

THE HIGH COURT

[2015 No. 219 S.S.]

IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLE 40.4.2° OF THE CONSTITUTION OF IRELAND

BETWEEN

VACILLE SCRIPCARU

APPLICANT

AND

THE GOVERNOR OF WHEATFIELD PRISON

RESPONDENT

JUDGMENT of Mr. Justice Eagar delivered on the 16th day of February 2015

1. This is an application for an inquiry by this court into the imprisonment of the Applicant. I understand that the President of the High Court directed the Governor of Wheatfield Prison, the Respondent in this case, to certify in writing the grounds of the Applicant's detention and this matter is being dealt with by this court.

Facts

2. The Applicant is a Moldovan national who is 28 years old. He was arrested at Dublin Airport on the 21st January 2015 while attempting to bring a large quantity of cigarettes into this jurisdiction without paying excise duty. This is a serious offence as it undermines both the Revenue from the excise duty and undermines the health policy of the nation as regards smoking. He was charged with three offences under s. 119 of the Finance Act 2001 (as amended).

3. He appeared later on that date before the District Court sitting in Parkgate Street and was remanded in custody to appear at Cloverhill District Court on the 28th January 2015.

4. On that date the Applicant had instructed Mr Donal Quigley as his solicitor. Judge Blake was the presiding District Judge and the directions of the Director of Public Prosecutions with regard to summary disposal were to the effect that the charges could be dealt with summarily on the basis of a guilty plea. The Applicant indicated that he would plead guilty and did so after Judge Blake deemed the offences suitable for summary disposal. It is not clear from Mr Quigley's affidavit as to whether the Applicant pleaded guilty to one charge or to three charges.

5. The penalty for an offence under s. 119 of the Finance Act 2001 (as amended) is a fine of €5,000 or at the discretion of the court to 12 months imprisonment. The fine can be mitigated to €2,500.

6. The judge indicated that he was minded to impose a fine and counsel indicated that the Applicant (a Moldovan national who appeared to have no ties in Ireland, no address and possibly in the State for the first time) would need some time to pay the fine. He had only €40 available. The learned District Judge had only discretion to impose a fine of €2,500. He told counsel that the €40 was not enough and that a higher amount would be needed. Bail was fixed in his own bond and with an independent surety but the Applicant was not able to reach the bail.

7. It appears to me that the decision of the District Judge to fix a cash lodgement and independent surety with the minimum conditions of bail in the circumstances of the Applicant having just arrived in the State was reasonable and appropriate.

8. He was remanded to appear in Cloverhill District Court on the 4th February 2015. On that date Mr Quigley reminded the District Judge that the case had been remanded for the Applicant to raise further money. The District Court had not at that stage imposed the fixed penalty of a fine of €2,500. He made a plea again in mitigation and if the court was imposing a fine the Applicant would need some time to pay.

9. Counsel for the prosecution set out the penalties and the District Judge imposed a fine of €2,750 nearly the minimum penalty provided by the Act and provided that on default of paying the fine he would have to serve 25 days by way of imprisonment. He also directed that the fine be paid forthwith.

10. Counsel for the Applicant complained that the conduct of the District Judge in not offering the Applicant time to pay was disproportionate, unreasonable and unfair in all the circumstances. He also complained that the District Judge did not consider community service.

11. The Applicant had already two weeks to secure the fine and as a man who had just arrived in this country with smuggled cigarettes with no stated ties to this country or anyone in it, it seems to me that the District Justice acted in accordance with law. The notion of community service is absolutely unrealistic.

12. I therefore deem that the Applicant is in lawful custody. Consequently the return made by the Respondent is a valid order of the District Court and is sufficient to detain the Applicant.

13. I have also considered the arguments by the Applicant that the law involved is invalid having regard to the provisions of the Constitution. I do not believe that the law involved is invalid and also note that the offences and penalties appear under the Finance Act. This legislation is in accordance with and provided for especially in Articles 21 and 22 of the Constitution of Ireland constituting a money bill.

