

## THE HIGH COURT

2006 No. 1475 J. R.

BETWEEN

CHRISTINE KIELY

APPLICANT

AND  
JUDGE ANGELA NÍ CHONDÚIN

RESPONDENT

AND  
THE DIRECTOR OF PUBLIC PROSECUTIONS

NOTICE PARTY

**Judgment of Mr. Justice Garrett Sheehan delivered on the 27th day of November, 2008**

1. The applicant in this case seeks an order of certiorari in respect of a warrant issued for her arrest on the 4th December, 2006, when she failed to appear in the Dublin Metropolitan District Court to face charges of assault and breach of the peace.
2. The applicant whose bail on these charges had been revoked because of an earlier breach had subsequently been rearrested and remanded in custody from time to time.
3. Due to an administrative failure the applicant was granted temporary release on the 28th November 2006, despite there being a custody remand order in place for her. It appears from the documentation filed before this Court that the prison authorities were not aware of this remand order, and believed the accused to be in custody solely in respect of a three months prison sentence which she was then serving.
4. The salient facts are set out in the following chronology:-

12th August, 2006	The applicant is arrested and charged with offences of assault and breach of the peace, and detained in police custody pending her appearance in the Dublin District Court on the following Monday.
14th August, 2006	The applicant is brought before the District court where she is remanded in custody for one week. A solicitor is appointed by the court to represent her under the Free Legal Aid Scheme.
21st August, 2006	The applicant is released on bail and remanded to the 11th September, 2006.
11th September, 2006	The applicant pleads not guilty to the charges and is remanded on bail to the 27th September, 2006, for her trial on the said charges.
27th September, 2006	The applicant fails to appear. A warrant is issued for her arrest.
October, 2006	The applicant is arrested on foot of the warrant issued on the 27th September, 2006, and remanded in custody to the 3rd November, 2006.
3rd November, 2006	A new hearing date is fixed for the 27th November, 2006. The applicant is remanded in custody to that date.
27th November, 2006	The applicant is not produced by the prison service in accordance with the order of the District Court on the 3rd November, 2006, and the District Court issues a warrant for the production of the applicant returnable for the 4th December, 2006.
28th November, 2006	The applicant is granted temporary release by the prison authorities, who are unaware of the District Court orders of the 3rd November, 2006, and 27th November, 2006.
4th December, 2006	The applicant does not attend court, and the respondent judge issues a warrant for her arrest.

5. Both the applicant and the notice party agree that the issue before this Court is primarily one of jurisdiction.
6. On behalf of the applicant, Mr. Dwyer submits in the first instance that the learned judge had no jurisdiction to issue the warrant. He further argued that even if the learned judge had jurisdiction to issue the warrant, the obligation to apply fair procedures in the particular circumstances of this case, required the respondent to use other means of getting the accused back before the District Court, before resorting to the issuing of a warrant for her arrest.
7. In support of his argument that the District Judge had no jurisdiction to issue a warrant for the arrest of the applicant, he relied on rules 1 and 2 of O. 22 of the District Court Rules 1997, as well as an extract from Professor Dermot Walsh's book *Criminal Procedure* (Thompson Round Hall 2002).
8. Rules 1 and 2 of O. 22 of the District Court Rules 1997 read as follows:-

"1. Where a summons is issued requiring the appearance before the Court of a person against whom a complaint has been made or an offence has been alleged and such person fails to appear at the required time and place or at any adjourned hearing of the matter, and it is proved to the Judge there present that such person has been served with the summons, or where at any time either before or after the date on which such person is required by the summons to appear an information, in the Form 22.1, Schedule B, is made that he or she is evading service or is about to abscond or has absconded, the Judge may issue a warrant, in the Form 22.2, Schedule B, for the arrest of such person.

2. Where

(a) a person who has been arrested and charged with an offence is released on bail by recognisance by a member of the Garda Síochána for his or her appearance before a sitting of the Court at a time on a date and at a place specified in the recognisance or

(b) an accused person is before the Court in connection with an offence and, on being remanded, is admitted to bail

by recognisance for his or her appearance before a subsequent sitting of the Court (either in the same or another place), and that person, having entered into the recognisance, fails to appear at a time on a date and at a place at or on which he or she was bound by the recognisance to appear, the Judge then and there sitting may, on production of the recognisance to him or her, issue a warrant, in the Form 22.3, Schedule B, for the arrest of that person."

The extract from Professor Dermot Walsh's book above referred to which Mr. Dwyer sought to rely on is at para. 10/62 p. 548:-

"There would not appear to be a statutory power of arrest in respect of an accused person who has actually failed to appear before a court in answer to his bail. Nevertheless the existence of a power to issue a warrant for the arrest of such a person cannot be doubted. Section 13 of the Criminal Justice Act 1984, clearly assumes the existence of such a power. It stipulates that where a court has issued a warrant for the arrest of a person who has failed to appear before the court in answer to his bail a member of the Garda Síochána may arrest that person, even though he does not have the warrant in his possession at the time of the arrest. In this event the member must produce and serve a warrant on the person as soon as practicable after the arrest. Certainly, a court order releasing an individual on bail subject to him entering into a recognisance which binds him to appear before that court at a specified time and place in the future, would have little practical meaning if the court had no means of enforcing that order. The problem is identifying the source of the power. The failure to appear before a court in answer to bail has been made a summary offence by section 13 of the Criminal Justice Act 1984, and there is authority to the effect that an arrest warrant can not issue in respect of a summary offence. It would appear nevertheless, that the District Court Rules 1997, provide authority for the issue of a warrant for the arrest of an individual who fails to appear before a court in answer to his bail, this applies both to a person who was released on bail subject to a recognisance by a member of the Garda Síochána and a person who was released on bail subject to a recognisance after appearing before a court in connection with an offence. Where the person fails to appear in accordance with his recognisance, the judge sitting at the time may on production of the recognisance issue a warrant for the arrest of the person in question. No further formalities are required."

9. If Mr. Dwyer is correct in his submission that the jurisdiction of a District Judge to issue a warrant for the arrest of an accused person is confined to those instances envisaged by rules 1 and 2 of O. 22 of the District Court Rules, then as the applicant in this case falls into neither category, the judge had no power to issue the warrant.

10. In responding to this argument Ms. Phelan, on behalf of the notice party, contends that the jurisdiction of a District Judge to issue a warrant is not confined to those circumstances set out in O. 22 and relies on the decision of Finlay Geoghegan J. in *Stephens v. Governor of Castlereagh Prison* [2002] IEHC 169.

11. In the course of her judgment in that case, Finlay Geoghegan J. cited with approval the judgments of Gavin Duffy P. in *The State (Attorney General) v. Judge Roe* [1951] I.R. 172, and the judgment of Davitt P. in *The State (Attorney General) v. Judge Fawsitt* [1955] I.R. 39.

12. In the course of his judgment in *The State (Attorney General) v. Judge Roe* [1951] I.R. 172 Gavin Duffy P. stated at p. 193:-

"If a defendant, duly summoned, does not appear, I think he can be arrested on a bench warrant issued by the Circuit Court Judge.

Mr. Sergeant Hawkins says: - 'Also it seems clear that whenever a Statute gives to any one justice of the peace a jurisdiction over any offence... it impliedly gives a power to every such justice to make out a warrant to bring before him any person accused of such offence...for it cannot but be intended, that a statute giving a person jurisdiction over an offence doth mean also to give him the power instant to all courts of compelling the party to come before him' (HAWK. P.C., 8th Ed., vol. 2, book 2, c.13, s.15). Chitty's *Criminal Law*, 2nd Ed. 1826, vol. 1, c. 8, pp. 337- 8 says: - 'Wherever the king grants an authority of oyer and terminer, the power to issue process is incidentally given; for as there can be no inquiry respecting offences, without the presence of the party, wherever the power is entrusted of determining the former, there must also be authority to compel the latter. For the same reason, justices of the peace, whenever they are authorised to inquire, hear, and determine, may thus compel the defendant to appear; and, indeed this is expressly declared by the words of their commission. The same observations apply, of course, to all magistrates whatsoever, who are invested with the power to try offenders."

13. Davitt P. in *The State (Attorney General) v. Judge Fawsitt* [1955] I.R. 39 at p. 52 considered that the above passages:-

"Contain a clear recognition and acceptance of the principle that where a statute confers upon a court a substantive jurisdiction to try a person charged with a criminal offence is impliedly confers likewise the adjective or ancillary jurisdiction necessary to compel that person to attend court to take his trial."

14. Having referred to the above cases Finlay Geoghegan J. in her judgment in the *Stephens* case went on to say:-

"I would respectfully agree with the above statements of principle. Order 22 is not in my view, intended to limit such inherent jurisdiction. Hence I consider that a District Judge having issued a bench warrant under O. 22, r. 2 which includes a reference to both an extraditable and non-extraditable offence has an inherent jurisdiction to issue a warrant referring only to the extraditable offence, upon being informed that the accused may be in another country. If he did not he would have no way of compelling the attendance of an accused to face trial for an extraditable offence."

15. It is clear from this judgment of Finlay Geoghegan J. that the jurisdiction of the District Court to issue a warrant is not confined to the circumstances envisaged by O. 22 of the District Court Rules 1997, and that the District Court has a wider inherent jurisdiction to issue a warrant for the arrest of an accused person in certain other circumstances.

16. While the applicant in this case had not been released on bail, I hold that she was nevertheless obliged to attend at the District Court for her trial, notwithstanding her wrongful release from custody and notwithstanding the fact, that she may not have been aware of the particular date that her case had been remanded to in her absence. I also hold following the decision of Finlay Geoghegan J. in the *Stephens* case, that in the circumstances of this case, the respondent judge Angela Ní Chondúin did have the necessary inherent jurisdiction to issue the impugned warrant. While I accept Mr. Dwyer's submission that the respondent was not obliged to issue the warrant in the first instance, and would have been entitled to adjourn the matter for a short period to enable the accused to voluntarily attend court, I nevertheless hold that in the circumstances of this case, and particularly where the applicant had failed to attend court on the occasion when her case was first listed for trial, that the issuing of the warrant for the arrest of the

applicant was the appropriate step for the District Judge to take. Accordingly, I refuse the application for the reliefs sought.