Neutral Citation Number: [2009] IEHC 485

THE HIGH COURT

JUDICIAL REVIEW

2007 47 JR

BETWEEN:

STEPHEN HEANEY

APPLICANT

AND

JUDGE BRADY AND THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT of Mr. Justice Herbert delivered on the 3rd day of November 2009

By Order of this Court made on the 22nd January, 2007, the applicant was given leave to seek judicial review, in the form of prohibition, restraining the respondents from taking any further steps in prosecuting the following matters:-

> Charge Sheet, 318839, - Offence under s. 49(2) and s. 6(a) of the Road Traffic Act 1961 (as amended) – [driving with excess alcohol in his blood].
>
> Charge Sheet, 318841, - Offence under s. 56(1) and (3) of the Road Traffic Act 1961 (as amended) – [driving without insurance].
>
> Charge Sheet, 318842, - Offence under s. 69(1) of the Road Traffic Act 1961 (as amended), - [failure to provide evidence of insurance within the permitted time].
>
> Charge Sheet, 318843, - Offence under s. 38(1) of the Road Traffic Act 1961 (as amended), - [driving without a driving licence].
>
> Charge Sheet, 318845, - Offence under s. 40(1) of the Road Traffic Act 1961, (as amended), - [failure to produce a driving licence within the permitted time].

The grounds upon which the applicant was granted leave to seek judicial review were as follows:-

> 1. The Applicant's right to constitutional and natural justice was denied and in particular his right to basic fairness of procedures was denied.
>
> 2. The Prosecution of the aforesaid Charge Sheets is statute barred, the Prosecutor having failed to institute the said prosecution within the time period provided for in S. 10(4) of the Petty Sessions (Ireland) Act 1851, as amended by the Statute of Limitations 1957, and s. 21(2) of the Courts of Justice Act 1928.
>
> 3. The First Named Respondent erred in law in permitting the Second Named Respondent to proceed with the prosecution of the said Charge Sheets notwithstanding the fact that same were statute barred as set out above.
>
> 4. In so ordering the continued prosecution of the said offences alleged on the aforesaid Charge Sheets, the first named respondent misdirected himself in law and/or acted without jurisdiction and/or acted in excess of jurisdiction.
>
> 5. The continued prosecution of the said offences as alleged on the aforesaid Charge Sheets constitutes a breach of the Applicant's right to an expeditious trial and/or right to a trial in due course of law.

The Application was verified by the affidavit of the applicant sworn on the 22nd January, 2007, and the affidavit of his solicitor, Mr. Brendan Comiskey, sworn on the 22nd January, 2007.

A Statement of Opposition was delivered on behalf of the respondents on the 19th April, 2007, joining issue with these claims and, asserting that:-

> 2. The Garda Síochána made efforts to serve these summonses at the Applicant's last known address, 835 Bremore Castle, Balbriggan, Co. Dublin. The Gardaí did not re-issue the summonses as they did not believe the Applicant was residing at an address within the jurisdiction. Charge Sheets were brought against the applicant because to apply for a re-issue of summonses would have led to a further delay in bringing these matters before the court.
>
> 7. If, which is denied, there was any delay in the prosecution of the offences, such delay was caused wholly by or substantially contributed to by the applicant's failure to attend to answer the charges and his subsequent failure to make himself available for the execution of the warrant issued for his non-attendance before the District Court.

This Statement of Opposition was verified by an affidavit sworn by Garda Michael Walsh on the 17th April, 2007 and an affidavit of Garda Brian Bell sworn on the 17th April, 2007.

THE FACTS

The pertinent facts as established by the affidavit evidence and by admissions made during the course of the hearing of this application for judicial review may be summarised as follows.

On the 18th September, 2004, the applicant was arrested and was charged with an offence under s. 49(1) of the Road Traffic Act 1961 (as amended), of driving a mechanically propelled vehicle while under the influence of intoxicating liquor or drugs to such an extent as to be incapable of having proper control of the vehicle.

The applicant appeared before the sitting of the Dublin Metropolitan District Court at Balbriggan on the 23rd September, 2004, and, was there remanded to the sitting of that court on the 25th November, 2004. On this latter occasion the applicant did not appear to answer the charges and, a Bench Warrant was issued for his arrest.

On the 9th March, 2005, Garda Walsh applied, pursuant to the provision of s. 1 of the Courts (No. 3) Act 1986, (No. 33 of the 1986), to the appropriate office of the District Court for the issue of five summonses alleging the same five offences stated (subsequently) on the five Charge Sheets to which I have already referred. These five summonses were duly issued and required the applicant to appear at the sitting of Dublin Metropolitan District Court at Balbriggan Courthouse on the 26th May, 2005, to answer these allegations. Garda Walsh avers in his affidavit that he had always intended to prosecute these matters but the result of the blood sample taken on the 18th September, 2004, had taken several weeks to come to hand. In the events which occurred, these summonses were never served.

At para. 2 of his affidavit, Garda Bell avers that on the 7th May, 2005, he endeavoured to serve these summonses at the applicant's last known address and, was informed by the then occupants of that house, that the applicant had moved to the United Kingdom. At para. 2 of his affidavit, Garda Walsh states that on or about the 25th November, 2004, when endeavouring to serve the Bench Warrant, he found that there was a, "For Sale" sign outside this house, which did not then appear to be inhabited.

In his affidavit the applicant states that it had slipped his mind that he had to attend Court on the 25th November, 2004. This he states was because of matrimonial and other problems then occurring in his life. He asserts that between this time and May 2005, he was commuting between the State and London. He claims that he returned permanently to the State in May 2005, and took up residence at No. 11 Ridgewood Park, Swords. He states that this was known to the Garda Síochána at Balbriggan Garda Station, "Through football training". However, he accepts that he did not formally notify An Garda Síochána of his return or of this new address. Garda Walsh, in his affidavit, avers that he did not know that the applicant was residing at this address. He knew that the applicant had played football for Balbriggan, but to his knowledge the applicant had ceased to do so after his arrest.

At para. 4 of this same affidavit, Garda Walsh states that on the 16th September, 2005, Sergeant Thomas Thornton of Swords Garda Station had entered into the Garda Intelligence Computer System, known as P.U.L.S.E., that the applicant had been residing at No. 11 Ridgewood Park, Swords, but no longer resided there. Garda Walsh avers that on the 19th September, 2005, he was informed by Sergeant Aaron Gormley that the applicant was residing in the Swords area. On the 25th July, 2006, Sergeant Thornton recorded in the P.U.L.S.E. System, that at the applicant was residing at a house in Foxford, Swords, Co. Dublin. Garda Walsh states in his affidavit that the Bench Warrant was executed on the 19th September, 2006, by Garda O'Callaghan of Swords Garda Station and, "by arrangement" the applicant attended the sitting of the District Court at Swords on the 19th September, 2006. He was remanded to the sitting of the District Court at Balbriggan on the 28th September, 2006, and, on that occasion was further remanded to the sitting of the Court on the 28th October, 2006.

At para. 7 of his affidavit, Garda Walsh states that he did not apply to have the five summonses reissued, because he believed the applicant was not living in the State at the time. When the Bench Warrant was executed by Garda O'Callaghan, he, Garda Walsh, did not seek to have the summonses reissued because he was informed, (he does not state by whom) that this would take six months. Instead, on the 28th October, 2006, he charged the applicant with the same offences appearing in the summonses, on Charge Sheets, 318839, 318841, 318842, 318843 and 318845 to which I have previously referred. On that occasion, counsel retained to represent the applicant objected to these charges and the matter was adjourned to the 23rd November, 2006, for legal submissions. On that date, it was further adjourned to the 21st December, 2006.

On the 21st December, 2006, having heard submissions from the parties the first named respondent reserved his decision to the 11th January, 2007. On that date the first named respondent ruled that the prosecution should proceed and, adjourned the matter for hearing to the 26th January, 2007. On the 22nd January, 2007, in granting leave to the applicant to seek judicial review, this Court made an Order staying these proceedings until, *inter alia*, the determination of the application for judicial review.

In his affidavit, the Solicitor for the applicant, asserts that in determining to permit the second named respondent to proceed with the prosecution, the first named respondent had misdirected himself in law and had acted without jurisdiction or in excess of jurisdiction, because the prosecution of these five charges was not instituted within the period of six months from the date of the alleged offences, as required by s. 10(4) of the Petty Sessions (Ireland) Act 1851, (as amended). The Solicitor for the applicant also submits that the learned District Judge in reaching his decision had failed to have regard for and, to give effect to, the right of the applicant to an expeditious trial and additionally or alternatively to the right of the applicant to a trial in due course of law.

At the hearing of this application for judicial review, it was submitted on behalf of the second named respondent that the application to the appropriate District Court Office to issue the original five summonses was made within the six months limitation period provided by the statute. This was accepted by counsel for the applicant. Counsel for the second named respondent submitted that this application, by virtue of the provisions of s. 1(7) of the Courts (No. 3) Act 1986, was effective to satisfy the statutory requirement so that it did not matter, - subject to the issue of delay, - that the Charge Sheets were served outside the limitation period. Counsel for the second named respondent submitted that as the five summonses were only a means of compelling the attendance of the applicant before the District Court there was nothing whatever to inhibit the member of the An Garda Síochána from opting for a more expeditious method of securing that objective when the original summonses not been served, had lapsed and had not been reissued. Counsel submitted that if there had been any delay in the matter it was entirely referable to the acts and omissions of the applicant himself.

Counsel for the applicant submitted that the procedure by way of Administrative Summons and the procedure by way of Charge Sheets were entirely distinct and separate methods of commencing proceedings and, it was not open to An Garda Síochána to switch between them. The Summons Procedure could have been abandoned and resort had to the Charge Sheet Procedure but only if the Charge Sheets had also been served within the six month limitation period. Counsel for the applicant submitted that the Summons Procedure had been abandoned by the service of the Charge Sheets and, since that had not been done within the limitation period, the first named respondent lacked jurisdiction to proceed with the case. Counsel for the applicant submitted, in the alternative, that a delay of 26 months on the part of the second named respondent in prosecuting the five alleged offences was a gross denial of the applicant's constitutional right to an expeditious trial.

DISCUSSION

The lodging by Garda Walsh, on the 9th March, 2005, at the Swords District Court Office of the Dublin Metropolitan District Court, of

the application for the issue of the original five summonses was within six months of the date of the alleged offences. Section 10(4) of the Petty Sessions (Ireland) Act 1851, provides that in all cases of summary jurisdiction the complaint shall be made within six months of the time when the cause of the complaint shall have arisen but not otherwise. The application by Garda Walsh was made pursuant to the provisions of s. 1(4) of the Courts (No. 3) Act 1986, and, s. 7 of that Act provides, that the making of the application would constitute the making of a complaint for the purpose of s. 10(4) of the Act of 1851, (see *The Director of Public Prosecutions v. Nolan* [1990] 2 I.R. 526 at 535-536 per. Finlay C.J.). In the same judgment the learned Chief Justice held that the correct interpretation of s. 1(6) of the Act of 1986 was that a summons issued under that Act had the same force and effect as a summons issued pursuant to s. 10 of the Act of 1851. In the instant case, each of the five summonses was issued on the 5th April, 2005, and each was returnable for the 26th May, 2005, at Balbriggan District Court. The affidavit evidence of Garda Walsh establishes that these summonses were not served and, that he did not apply to have fresh summonses issued because he believed that the applicant was residing the United Kingdom. Therefore the original five summonses had lapsed.

In *The Director of Public Prosecutions v. Gill* [1980] I.R. 263 at 266 and 267, Henchy J., held that if a summons lapses without anything occurring which could be held to be a bar to subsequent proceedings, a fresh summons could be issued in respect of the same complaint. He held that this had been frequently done and that there was good authority for so doing. The learned judge stressed that it is the complaint which gives jurisdiction to the District Court and, that the summons is merely a process to compel the attendance of the defendant in court, (*Attorney General (McConnell) v. Higgins* [1964] I.R. 374 at 390-391, per. Kingsmill-Moore J.). Henchy J. was referring to the procedure under the Act of 1851, where the summons is issued by direction of the District Judge after the complaint has been made to her or to him, (*Rainey v. Delap* [1980] I.R. 470 at 478).

In *The Director of Public Prosecutions v. McKillen* [1991] 2 I.R. 508 at 511, Lavan J. held, applying the decision in *Ex parte Fielding* [1861] 25 J.P. 759, that proceedings instituted pursuant to s. 10 of the Act of 1851, always permitted of the issue of a fresh summons where the first summons had not been served, the re-issued summons being deemed to have been grounded upon the first complaint having been made, and within time. Here again, the learned judge in this passage was referring to the procedure under the Act of 1851. However, the learned judge went on to hold that this power to issue a fresh summons (almost universally, but not correctly referred to as a re-issue of the summons), also applied to a summons issued pursuant to the Act of 1986, as this was consistent with and, should be read as one with the modifications referred to in s. 1(7) of the Act of 1986, [p. 512].

Ex parte Fielding [1861] 25 J.P. 759, concerned an application for an order of *certiorari* in relation to the granting by Justices of an Affiliation Order. The report is very brief. It was held by Cockburn C.J., (Wrightman and Blackburn J.J. concurring), without citing any authority, that once an information or complaint is made in time and the summons issued thereupon is for some reason or other not served and is dropped, there is no reason why another summons or series of summonses, if necessary, could not be issued on the same information or complaint.

In *Attorney General (McDonnell) v. Higgins* (above cited), Kingsmill-Moore J. further held that a Charge Sheet starts as a purely Garda Síochána document and the entry of the offences on the Charge Sheet is necessary for the protection of An Garda to show that such offences justified an arrest and detention of the defendant without warrant. It only becomes a Court Document after it has been put before the District Judge and she or he has recorded his or her decision on it. The Charge Sheet itself is not the complaint which gives jurisdiction to the District Court.

It was submitted by counsel for the applicant that the issuing on the 5th April, 2005, of the five summonses pursuant to the procedure provided by s. 1 of the Courts (No. 3) Act 1986, meant that it was not permissible for Garda Walsh to draw up Charge Sheets in respect of the same alleged offences and, to serve them on the applicant on the 28th October, 2006. In support of this submission, counsel relied upon the provisions of O. 17, r. 1(1) of the District Court Rules 1997. This rule provides that where an offence is alleged against a person who is already on remand to the Court and a summons in respect of the offence is not issued, particulars of the offence alleged against that person shall be set out on a Charge Sheet. I find that counsel for the second named respondent is correct in his submission that this rule is referring to what he aptly described as "a live summons".

The mischief targeted by this rule is the serious risk of confusion or of difficulties with enforcement which would follow the simultaneous employment of these distinct procedures. I consider that the use of the present indicative and perfect participle indicates an existing state of things. A summons which was issued but has lapsed is no longer existing and a fresh summons must be issued. The rule is concerned with the immediate circumstances and not with the historical situation. The words of the rule are, "is not issued" and not, "was not issued" or "has not been issued", which would be necessary to indicate that a non-current as well as a current summons might have been intended.

The foregoing authorities establish that a District Judge who issued a summons on foot of a complaint made to her or to him within the statutory period of six months may, where that summons has not been served and has lapsed or been struck out, issue a fresh summons on a subsequent application made outside the period of six months, based upon the initial complaint having been made within that period. They also establish that an appropriate District Court Office which has issued a summons (whether inside or outside the statutory six-month period), on foot of an application made by an authorised person within that statutory period, may issue a fresh summons on a subsequent application by such a person outside the statutory period, provided that the original summons had not been served and had lapsed. However, I do not consider that a District Judge may issue a fresh summons where the original summons had been issued by an appropriate District Court Office and *vice versa*. As was pointed out by Finlay C.J., in the case of the *State (Clarke) v. Roche* [1987] I.L.R.M. 309, the issuing of a summons under the Act of 1851, was a judicial and not an administrative act, and, the complaint on foot of which the summons issued had to be brought to the personal attention of the person authorised to receive it, that is, the District Judge. This is a very different and more formal procedure to that established by the Act of 1986, the so-called Administrative Procedure. Even in 1987, the volume of complaints made it impossible for each complaint to be personally considered by a District Judge.

The fact that by virtue of the provisions of s. 1 (6) of the Act of 1986, a summons issued by the District Court Office has the same force and effect as a summons issued by a District Judge under the Act of 1851, does not mean that the procedures have been assimilated. I find that a District Judge who, upon a complaint made to her or to him, exercises his or her judicial discretion and issues a summons thereupon, retains seisin of that summons and any subsequent applications for a fresh summons must be made to that District Judge or, to a colleague assigned to the relevant District Court Area, if the original summons was not served and has lapsed.

Where a District Judge issues a summons pursuant to the provisions of the Act of 1851, the complaint which confers jurisdiction on the District Judge has already been made. Where, however, an application is made by an authorised person to an appropriate District Court Office and a summons subsequently issues, the complaint which confers jurisdiction on the District Judge is not made until the defendant appears before the Court on foot of the summons. This important distinction is reflected in O. 15 of the Rules of the District Court 1997, where r. 3 (2) provides that a summons issued by the District Court Office shall notify the person to whom it is directed that he or she will be accused of the offence stated in that summons at the sitting of the District Court specified in the

summons. An appropriate District Court Office could not issue a fresh summons of the type initially issued by a District Judge.

I find that the Charge Sheet procedure, the summons procedure under the Act of 1851, and the summons procedure under the Act of 1986, are simply alternative methods of procuring the attendance of an accused person before the court. In my judgment, a member of an Garda Síochána may avail of the Charge Sheet Procedure, either initially or where a summons issued by a District Judge or a summons issued by an appropriate District Court Office for the same alleged offences has not been served and has lapsed. A member of An Garda Síochána is not put to his or her election to adopt one of the three procedures and estopped thereafter from availing of another procedure where there is good and sufficient reason for the change and, provide always, that the procedures may not be availed of simultaneously.

In *Kelly v. The Director of Public Prosecutions* [1997] 1 I.L.R.M.69, the Supreme Court (*per* Murphy J: Hamilton C.J., and O'Flaherty J. concurring), held that the Director of Public Prosecutions could reconsider his decision and resile from one available procedure and fall back on another provided that there had been no acquittal on the merits, no adjudication on any issue, and no gain to an accused person of which he or she would be deprived. In that case, the offences alleged in the original five summonses which arose out of an incident which occurred on 1st March, 1992, were almost identical to those in the instant case. These summary charges were returnable on 22nd February, 1993, but at the request of the accused, the hearing date was adjourned to 11th May, 1993. On 8th May, 1993, the defendant was arrested and charged with dangerous driving, causing death. At the hearing on 11th May, 1993, the Solicitor for the accused argued that all the offences were statute barred and the prosecution should be dismissed. By a letter dated 6th July, 1993, the Director of Public Prosecutions withdrew all six summonses. On 8th October, 1993, a Book of Evidence was served on the defendant and he was returned for trial on indictment (there being no similar limitation period) on the charge of dangerous driving, causing death.

In the instant case, the summonses were not served and lapsed so that the applicant was never in jeopardy by virtue of the summonses. There is no reason why the principles stated in *Kelly v. The Director of Public Prosecutions* should not apply as much to choices between alternative forms of procedure in summary prosecutions as to the choice of proceeding summarily or on indictment where that alternative exists.

However, if the complaint to a District Judge or the application to an appropriate District Court Office or the serving of a Charge Sheet amounts to a new complaint or application, then it must also be made within the mandatory period of six months from the date when the cause of complaint first arose. In *The Director of Public Prosecutions v. Sheeran* [1986] I.L.R.M. 579, Gannon J., at p. 582, held that:

> "The case stated does not show that there was evidence before the [District Judge] upon which he could find that there was a second complaint or that this was new in the sense of being different [from the first]. If a second complaint, as distinct from a repetition of the same complaint . . ."

In the *Sheeran* case, the evidence established that a complaint had been made to Michael Poole, a Peace Commissioner, within the statutory period of six months from 23rd December, 1983, the date upon which the road traffic offences were alleged to have occurred. Four summonses were issued by him on 9th June, 1994. A further set of summonses, in, I can only infer, the same terms and with the same contents as those original summonses, were issued on 2nd August, 1994, by Arnold Crawford, a Peace Commissioner. This was necessary, probably (it is not clear from the Report) because the original summonses had not been served and had lapsed or had been struck out. The District Judge dismissed the charges on the grounds that the summonses issued on 2nd August, 1994, had been issued outside the statutory six-month period and were issued by a different Peace Commissioner. Gannon J. held that the original complaint had been made to an authorised person within the statutory period and that the complaint made on 2nd August, 1994, related to and did not differ from the original complaint made on 9th June, 1994, even though it had been made to a different Peace Commissioner.

In *State (Clarke) v. Roche* (above cited), the Supreme Court ruled that the issuing of a summons under the 1851 Act procedure, was a judicial and not an administrative act. It was accepted thereafter that a valid summons could not be issued by a Peace Commissioner.

I am satisfied that the distinction pointed to by Gannon J. between a "different complaint" and a "repetition of the same complaint" also applies when one is considering a change between alternative summary jurisdiction procedures made outside the statutory six-month period. The subsequent complaint or application amounts to a repetition only of the original complaint or previous application and is therefore referable back to the original complaint made within time and the charges are not statute barred.

In the instant case, the original summonses issued out of the appropriate District Court Office, notified the applicant that he would be accused before a District Judge of the offences specified in them on the nominated date and at the indicated place. These summonses were not served, so that did not occur and, no complaint was actually made to a District Judge. The applicant was later arrested and, it appears, charged on foot of Charge Sheets with the same offences in essentially the same terms before a District Judge. This Court, at the hearing of this application for judicial review, was able to compare photocopies of the original summonses and the later Charge Sheets. In my judgment, this was not a "new" complaint in the sense identified by Gannon J. The terms of the complaint to the District Judge and the basis for the original application to the appropriate District Court Office were not in any material way different. The complaint to the District Judge was a repetition of the terms of the application made to the appropriate District Court Office within the statutory period and Garda Walsh had simply availed for good and sufficient reason of the alternative procedure available to him. In the absence of such good and sufficient reason, movement between the procedures is to be discouraged as it is likely to lead to administrative difficulties and errors, usurpation of court time already at a premium, and a general laxity in the service of summonses.

It was held in *Mulready v. the Director of Public Prosecutions* [2001] 1 I.L.R.M 382, that the onus of establishing a breach of the right to a trial with reasonable expedition rests on the accused person.

In *Director of Public Prosecutions v. Arthurs* [2002] I.L.R.M. 363, O'Neill J., at pp. 376-377 held as follows:-

> "If it is the case that an Accused person has a right under the Constitution to a speedy and expeditious trial, a necessary corollary of that right is that there rests upon the State a duty to ensure that all reasonable steps are taken to ensure such a speedy trial is provided. That must necessarily mean conducting the investigation and prosecution in a manner which, insofar as is reasonably practicable, eliminates unnecessary delay, and must additionally mean that such resources as are necessary for the orderly and expeditiously processing of criminal cases through the courts are provided.
>
> The failure on the part of the State to have made adequate provision for the expeditious conduct of cases in the District

> Court in question resulting, as it did, in the adding to an already excessive delay a further nine months delay bringing the total delay to 2 years and three months, was in my opinion, an unwarranted invasion of the Accused's constitutional right to an expeditious trial. In that circumstance, notwithstanding the absence of evidence of prejudice, actual or presumptive, the Learned District Judge was obliged to prevent such an invasion of the Accused's constitutional right and should have acceded to the accused's request not to allow the trial to proceed."

In that case the offence was alleged to have been committed on the 27th October, 1995. The accused was brought before the Court on the 14th August, 1996, on foot of a warrant issued on the 26th June, 1996. On 18th December, 1996, the District Judge consented to the summary disposal of the matter and a hearing date was fixed for the 8th April, 1997. Thereafter the hearing was repeatedly adjourned, until the 13th January, 1998, due to overcrowding in the District Court lists of cases for hearing. The result was an overall delay of two years and three months from the date of the alleged offence.

In the instant case the alleged Road Traffic Act offences occurred on the 18th September, 2004. The applicant was immediately charged with driving under the influence of intoxicating liquor or drugs. He appeared before the District Court on the 23rd September, 2004, but failed to appear on the remand date, the 22nd November, 2004. A Bench Warrant was issued for his arrest. Application was made for the issue of the five summonses, all arising out of the events of the 18th September, 2004, on the 9th March, 2005, and the summonses were issued on the 5th April, 2005. I cannot ascertain from the evidence the extent to which the processing of the blood samples taken from the applicant on the 18th September, 2004, contributed, as alleged, to the delay in applying for theses summonses. An unsuccessful attempt was made to serve these summonses on the 7th May, 2005. At this point I am satisfied on the affidavit evidence that An Garda Síochána had good and sufficient reason for believing that the applicant had left the State and had gone to reside in the United Kingdom.

Up to this point I am satisfied that there was no excessive or blameworthy delay on the part of the prosecution. The offence of driving under the influence of intoxicating liquor or drugs was brought very speedily before the District Court and, the two month remand period was not in any way excessive as the applicant was not remanded in custody. An explanation has been offered to account for at least some of the further delay in applying for the issue of the five further summonses, which were sought within the six month statutory limitation period. No explanation has been offered for the further delay of two months in issuing and endeavouring to serve these five summonses. However, on the facts the passage of seven months and nineteen days from the date of the alleged offence is not in my judgment indicative of blameworthy prosecutorial delay.

Perhaps, for the reasons advanced in his affidavit, it did slip the applicant's mind to attend Court on the 23rd November, 2004. However, I find it impossible to accept that thereafter, until the execution of the Bench Warrant on the 19th September, 2006, it continued to slip his mind regardless of whatever other problems he may have had during this period, in respect of which there is a marked paucity of information. If as he alleges, he returned to reside permanently in the State, sometime in May 2005, he did not advise An Garda Síochána of that fact, nor did he contact the local District Court Office to inquire about what had happened to the summons for driving under the influence of intoxicating liquor or drugs. On the affidavit evidence, I am satisfied that the applicant adopted a position of ignoring the charge and the Court and An Garda Síochána, probably in the hope that it would all somehow go or be made to go away. I reject entirely the suggestion that An Garda Síochána ought to have known that he was back in the Swords – Balbriggan area, "through football training" and, were therefore culpable in not executing the Bench Warrant or serving the summonses which latter were each returnable for 26th May, 2005, at Balbriggan Courthouse. It is significant that the applicant does not state in his affidavit on what date in May 2005 he returned permanently to the State, identify what member or members of An Garda Síochána ought to have been aware of this fact, "through football training" and, when and exactly how.

Garda Walsh states in his affidavit, that on the 19th September, 2005, he was advised by Sgt. Gormley that the applicant was then residing in the Swords area. Three days previously it had been posted on the Garda P.U.L.S.E. System that the applicant had been residing at No. 11 Ridgewood Park, Swords, "but no longer resided there". In his affidavit the applicant swears that since his full time return to the State in May 2005, he has at all times resided and, as of the 22nd January, 2007, continued to reside at this address. No call appears to have been made to this address to see if perchance the information that he no longer resided there was incorrect or, to see whether someone at that location or in the immediate area might have been aware of the applicant's whereabouts. Nothing is stated in the affidavit of Garda Walsh as to how Sgt. Gormley had come by this information or, how Sgt. Thornton of Swords Garda Station had learned of the information which he had posted in the P.U.L.S.E. System on the 16th September, 2005. Despite the existence of the Bench Warrant, which was issued in the 22nd November, 2004, this Court has not been advised of any attempt on the part of An Garda Síochána to locate the applicant. On the affidavit evidence more than ten months elapsed without any attempt whatsoever being made to apprehend the applicant. On the 25th July, 2006, Sgt. Thornton again posted information on the P.U.L.S.E. System that the applicant was then residing at Foxford, Swords, Co. Dublin. Despite this additional information nothing appears to have been done for a further 56 days, until the 19th September, 2006. On that date, - a full year after An Garda Síochána was informed that the applicant was back in the State and residing in the Swords area, - the Bench Warrant was executed, "by agreement" and, the applicant was charged on foot of the five Charge Sheets.

DECISION

In these circumstances, as regards the five Charge Sheets the subject matter of this application for judicial review, despite the initial default on the part of the applicant himself, I am satisfied that there was such additional delay on the part of the prosecuting authority as to infringe the applicant's constitutional right to a trial with reasonable expedition. No explanation for this extraordinary additional delay on the part of the prosecuting authority was forthcoming in the course of the affidavit evidence. The applicant is entitled therefore to the order of prohibition sought on grounds 1 and 5 of the permitted grounds of application and the Court will so order.