

THE HIGH COURT

[2016 No. 17 SSP]

IN THE MATTER OF THE CONSTITUTION OF IRELAND

AND

IN THE MATTER OF AN APPLICATION FOR HABEAS CORPUS BY FRANK WARD (AT PRESENT IN CUSTODY IN MIDLANDS PRISON)

JUDGMENT of Ms. Justice O'Regan delivered on the 27th day of October, 2016

1. Frank Ward (the applicant) has applied to the Court in writing, challenging the legality of the committal warrant upon which he has been held.

2. The applicant was sentenced on 31st October, 2007 by the Dublin Circuit Criminal Court to life imprisonment in respect of his conviction on charges of robbery contrary to s. 14 of the Criminal Justice (Theft & Fraud Offences) Act, 2001 and causing serious harm contrary to s. 4 of the Non-Fatal Offences against the Person Act, 1997.

3. The applicant applied for leave to appeal against the sentence aforesaid and following such leave being afforded the matter was dealt with by the Court of Criminal Appeal and on 16th January, 2012. The sentence of life imprisonment imposed on him on 31st October, 2007 was quashed and in lieu thereof a sentence of 20 years' imprisonment in respect of each of the counts aforesaid was imposed, such sentences to run concurrently with each other and to date from 6th October, 2003.

4. The applicant has exhibited the warrant of 16th January, 2012 which issued following the order of the Court of Criminal Appeal as aforesaid and has further exhibited a copy of Article 36 of the Constitution of Ireland, 1937 together with a copy of Article 40.4.1 of the said constitution and based on the foregoing the applicant submits as follows:

a. The warrant is repugnant to Article 36 of the Constitution insofar as the said article provides for the matters therein mentioned to be regulated in accordance with law.

b. The warrant is repugnant to Article 40.4.1 of the constitution of 1937 in that same provides that no citizen shall be deprived of his personal liberty, save in accordance with law.

5. The applicant argues:-

A. that to be consistent with both Article 36 and Article 40.4.1 aforesaid, it is necessary that there be legislative law "admitting of and statutes formulating of a necessary committal warrant". (sic) The applicant argues that because his original committal warrant "is of no statute standing" (sic) same is repugnant to the Constitution.

B. that there is no constitutional mandate for punishment for breaches of law or social retribution as punishment is not administered by judges and prisons are "not of necessity to curtail personal liberty". (sic)

C. that the Constitution does not specify how personal liberty is to be interpreted or applied.

D. that by reason of the foregoing arguments his imprisonment is not specifically authorised by the Constitution and therefore is unconstitutional.

6. I am satisfied that Article 36 of the Constitution whether considered on a standalone basis or in conjunction with Article 40.4.1 has no particular bearing on the applicant's detention. No cogent argument has been put forward to suggest that based on Article 36, whether on a standalone basis or in conjunction with some other article within the Constitution, that the applicant's detention might be considered unlawful.

7. With regard to the effective assertion that the Constitution does not mandate the imprisonment of any particular citizen and therefore imprisonment *per se* is unlawful, I do not agree. The applicant lays particular stress on the provisions of Article 40.4.1 which provides:

"No citizen shall be deprived of his personal liberty save in accordance with law."

8. In the matter of *Re Article 26 and the Offences against the State (Amendment) Bill, 1940* [1940] I.R. 470 Sullivan C.J., delivering the Court's judgment, stated:-

"A person in custody is detained in accordance with law if he is detained in accordance with the provisions of a statute duly passed by the Oireachtas; subject always to the qualification that such provisions are not repugnant to the Constitution or to any provision thereof."

9. In the circumstances I find that there is no basis upon which this Court could be satisfied to direct an enquiry pursuant to Article 40 of the Constitution.