Neutral Citation Number: [2009] IEHC 558

THE HIGH COURT

2009 1727 SS

IN THE MATTER OF AN APPLICATION FOR AN INQUIRY PURSUANT TO ARTICLE 40.4.2 OF THE CONSTITUTION OF IRELAND, 1937

Frederick Olafusi

Applicant

And

The Governor of Cloverhill Prison

And

The Director of Public Prosecutions

Respondents

JUDGMENT of O'Neill J. delivered the 11th day of December, 2009.

1. The Facts

1.1 On the 8th October, 2009, the applicant was arrested and charged with offences contrary to ss.12 (1) (a) and (2) and s.13 of the Immigration Act 2004 for failure to produce on demand to a member of An Garda Síochána evidence of his identity and nationality and for failure to provide a satisfactory explanation of the circumstances that prevented him from doing so. On the same day the applicant was brought before the Dublin Metropolitan District Court where evidence of arrest, charge and caution was given by the prosecuting garda, Garda O'Meara, in respect of the single charge sheet before the Court. The applicant was legally represented. On foot of the application of Garda O'Meara the applicant was remanded in custody to appear before Cloverhill District Court on the 15th October, 2009. Counsel for the applicant indicated to the Court that the applicant was not consenting to the remand.

1.2 On the 15th October, 2009, the applicant appeared in Cloverhill District Court, where again he was legally represented. A plea of guilty was entered on his behalf. This was not accepted by the District Court Judge. Paragraph 5 of the affidavit of the applicant's solicitor, Michelle Sheeran, sets out what occurred on that date in Court based on the applicant's instructions which were confirmed to her by counsel, as Ms. Sheeran was not in Court herself on that date. This account of events was not disputed by the second named respondent, apart from the averment that the applicant had given a false name to Garda O'Meara. The Court was told that Garda O'Meara's recollection was that the applicant had given no details to him whatsoever. This dispute, however, is not central to these *habeas corpus* proceedings. The relevant portion of the aforementioned affidavit reads as follows:-

> "...
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> *When the case was called the prosecuting Garda told the District Court that the Gardai were not satisfied as to the true identity of the Applicant and that he was seeking a remand in custody. Counsel had received instructions from the Applicant that he was pleading guilty to the offence and he informed the Court that there was a plea of guilty. At that juncture the District Judge said that she could not take a plea of guilty where there was an issue about the Applicant's identity. Counsel told the District Judge that the Applicant had applied for asylum and that the letter acknowledging receipt of the application from the relevant authorities had been shown to the prosecuting Garda. Counsel proffered the letter to the District Judge but she said that the application for Asylum was irrelevant. When asked by the District Judge Garda O'Meara told the Court that the Applicant had initially given a different name and had not given the Gardai any assistance and that the Applicant had been observed working in the shop where he had been arrested. In response to a question from the District Judge Garda O'Meara further told the Court the Applicant had not been asked to fill out a Bio Data form and had not been asked to provide fingerprints. Counsel informed the District Judge he was instructed that the Applicant was not in a position to provide any further documents and reiterated that he wished to plead guilty. Further that it was his understanding that where Applicants had successfully brought Habeas Corpus Applications when a District Judge has refused to accept a guilty plea. The District Judge asked if there were written Judgments and Counsel said not to his knowledge. District Judge Watkins then inquired if the Applicant was willing to give evidence regarding the lack of documentation as she did not accept instructions as being good enough for her Court. Counsel on behalf of the Applicant asked that the matter be put to second calling so that could [sic.] take instructions as to whether the Applicant give evidence [sic.]. After some discussion the matter was put back to second calling. On second calling Counsel told the Court the Applicant was not giving evidence. District Judge Watkins then remanded the Applicant in custody to the 22nd October, 2009."*

1.3 It is clear from the above that a plea of guilty was entered on the part of the applicant but that that the District Judge refused to accept that plea because of a concern as to the true identity of the applicant. These *habeas corpus* proceedings were instituted by the applicant on the 19th October, 2009. The applicant was released from custody on the 20th October, 2009, upon this Court finding that his detention was unlawful. The reasons for this are set out in this judgment.

2. Counsels' Submissions

2.1 Mr. Nolan B.L., for the second named respondent, relied on the judgment of Denham J. in the case of *The People (D.P.P.) v. Redmond* [2006] 3 I.R. 188 in support of his submission that it was permissible for courts to depart from the requirement to accept a plea in certain circumstances, which included the protection of the integrity of the court process. He also relied on the judgment of Hedigan J. in *Dean v. The Director of Public Prosecutions* [2008] I.E.H.C. 87, which alludes to the circumstances where a Court can act to protect the procedures of the Court.

2.2 Mr. Nolan further argued that the present proceedings were distinguishable from other *habeas corpus* cases where the detention of the applicant was found to be unlawful, such as that of *San Chen, Oleg Strelzov* and *Zaed Rahim*, on the basis that the applicant in the present case had spent a relatively short time in custody; that no effort had been made by the applicant to assist with queries on identity; that no documentation of any kind had been produced by the applicant and that the applicant had refused to give evidence to the District Judge as to documentation.

2.3 Mr. Gillane S.C., for the applicant, observed that the judgment of Denham J. in *The People (D.P.P.) v. Redmond* [2006] 3 I.R. 188 was a dissenting one and did not, in any event, in his submission, justify the argument the second named respondent made. He argued that there was no principle or authority which could justify a Court refusing to accept a plea of guilty in circumstances where that person was legally represented. He noted that in an *ex tempore* judgment delivered by this Court in the context of an Article 40 enquiry in the case of *Oleg Strelzov* on the 10th June, 2008, that the Court remarked that the criminal process could not be used to deal with something that it should not be used for. Mr. Gillane noted that s.9(8) of the Refugee Act 1996, as amended, made provision for the detention of persons for a number of weeks should the authorities not be satisfied as to the identity of a person, thereby providing a remedy for the mischief the second named respondent complained of.

3. Decision
3.1 The Supreme Court in *The People (D.P.P.) v. Redmond* [2006] 3 I.R. 188 examined, *inter alia*, the jurisdiction to refuse a plea of guilty, in the context of a consultative case stated from the Circuit Court. In that case the accused was charged with causing serious harm contrary to s. 4(1) of the Non-Fatal Offences Against the Person Act 1997 and pleaded guilty to the charge. At the time of sentencing the Circuit Court Judge made a finding that he had substantial grounds for believing that the accused may have been insane in law at the time he committed the acts alleged to constitute the offence. The issue for the Supreme Court to determine was whether, in those circumstances, the Circuit Court Judge could decline to accept a plea of guilty and enter a plea of not guilty on behalf of the accused, in an effort to ensure that the issue of insanity would be fully investigated at trial.

3.2 The majority found that the sentencing judge had to accept the plea of guilty in this case. Fennelly J. concluded as follows at p.210:-

> *"79 I believe that it remains the law that the onus of proof of insanity rests on the defence.*
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> *80 I do not think it can be consistent with the foregoing proposition that a judge may substitute a plea of 'not guilty' in a case such as the present. What would be the consequence of his doing so? The trial would have to proceed. The prosecution would have the burden of proving every element of the case against the accused, but he would be presumed to be sane. The burden of proving the contrary would rest on the accused. He is entitled to decide whether to raise the defence. Where he decides not to raise it and the facts are proved to the satisfaction of the jury beyond reasonable doubt, he will be convicted."*

3.3 Kearns J. noted that an intervention by a trial judge to set aside a plea in circumstances where there was an issue as to insanity must be seen as necessarily raising for determination by a jury of the issue of fitness to plead, that such an intervention ran counter to the an accused person's right to select his preferred line of defence, as per Article 38.1 of the Constitution, that a person found to be unfit would be in the same position as a person found "*guilty but insane*" and that an intervention could deprive an accused who in a different case wants to plead "*not guilty*" of the opportunity of being acquitted on foot of a substantive defence, which might have been available had the trial gone ahead. He stated as follows at p.217:-

> *"103 Against this backdrop a judge would, in my view, require to be satisfied that very exceptional circumstances are demonstrated and a very high threshold met before he actively intervenes to 'second guess' the accused and his legal and/or medical advisers who opt to plead or conduct a defence in a particular way. As noted by Geoghegan J. in his judgment herein an accused person may justifiably be extremely indignant that his decision to plead in a particular way is being superseded by an inquiry as to his sanity. In my opinion therefore, a judge should not intervene to set aside a guilty plea unless there are quite exceptional circumstances arising in the particular case."*

3.4 Denham J., in her dissenting judgment, also pointed out that it was only in exceptional circumstances that the Court could intervene in respect of the plea entered and in this regard she referred to circumstances where there may be unfairness in the procedures or a lack of due process, such as where the accused was not legally represented. The relevant section from the judgment of Denham J. is at pp.195-196 states as follows:-

> *" A plea*
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> *21 I am satisfied that in general an accused has a right to choose whether or not he will enter a plea of guilty. Such a right is enhanced if the accused has the benefit of legal advice, as in this case. It would be only in exceptional circumstances that a court would intervene in such a decision. The right to enter a plea is not an absolute right. The court retains a discretion at all times to ensure that there are fair procedures and due process.*
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> *22 Thus, for example, if an accused was not legally represented and had entered a plea, a judge, on hearing more of the circumstances might, correctly, determine that the justice of the situation was best met by the accused not entering a plea, but pleading not guilty. The judge takes such steps to ensure the administration of justice.*
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> *23 There are many factors which may influence an accused in his decision to plead. I stress that once a plea is entered, in general, it is not a matter for the court to inquire into. However, the court at all times retains an inherent jurisdiction, and indeed a duty, to protect the fairness of the proceedings, to protect a fair trial process. This is a constitutional duty of judges of all jurisdictions.*

24 A person is presumed sane and responsible for his actions. However, in this case the trial judge has substantial grounds for believing that the accused was insane at the time he committed the acts alleged to constitute the crime. While usually the issue of insanity is a matter to be raised by the defence, it is also an issue which may be raised by the prosecution, especially if the situation is one relating to a dangerous man in the community. In this case the court has evidence before it so as to raise a doubt as to the sanity of the accused at the time of the alleged crime.

In such circumstances I am satisfied that the matter should be decided by a jury - before whom all the facts may be placed by the accused and the prosecution.

Integrity of the process

25 In addition to an inherent jurisdiction and indeed a duty to protect fair procedures, the court has a duty to protect the integrity of the court process. Inherent in the judicial process is the right of the judge, and indeed duty in certain circumstances, to ensure that there is an administration of justice in court."

3.5 It is clear from the Redmond case that it is only in the most exceptional circumstances can there be a refusal to accept a plea. I am satisfied that this is all the more so in a case of a summary offence at the minor end of the criminal calendar. Without doubt, the refusal of a guilty plea for the purposes of enabling an adjournment to facilitate further enquiries concerning the identification of an accused is not a proper basis for refusing a plea. Therefore, the necessary conclusion of this Court is that the detention of the applicant on foot of a decision to refuse a plea in the absence of appropriate exceptional circumstances was unquestionably illegal detention.

3.6 The conclusions of Denham J. imply that the basis upon which the courts can decline to accept a plea of guilty is where the procedure may be unfair, for example, where the accused is not represented. I am satisfied that the reliance by the second named respondent on the judgment of Denham J. is to no avail given that the exceptional circumstances that would give rise to a court not accepting a guilty plea envisaged by Denham J. are related to due process and, in particular, the fairness of the criminal justice process. No such considerations arise in this case. The accused was legally represented and does not suffer from a mental impairment.

3.7 It may well be the case that difficulties are encountered in the identification of people who are found not to have normal proof of identification, but, be that as it may, the criminal justice process cannot be used or adapted to facilitate the ascertainment of the identity of such a person. Where such a person offers a plea of guilty the Court must, in the absence of appropriate exceptional circumstances, proceed to sentence. Insofar as there are difficulties encountered in establishing the identity of persons, this is a matter to be resolved by the immigration authorities and the Gardaí. In this regard it is to be observed that there are statutory provisions which provide for the detention of such persons quite apart from the criminal process, such as s.9 (8) of the Refugee Act 1996, as amended.