

**THE HIGH COURT**

**HABEAS CORPUS**

**2010 1940 SS**

**BETWEEN**

**PREMIER MTHETHWA**

**APPLICANT**

**AND**

**GOVERNOR OF CORK PRISON**

**RESPONDENT**

**JUDGMENT of Mr. Justice Peter Charleton delivered the 2nd day of November 2010**

1. This is a personal application for habeas corpus by a prisoner who is lodged in Cork Prison. He is detained pursuant to a warrant of the Circuit Court dated 16th March 2010 convicting him of possession of a control drug for unlawful sale or supply, with a market value exceeding €13,000, contrary to s. 15(A) (as inserted by s. 4 of the Criminal Justice Act 1999), and s. 27 (as amended by s.5 of the Criminal Justice Act 1999), of the Misuse of Drugs Act 1977. The warrant is dated the 19th March 2010 and the offence was said to have been committed on 5th October 2006. The warrant indicates that the accused was found guilty following a trial by a jury before his Honour Justice Fullam, having pleaded not guilty.

2. There is no indication as to whether the prisoner has lodged an appeal. An appeal is, however, the only appropriate remedy in the circumstances that the applicant outlines.

3. He claims to be in unlawful custody because, to paraphrase the statement that has been supplied, he believes that he is innocent and a victim of entrapment. The claim is that gardaí illegally rented a DHL express parcel delivery van and drove to his house in County Kerry. They then, he claims, delivered a box to his house and then returned quickly to arrest him for importing drugs, possession of drugs and possession of a substantial quantity of drugs intending to sell them. I infer that there were drugs in the DHL box. He complains that on the second day of his trial the Director of Public Prosecutions decided to discontinue the importation charge. The judge, he asserts, on that occurrence should have told counsel for the prosecution that he would allow the trial to proceed. He claims the judge was bound by law to stop the case at that point and then argues, on no legal basis that is stated, that he ignored the law.

4. The applicant claims that he was wrongly convicted because the gardaí could not prove the origin of the box and says that the DHL company did not know or have any record concerning the box and that the name on the box was not his name and that he had not signed for the box. Further, neither DNA nor fingerprint evidence matching the applicant was found on the box, he says. The implication of these assertions is, I presume, that there was no evidence of the applicant had handled it.

5. The applicant says he has never been involved in any gang or criminal organisation and that a sum of money be sent to his family in South Africa had nothing to do with the box. He ends by saying: "I strongly believe that I was treated unfairly during my trial in the court. I just want justice to take its course."

6. There is no basis upon which any inquiry into the lawfulness of the detention of the applicant could be launched. The detention of the applicant is pursuant to a lawful warrant of the Circuit Court in Tralee. The warrant, which is appended to the applicant's statement, is an official record which is evidence of the facts therein stated. It thereby emerges that the applicant was convicted as charged on the 16th March 2010 and was sentenced to seven years imprisonment by his Honour Judge Fullam.

7. The applicant has given only one side of the case in his written application to the court. There is nothing in that to indicate anything other than an assertion of innocence based upon a particular view of the case. In contrast to that, on the side of an objective view of the case there must have been a book of evidence served on the applicant, an indictment of what he was charged with and also a transcript of the events of the trial.

8. It is only in circumstances of a fundamental denial of the fair procedures that are inherent in the criminal process that any detention based on a sentence following on conviction at a criminal trial could be argued to lack a lawful basis.

9. There is nothing in the papers lodged by the applicant to suggest that. On the contrary, the papers suggest that the applicant might be advised by his solicitor to pursue an appeal whereby his arguments on the merits of the law applied at his trial can be heard by the Court of Criminal Appeal on a full review of the relevant papers. It is further to be noted that the applicant was legally represented at his trial.

10. Similar to every other person tried on a criminal charge in Ireland, the applicant had three fundamental rights at his trial and there is no evidence that these were brushed aside. He had the right to be presumed innocent; the right not to be convicted unless jury was convinced of his guilt beyond reasonable doubt; and the right to contest the trial through cross-examination and by presenting evidence his own evidence and argument. There is not the slightest indication that any of these rights were infringed. Indeed, I have no idea as to whether the view presented in his personal application was given in evidence by the applicant to the jury trying his case.

11. As to whether any technical breach of procedure occurred, or whether any misdirection by the learned trial judge may have come about through whatever circumstances, is a matter for the Court of Criminal Appeal. The application is refused.

