and assigns a document in his official capacity he does so on behalf of the Governor of the prison.

23. Thus, whenever a Deputy Governor or Assistant Governor certifies in writing the basis for a prisoner's detention it can be assumed that he or she does so on behalf of the prison detaining them. The affidavit goes on to state that, without prejudice made to the contentions, Governor Dooley has, as precaution, executed a separate certificate in which he certifies the grounds for Mr Ward's detention and exhibits that certificate.

24. Finally, in the course of the affidavit he confirms that, in his absence from Portlaoise Prison he arranged for Assistant Governor O'Toole to certify the grounds for the applicant's detention. On the relevant date he, Governor Dooley, had a medical appointment in Kilkenny and was therefore absent from Portlaoise Prison. The Deputy Governor was on a training course and the Governor arranged for the Assistant Governor to deal with the Article 40 application. It seems to me that it is perfectly clear that the provisions of Article 40.4.2 are such that stipulations of the constitution are that the person justifying such detention must be given the opportunity of justifying such detention.

25. The question which must be determined here is whether such justification, as has been advanced, has been made in accordance with law and in accordance with the procedures laid down under the constitution itself. The applicant's case must be looked at in a little more detail now. It can, I think, be summarised in this way. First, that the respondent is constitutionally prohibited from serving, filing and relying upon different certificates justifying the detention of the applicant than those which were before the High Court and the Supreme Court in prior hearings.

26. Second, the applicant was not served with a certificate of return made by the Governor before the High Court which was a breach of fair procedures. The attempt to rely upon a new certificate and what is stated to be the altered warrant compounds the alleged breach of fair procedures into what is contended to be an abuse of process of the court. Third, the Governor and not the Assistant Governor was bound to certify the ground of detention of the applicant. Fourth, the Circuit Court warrant upon which the respondent has relied to justify the detention of the applicant is invalid. It is submitted that any attempt to retrospectively validate that warrant is a procedure not known to law and amounts to a further abuse of process. Fifth, in any event, the Circuit Court warrant contained in the certification of the 19th of July 2006, even if a purported retrospective validation was permitted is an invalid warrant as it is not sealed or otherwise authenticated in accordance with order 4 of the rules of the Circuit Court and finally where the Circuit Court warrant relied upon to justify the detention of the applicant is defective, the respondent is not entitled to rely in the alternative upon the District Court return for trial which is now spent.

27. The essential case which is made by the applicant is that what has occurred here is a breach of fair procedures and an abuse of process. The applicant submits that any documentation relied upon by a respondent in an Article 40 inquiry should be made available sufficiently in advance of the hearing in order to facilitate a full response by the complainant. He says that the procedures which require the respondent to certify the grounds of the prisoner's detention are mandatory in nature and in that connection they refer to the authorities of the application of Zwann, Z-W-A-N-N, 1981 IR 395 and the *State, Rogers v. Galvin* (1983) Irish Reports 249.

28. Relying on these authorities they submit that the justification for the detention which lies at the heart of the jurisdiction to grant a release by habeas corpus accrues to the benefit of the applicant and respondent in equal measure. They say that if the requirement is a constitutional recognition of the rule of natural justice expressed in the *maxim audi alteram partem* then it should guard against the risk that the applicant is not informed of the justification for his detention. And in that connection they refer back to the Supreme Court judgment where it was found:

> "It appears that the applicant was not given a copy of a certificate, schedule or warrant filed on behalf of the governor at or before the High Court hearing. Such a situation would be a breach of fair procedures."

29. The applicants submit that the actions of the respondent, as now described, are an effort to frustrate the applicant's access to and operation of the constitutional remedy of an inquiry under Article 40 by service and reliance upon a retrospectively altered warrant which they contend purports to be cured of the defect of which the applicant complained. They say that while the stated failure to give the applicant a copy of the certificate at first instance before the High Court may have amounted to a breach of fair procedures the attempt to divert the court from its inquiry, by virtue of the course of action now adopted, is an abuse of process under Article 40. It is submitted that what is being embarked upon is constitutionally impermissible and that, to permit the procedure which has been outlined herein would be to create an imbalance between the rights and powers of the respondent and those of the applicant.

30. In this connection reference to a number of authorities, the most recent of which is *A v. the Medical Council* and also *Woodhouse v. Consignia*, wherein it is stated that it is necessary in the interests of justice that, in the absence of special circumstances parties should bring their whole case before the court so that all aspects of it may be decided once and for all. The rationale for this is that it is a rule of public policy based upon the desirability that litigation should not be dragged on indefinitely. And they, in this connection they say that the respondent should not be permitted to introduce, in a phased way, its production of the authority which justifies, it is said, the detention of the applicant.

31. As has been pointed out, there are now two warrants in existence, which mandate the applicant's detention. The District Court warrant is dated the 12th of October 2004 and it states, on its face, that it mandates the applicant's detention up until his trial. That warrant constituted a command to the Governor to lodge the applicant in Cloverhill Prison, there to be detained by the Governor thereof, "until his trial for the said offence and his discharge in due course of law".

32. However, it has been correctly accepted, I think, by the respondent, applying the authority of Singer's case, that this warrant is now spent. Essentially, therefore, the case of the respondent relies, secondly, on the warrant of Judge Delahunt. That states that the Governor is to receive into his custody the above named accused, "to appear before the Dublin Circuit Criminal Court on this date and cause said accused to be detained therein in accordance with the order of the court".

33. On the first page of the warrant, the order recites that, "the matter was adjourned for mention to the 10th of October 2006 in court 8 at 10.30 am". The trial date, which had been fixed for the 14th of June 2006, was vacated and the accused was remanded in custody. It is accepted by the respondent that the Circuit Court warrant, signed by the court registrar at the first instance, did not carry the Circuit Court seal. At the time of its issuance, it is accepted, it did not comply with the technical requirements laid down by the Circuit Court rules, in that it was not sealed or signed. The reason which has been put before the court by way of submission for this is that when an accused person is convicted and sentenced in the Dublin Circuit Court, the registrar issues what is known in practice as a "temporary warrant" for the prison officer present in court to present to the Governor of the prison; the actual signed and sealed warrant then follows. In this case, the accused was remanded in custody, the trial date having been vacated and adjourned for mention until the 10th of October 2006.

34. In cases such as this, the court has been informed. The practice is that a remand warrant is issued for the same reason as above. The sealed warrant will issue when and if the accused is convicted and sentenced. It is said that the practice of issuing "holding" warrants is a time honoured one, and the primary purpose ofthe document is that the prison officer in court will have a record of what occurred so that he can return with it to the prison. It is accepted that the original warrant was neither sealed or signed by the County Registrar. Therefore, it is accepted that the technical requirements of order 4 of the Circuit Court rules were therefore not complied with. The respondents rely on order 67, rule 15 of the Circuit Court rules which, they say, allows them to meet the situation by virtue of its statement that noncompliance with any of these rules or with any practice for the time being enforced in the court shall not render proceedings void, unless the court shall direct, but such proceedings may be set aside wholly or in part as irregular or may be amended or otherwise dealt with in such manner or upon such terms as the court shall think fit.

35. The respondent submits that order 67 has application to this case, in circumstances where the applicant is not challenging the underpinning court orders upon which the warrants en suit are based. That is to say, no attack is made upon the procedures invoked in either the District or Circuit Courts when making their respective orders, whether from a jurisdictional or a fairness perspective. It is a noteworthy feature of this case that the issues which are canvassed by the applicant do not raise any question of substantive prejudice, nor do they raise any issue of substantive wrong in the making of the order. In saying this I am, of course, having regard to the submissions made by Ms Aileen Donnelly in her most able argument on behalf of the applicant. She says that what occurred had the effect of denying the applicant the opportunity of raising the issue or litigating it in the habeas corpus proceedings, which are more properly referred to as the Article 40 proceedings, that he has been detained in custody for three extra months, that the respondent's full case was not pleaded and that the course of action which they are now seeking to adopt is to litigate a new area.

36. On behalf of the respondent, Mr O'Higgins has pointed out that the application under Article 40 actually predated the order of the Circuit Court, in

37. that it was brought on the 5th of April 2006. It had nothing to do with the order of the Circuit Court. What was in issue when the Article 40 proceedings were initiated were those matters determined in the Supreme Court and by implication those remitted back to the High Court. And he asserts that essentially the case made by the applicant herein is, in a sense, speculative in that it relies upon a contention that an inquiry would have been made in the High Court at first instance on the basis of the alleged defective nature of the warrant.

38. He says the courts need not entertain every potential ground in a habeas corpus proceeding, although, of course, this must be

balanced by the observation that it is for the courts to ensure that the rights of an applicant are properly protected and particularly the rights of an applicant who is unrepresented.

39. The essential issue in one sense is whether the issue to be determined in this court can be crystallised as of the time that the matter was before the Supreme Court or whether it is open to the respondent to justify the detention of the applicant in circumstances which have been outlined in the course of this judgment.

40. In this connection, it may be relevant to point out that the issues which have been canvassed in this case, while they do have a technical substance, do not have a substance which relates to the applicant's substantive right to liberty. By that I mean that there has been no effort in the course of these proceedings, nor could there be, to impugn the order of Judge Delahunt. It seems that one of the issues which truly arises in this proceeding is whether or not there has been a conflation between the order of the Circuit Court and the warrants made thereunder. There has been considerable discussion of the statement of O'Higgins, Chief Justice in the *State, McDonagh v. Frawley*, where he said, "For *habeas corpus* purposes, therefore, it is insufficient for the prisoner to show that there has been a legal error or impropriety or even that jurisdiction has been inadvertently exceeded".

41. In his book on the law of habeas corpus in Ireland, Dr Kevin Costello points out that the jurisdiction to permit a retrospective compliance is discretionary and whether late correction is permitted may depend on factors such as the relative seriousness of the illegality or the extent to which the authorities have been guilty of maladministration. When one asks oneself the question, has there been demonstrated here any substantive illegality in the sense of the warrant in a prejudicial way failing to reflect the order of the Circuit Court, I think the answer is no. When one asks oneself, has there been demonstrated here maladministration on the part of the authorities, in my view, the answer to that question is no also. Has any violence been done to the order of the Circuit Court in what occurred? I am not convinced that it has.

42. Authority has been placed on the judgment of Ray Phipps, 1870 WR 730. In that case, a rule nise had been obtained calling on the Governor of a house of correction to show cause why a writ of habeas corpus should not issue to bring up a prisoner in his custody, on the ground that the warrant under which he was committed was not properly sealed. It is said that there lies a point of contrast with the present proceedings, being that the second warrant was lodged with the Governor in similar terms and that this was held to be a sufficient warrant for the detention of the prisoner, even though it was made after the rule was obtained, but before the return was made by the Governor.

43. Similarly, the Supreme Court in Ray Francis relied upon a new order and warrant that had come into existence by virtue of a new appearance in the Circuit Court, pursuant to the original remand, which it is contended was a separate judicial decision. But the question which the court must ask itself here is, is there any fundamental distinction in principle between the facts of Ray Phipps and Ray Francis, compared to the instant case? In my view, the answer is no. In that context, what was done by the signature on the 18th of July of the warrant was merely a procedure in order to ensure compliance with the rules.

44. The fact that there was no signature or seal prior to that time had no effect whatever on the validity of the order, which had been made by Judge Delahunt and consequently it cannot be said that there has been substantive prejudice in the sense that I have outlined. I also think that the situation is distinct from that which arose in the *State, Downing v. Kingston*, where Gavin Duffy J was not disposed to permit of an amendment in proceedings which were brought … he was not disposed to permit of any amendment of proofs, because of the nature of habeas corpus proceedings brought under Article 6 of the constitution of 1922. What is at issue here essentially is whether the warrant has a root in a good and effective court order. In the absence of any challenge to the order, it seems to me that what was done by the County Registrar was a mere rectification of what must be seen as an entirely technical defect.

45. It is necessary now to consider a number of the other issues which arose in the course of the application, although it is fair to say that the focus of the applicant’s attack has been in relation to the matters which I have earlier described. Before going on to do that however, I would merely revert to the remarks of Chief Justice O'Higgins in *McDonagh v. Frawley*. I think the question which the court must ask itself, in the context of whether the applicant is a remand prisoner or whether he is a prisoner having been convicted, is whether there has been a clear demonstration that the technical defect is one of seriousness, is one of significance and is one which impinges on the true … on issues such as whether the warrant reflects properly the order of the court. That, I think, is what was meant by the observations of the Chief Justice in *McDonagh v. Frawley*; not, I think, whether it can be demonstrated there was a technical, purely technical defect in the face of the warrant.

46. Now, having said that, the balance of the issues must now be considered. It is said that the Governor should have been in court, but in this connection I do not think that even read literally, Article 40.4.2 requires the Governor of a prison personally to appear. The Article provides that the High Court may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention.

47. The order of Mr Justice Lavan of the 4th of May 2006 ordering the inquiry was in similar language, directing the respondent to produce before the court the body of the applicant and to certify in writing the grounds of his detention. I do not consider that either the constitution nor the order of Mr Justice Lavan would require the Governor of Portlaoise Prison to personally produce the applicant before the High Court. All that is necessary is that the prison arrange for the prisoner to be produced and for the grounds of the detention to be certified in writing.

48. I think it has been correctly pointed out by the respondents that any contrary conclusion might well be unworkable in the context, for example, where a number of Article 40 applications were made returnable before different courts in the Four Courts on behalf of different prisoners. It would be plainly impossible for one Governor to be present in different courts at the one time. It seems to me that the words "to produce and certify" within article 40.4.2 should be read in a purposive and non-personal way.

49. The essential test which must be applied in any Article 40.4.2 inquiry is to establish whether the detainee is being detained in accordance with the law and I emphasise the definite article, the law, in the context of my observations earlier in relation to what is and what is not in issue in these proceedings. It is contended that the Governor did not certify the grounds. However, it seems to me that the certificate signed by Assistant Governor O'Toole is an order and now meets the requirements of Article 40.4.2.

50. I think it is in order for a person of senior managerial rank within a prison to certify the grounds for detaining a prisoner in that prison. Nowhere is it expressly provided that the person certifying must be a Prison Governor. Article 40.4.2 speaks of the person in who's custody such person is detained. At any one time, a prisoner in a prison may be in the detention of a series of prison officers and it might be submitted or considered that a truly literal reading of Article 40.4.2 might suggest that all persons who are involved in the detention of a prisoner should sign a certificate, which again would plainly be unworkable and cannot have been intended by the framers of the constitution. That is not to say, however, that at any time responsibility for the custody of a prisoner can be avoided

by any process of seeking to shift responsibility between officers. Ultimately, the responsibility must always lie with the Governor, but it seems to me it is open for a person of managerial rank to certify the grounds for detaining a prisoner in that prison.

51. One might instance in this regard a habeas corpus proceeding arising from a section 30 detention, where the practice is for a member in charge of the Garda Station to be named as the respondent in the proceedings. That is so, even though the prisoner in question may be in the physical custody of a team of interviewing gardaí.

52. In *Bolger v. the Garda Commissioner*, 2nd of November 1998, Mr Justice O'Flaherty stated and it is an observation relevant in this case, in more than one sense: "There is no formality provided for the certificate in writing. The Governor of the prison, may, no doubt, certify in writing that he holds a prisoner pursuant to such an order of such a court. He may well annex a copy of the warrant committing him to prison to a certificate in writing. I am not saying that he necessarily has to do so, but for completeness sake, it is probably a wise move."

53. In *Bolger*, it is clear that Mr. Justice O'Flaherty was directing that the court's focus should be on the question of whether the detention is in accordance with law, as opposed to the technical requirements of the certificate. Again commenting on this issue, Mr Costello comments, "The fact that the Article 40.4.2 inquiry is concerned with establishing whether the detainee is being detained in accordance with the law and not with the sufficiency of the return, also suggests that the technical content of the return is not of high significance under the constitution". It seems to me that those observations are also of application in the instant case, particularly in the light of the explanation which has been furnished earlier as to the circumstances in which the Governor did not assign the certificate.

54. I do not think that there can be a tenable contention made that, where an Assistant Governor certifies grounds for a prisoner's detention, it is necessary to produce a power of attorney or other proof of formal delegation. In the absence of any suggestion that the Assistant Governor acted mala fides, I think it should be presumed that where a person of senior managerial rank within a prison certifies the grounds for a prisoner's detention, that person has authority to do so and is doing so on behalf of the prison.

55. As regards the issue which is raised as to the warrant not being in compliance with the Circuit Court rules, I would merely add to the previous observations which have been made here that the contention seems to me to be one which also fails and I say that on the basis which has been outlined earlier in the course of my findings in relation to the issues which have been set out earlier in these proceedings.

56. It seems to me that it is a fundamental precept which must be observed here, that a mere lapse in jurisdictional propriety is not sufficient to justify the making absolute of an order under Article 40.4.2. The essential question which must be asked is has there been a departure from the fundamental rules of natural justice, and for the reasons that I have outlined earlier, I do not think that what has been outlined here constitutes such a departure from the fundamental rules of natural justice, whether the prisoner be on remand or whether he be convicted. The essential question, as has been pointed out in many recent authorities, is whether the applicant is detained in accordance with law. The question which should be asked is whether any irregularity or procedural deficiency must be such as would invalidate any essential step in the proceedings leading to the applicant's detention. I do not think this has not been demonstrated on the facts of this case.

57. Finally, it is necessary to consider the contention made that the warrant fails to show jurisdiction on its face. It seems to me that the warrant mentions various criminal provisions with which the applicant is charged. Whilst it may not recite the Courts of Justice Act 1924 or other items of legislation, such a requirement is not necessary in accordance with the authorities. As has been pointed out in *Walsh v. the Governor of Limerick Prison*, the applicant's detention was found to be lawful, notwithstanding that the warrant from the Special Criminal Court which mandated the detention failed to show jurisdiction on its face. I think it’s again of relevance to this ground that the applicant has not sought to impugn any aspect of the hearing before Judge Delahunt.

58. One other point arises, which is whether Portlaoise Prison is the appropriate place of detention of the applicant and it seems to me, as I indicated during the course of the hearing, that that issue is an administrative issue, but that nonetheless it appears to me that the order directed that the applicant be detained in Cloverhill Prison as opposed to Portlaoise Prison and I would think that the State authorities should take steps to regularise that position.

59. It having now been indicated to me that the matter has been regularized, I do not think it is necessary to make any further finding in that regard.

60. In those circumstances, I consider that the applicant's detention has been shown to be in accordance with law, which is the only issue which arises in this Article 40 application. This concludes the judgment.