THE HIGH COURT
JUDICIAL REVIEW

[2016 No. 264 J.R.]

BETWEEN

DEAN MARTIN

APPLICANT

AND
DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 10th day of July, 2018.

Background
1. The factual background to this application is that the applicant pleaded guilty to three charges and was due to be sentenced by the District Court in December 2015. Following a number of adjournments, the applicant was remanded on continuing bail until 8 February 2016. On that date, the applicant failed to attend at the District Court and, as there was no bail recognisance appended to the charge sheets on the court file, the District Judge made no order (hereinafter referred to as the "no order charges").

2. On 4 March 2016, the applicant was before the District Court in respect of other matters. The gardaí sought to re-enter the no order charges. This, however, was objected to by the solicitor acting on behalf of the plaintiff. The District Judge reinstated the no order charges but stated that he would accept submissions on the matter and indicated that a case stated should be prepared as regards the proper procedure to be followed in re-entering the no order charges. The applicant was remanded on continuing bail to 15 April 2016.

3. On 15 April 2016, the matter came before a different District Judge. Following exchanges in relation to submissions in respect of the case stated, the District Judge remanded the applicant on continuing bail to 27 May 2016.

4. On 20 April 2016, the matter was mentioned before the District Judge who had been sitting on 4 March 2016 when the no order charges had been reinstated. The respondent informed the court that a case stated might not be necessary as most, if not all, of the issues in question had been addressed by the decision in *DPP v. Scott Hallion* (Unreported, High Court, Hanna J., 27 May 2011). In *Hallion* it was submitted, as in the instant case, that the applicant had pleaded guilty to no order charges and that consequently a recharge in respect of the said charges would be a "double jeopardy". After the respondent brought this judgment to the attention of the District Judge and submissions were made by both sides, the matter was adjourned to the following day.

5. On 21 April 2016, the matter was again considered by the District Judge. Once again, the applicant, through his solicitor, objected to the re-entry of the no order charges maintaining that the charges were not properly before the court. The District Judge, however, remanded the applicant on continuing bail, without prejudice to the defendant. The transcript of the hearing reads:-

> "JUDGE: Because we're not going to deal with these matters until the 15th of June.
>
> MR BRADBURY: Very good.
>
> JUDGE: So, I am remanding on continuing bail without prejudice to the defendant, OK.
>
> Mr. BRADBURY: OK.
>
> JUDGE: OK. So, there is no prejudice to the defendant and then you can hold your powder dry until the next occasion. OK?"

Judicial Review Proceedings
6. On 25 April 2016, the High Court (Humphreys J.) granted the applicant liberty to apply by way of an application for judicial review for:-

> (i) An order of *certiorari* quashing the order made by the District Judge on 21 April 2016, remanding without prejudice the applicant to 15 June 2016, on the no order charges.
>
> (ii) A declaration that the order "remand without prejudice" is not an order known in law.
>
> (iii) A declaration that the District Court does not have the power to make orders on charge sheets which are not formally before it.
>
> (iv) A declaration that any attempt to re-enter the no order charges must be on notice to the accused.
>
> (v) An order of *certiorari* quashing the purported re-entry of the no order charges on 15 April 2016.

7. It should be noted that the Digital Audio Recording (DAR) of the proceedings before the District Court on 4 March 2016 make it clear that it was on that date, and not 15 April 2016, that the no order charges were re-entered.

Submissions of the Parties
8. Mr. Ronan Munro, S.C., on behalf of the applicant, submitted that the no order charges were re-entered without warning or notice to the applicant. This, it was argued, lacked the requisite constitutional fairness. It was submitted that there is no provision in the District Court Rules setting out the procedure that should be followed when charges, such as those at issue before this Court, are being re-entered. Counsel for the applicant argued that the District Judge should have adopted a procedure analogous to O. 22 of the District Court Rules, which governs the procedure to be followed where an accused fails to appear.

9. The applicant maintained that the order to "remand without prejudice" has no basis and is unknown in law. In support of this, the applicant relied upon ss. 21 – 24 of the Criminal Procedure Act 1967. There is no reference in these provisions to a "remand without

prejudice".

10. Mr. Paul Anthony McDermott, S.C., on behalf of the respondent, submitted that no formal procedure was required for the re-entry of charge sheets for which there had been a plea of guilty. It was submitted by counsel that the re-entry of the no order charges was an administrative matter which was necessary to finalise the hearing of the charges in question, in circumstances where the issue of sentence had still to be determined.

11. The respondent was clear in his submissions that the District Court, having re-entered the no order charges, would have taken no further action without the applicant being given proper notice and affording him an opportunity to be heard. In this way, the applicant's constitutional rights would have been safeguarded. As for the order remanding the applicant "without prejudice", counsel for the respondent submitted that the use of these words simply reflected the fact that the District Judge was open to hearing further submissions from the applicant on the adjourned date and had no bearing on the validity of the order made.

Consideration of Submissions
12. It is common case that the applicant had pleaded guilty to a number of charges and that a hearing on sentence was required to dispose of the matters. What is disputed, however, is the procedure followed by the District Judge to re-enter the no order charges. To my mind, the procedure to be followed depends upon the nature of the step in re-entering the no order charges. If the step is administrative in nature, then little formality is required. If, however, it is a substantive legal step then some formality, by way of application of a rule or an adapted rule, is required. This is to safeguard the applicant's constitutional right that he be given a fair hearing which encompasses a right to be heard and reasonable time to prepare his defence and make submissions.

13. The Court was referred to *Richards v. O'Donohoe* [2017] 2 I.R. 157. In that case, the applicant was convicted of certain offences in the District Court and appealed the convictions to the Circuit Court. When the appeal came on for hearing before the Circuit Court, the prosecuting member of An Garda Síochána was not present at first call. The respondent allowed the appeal and dismissed the charges. The applicant then left the court. The prosecuting garda subsequently arrived in court later that morning. That afternoon, in the absence of the applicant, an application was made to have the appeal reinstated; an application to which the respondent acceded. Thus the appeal was relisted and adjourned to a later date. The High Court granted an application for *certiorari* on the basis that the Circuit Court should not have reinstated the appeal without notice to the applicant, despite having the requisite jurisdiction to do so, and the matter was remitted to the Circuit Court for determination. There was a subsequent appeal to the Supreme Court against the order of remittal. In *Richards*, unlike the case before this Court, a substantive final order had been made dismissing the charges against the applicant. The respondent, on the application of the gardaí, then reinstated the appeal in the absence of the applicant and thus deprived him of the benefit of the dismissal. In giving the judgment of the court, O'Malley J. stated, at p. 171:-

> "[45] I agree with Birmingham J. and with the observations of Geoghegan J. in *Kennelly v. Cronin* [2002] 4 I.R. 292 that the sheer volume of cases dealt with in the District Court and, on appeal, the Circuit Court, requires the availability of a relatively informal mechanism for the correction of mistakes and misunderstandings. The problem is to define the parameters of the jurisdiction, having regard to current court listing systems, the necessity to observe fair procedures, the necessity to act rationally, and the requirement to give reasons."

14. Further, at p. 173:-

> "[53] A judge may decide, for good reason, to make a final order without hearing the matter on the merits, in circumstances where (as here) one party is unable to proceed but both are represented and have an opportunity to make submissions on the proposed order. That should normally be the end of it unless the party that was unable to proceed indicates grounds of objection to the order at the time, and makes it clear that an application for re-entry may follow later that day or within such time as the judge may allow. It is highly undesirable, and should be seen to militate against an application to reinstate, to permit a situation where a party leaves court under the impression that the matter has been concluded, without objection, in his or her favour, with no indication that the other party may subsequently seek to alter that situation."

15. Unlike *Richards*, what is at issue in this case is not the making of a final order but rather an administrative step so that a final order can be made at a future hearing which the applicant has notice of. At that hearing, the applicant will have the opportunity to exercise his constitutional rights.

16. It seems to me that the use of the term "without prejudice to the defendant" in remanding the applicant on continuing bail is consistent with the position taken by the respondent that no further step would be taken without the applicant having an opportunity to be heard and make further submissions should he wish to do so. The words "without prejudice to the defendant" do not, in my view, affect the validity of the order made but rather simply confirm that before any final order is made the applicant will be afforded an opportunity to exercise his constitutional rights.

17. As to remanding the applicant on continuing bail, I refer to Brady v. Fulham [2010] IEHC 99. In this case, there was an error in the order returning the applicant for trial from the District Court to the Circuit Court. The applicant construed this as a termination of his obligation under recognisance to attend court, a view that was strengthened by the fact that the €2,000 cash lodgement and his passport had been returned to him. O'Neill J. stated:-

> "5.3 …In my opinion he was wrong in this conclusion. Certainly, whilst the prosecution was in hiatus, pending the amendment of the return for trial under the slip rule in the District Court, he was relieved of the obligation to attend the Circuit Court in person, for the obvious reason that no proceedings were taking place in that Court, in the prosecution. However, once the District Court made the amending order, thereby invoking correctly the jurisdiction of the Circuit Court the applicant's obligation under the recognisance revived and having been cautioned of when to attend the Circuit Court, he was, under the terms of the recognisance obliged to comply. Thus, in my opinion, the first named respondent was correct in concluding, when the matter came before him on the 6th May 2009, that the applicant had remained bound under the conditions of his original bail terms as set in September 2006. The return of the cash lodgment and the passport was an error, as the charges against the applicant had not been disposed of according to law."

18. In light of the judgment in *Brady*, I cannot see any objection to the District Judge remanding the applicant on bail until 15 June 2016.

Conclusion
19. By reason of the foregoing, the applicant is not entitled to the reliefs sought and I dismiss his application for judicial review.