

THE HIGH COURT

[2008] No. 423SS.

BETWEEN

JOHN J. RINEY

APPLICANT

AND
THE GOVERNOR OF THE LOUGHAN HOUSE PRISON

RESPONDENT

AND
THE ATTORNEY GENERAL

NOTICE PARTY

Judgment of Mr. Justice John Edwards delivered on 21st March, 2008.**Introduction**

1. The applicant in this case is detained in Loughan House Prison. He seeks an inquiry under article 40.4 of the Constitution of Ireland into the lawfulness of his detention. His application is grounded upon a six page handwritten affidavit, partly in English and partly in Irish, sworn on the 19th of March 2008. I will deal with this affidavit in some detail later in this judgment

2. I have also been provided with a copy District Court warrant, which I understand to be the warrant on foot of which the applicant is detained, together with a Notice of Appeal to the Circuit Court in respect of the District Court Order on foot of which the warrant is based.

The Warrant

3. The first thing to be said is that there are no obvious defects in the warrant and it appears good on its face. It emanates from the District Court, for the District Court Area of Letterkenny and District No 1, under the signature of Desmond Zaidan, the judge of the District Court assigned to that area and district. It is expressed to be a "Warrant of Execution" (to Commit in Default of Payment of Penalty).

4. It appears from the body of the warrant that in proceedings entitled *The Director of Public Prosecutions at the suit of Garda T McDonagh v. John Riney*, heard before the District Court sitting in Letterkenny Courthouse on the 11th of January 2008, the accused was convicted of committing an offence contrary to section 6 of the Criminal Justice (Public Order) Act, 1994 at Main Street, Milford, Co Donegal on the 18th of June, 2007. He was fined €630.00, or 80 days imprisonment in default of payment of the fine within 30 days. Apparently he has never paid the fine. In default of payment of the fine a warrant of execution duly issued, namely the warrant now before me, and that warrant commanded the person to whom it was addressed, namely the Superintendent of An Garda Síochána at Baile an Galloglach to lodge the accused (namely, the applicant herein) in the prison at Castlereagh. The warrant was required to be executed within six months.

5. It appears from the applicant's affidavit that the warrant was executed by various Gardai as he was walking across the Diamond in Donegal town on the 13th of March 2008. No point is taken that the warrant specifies Castlereagh Prison and he is now in Loughan house. In the circumstances I infer that he was received at Castlereagh and that the executive, as is their entitlement, duly transferred him to Loughan House.

The Notice of Appeal

6. The Notice of Appeal is dated the 19th of March, 2008. Although the correct pre-printed form is used, it is not in conformity with the Rules of the District Court in as much as it does not specify what Order is being appealed against. It is expressed in terms that it is against 'whatever conviction + sentence Mr Des A Zaidan "District Justice" imposed ex parte at Letterkenny Town's "District Court" on whatever date is on "the Warrants".' In the body of the purported Notice of Appeal the applicant reiterates that he was not on notice of the proceedings.

7. There is also a manifestly ill-founded assertion to the effect that District Judge Zaidan is not a properly appointed judge as by "commencing" the Courts (Establishment and Constitution) Act 1961 Sean F Lemass wrongfully and unlawfully abolished the Courts referred to in the Constitution of Ireland. I am inferring for the purposes of these proceedings that the applicant has an intention to appeal, if possible, against his conviction and sentence in the District Court on the 11th of January 2008.

The applicant's affidavit.

8. The applicant's affidavit is, to coin a phrase, "all over the place". However, I have studied it carefully in an effort to extract, in so far as can be done, the basis of his contention that he is entitled to relief under article 40.4.

9. At paragraph 1 he sets out that he is now in Loughan House Prison.

10. At paragraph 2 he describes the circumstances in which he was arrested. He says that he and his wife were walking across "the Diamond" in Donegal town when various Gardai, whom he names, "unlawfully arrested, assaulted, and falsely imprisoned" him. He appears to suggest that some of the Gardai involved harbour ill-will or an animus against him arising out of a previous incident that is said to have occurred at, or shortly after, an employment appeals tribunal hearing at the Mount Errigal Hotel, Letterkenny, on the 13th of March, 2007 in the course of which, the applicant alleges, he and his wife and daughter were assaulted by two Gardai. There follows a lengthy description of the background to the EAT proceedings, which is simply not relevant to the issues that I have to decide save for establishing that there is no love lost between the applicant and the Gardai, at least in the applicant's perception. Unfortunately, the applicant's affidavit, while alleging that his arrest was unlawful, fails to deal with the undeniable fact that a prima facie valid warrant was extant for his arrest for non payment of a fine, and that the Gardai were entitled to arrest him in execution of that warrant.

11. In paragraph 3 of his affidavit the applicant invokes article 40.4 of the Constitution, and proceeds to quote the entirety of the Irish text of it, and moreover does so using "old Irish" script. He then goes on to contend that his detention is unlawful by virtue of the Second Amendment to the Constitution Act 1941, though the basis for that contention completely eludes me.

12. Next he refers to the "double construction rule" enunciated by Walsh J in *East Donegal Cooperative Ltd -v- The Attorney General* [1970] I.R.348. How the East Donegal Cooperative Ltd case is supposed to have implications for his detention, beyond its enunciation of the well established imperatives of respect for natural and constitutional justice, is not apparent. At any rate he clearly holds a

totally surreal conspiracy theory, although I only partially understand it. He points out, *inter alia*, that East Donegal Cooperative Ltd runs Raphoe Mart where "Ritchie Barron" often dealt in livestock prior to his murder. (What this has to do with the East Donegal Cooperative Ltd decision and the "double construction rule" eludes me.) The applicant next contends that he has personally investigated and knows the real truth of the Ritchie Barron Murder. Among other things he appears to be suggesting that on account of this his present detention is an attempt by "the State" to muzzle him. According to the applicant they are also concerned to do so because he may expose "the countless negligent homicides either committed or covered up by members of 'the Medical Professions', aided and abetted by 'their University Friends'".

Decision

13. Having considered all of the materials put before me I am not satisfied that I have sufficient basis for opening an inquiry under article 40.4. The evidence at the moment suggests that the applicant is in detention on foot of a valid committal warrant. I have been given no sufficient basis to justify seeking to look behind it. In so far as the suggestion is made in the applicant's Notice of Appeal that he was convicted in his absence and without notice of the proceedings, the applicant does not seek to make that case in his affidavit. There would have been many stages in the proceedings before the issuance of a warrant of execution, in respect of which the applicant would have been served with documentation, or at least have been written to by the relevant authorities, so as to alert him of the existence of proceedings against him. He has not stated in terms that he received no documentation. Nor has he stated that the address that they have for him, clearly stated on the warrant, is incorrect. I am not satisfied, on present information, that there is any evidence of a conspiracy against him to convict him in his absence and incarcerate him without notice.

14. In all the circumstances I must refuse the application.