

THE HIGH COURT

JUDICIAL REVIEW

[Record No: 2015/619 JR]

BETWEEN

JOSEPH LAVERY

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

(No. 1)

EX TEMPORE JUDGMENT of Mr. Justice Richard Humphreys delivered on the 21st day of December, 2015.

1. This matter came before me by way of an *ex parte* leave application, which I directed to be made on notice to the D.P.P. (for whom Ms. Lily Buckley, B.L. appeared), in which the applicant seeks an order of *certiorari* quashing the order of District Court Judge Clyne in Cavan District Court on the 5th November, 2015, appointing a legal aid solicitor Damian Rudden to represent the applicant in criminal proceedings, in circumstances where the applicant said he wanted to represent himself.
2. In order to facilitate this matter being resolved I stayed the further substantive processing of the proceedings pending determination of the leave application but specifically allowed certain matters to be done in the meantime including permitting the applicant to discharge the appointed solicitor.
3. Since the leave application was initially made, the applicant has since been able to discharge Mr. Rudden and represent himself.
4. The applicant has put forward a number of other complaints in terms of issues in relation to bench warrants and a report in the local newspaper that says he was dragged out of court. These complaints do not seem to me to have been developed to an extent that would warrant grant of leave.
5. The applicant says that he wants the transcript of the District Court in Cavan. However the Director has informed the court that the transcript of the digital audio recording (D.A.R.) is not available for Cavan Courthouse on the date sought.
6. The applicant also complains that the Director's latest affidavits in the present application are unsworn. However I have been given sworn copies of these affidavits.
7. The applicant accepts that he can now represent himself which is the central issue of the case as framed in the grounding affidavit.
8. Considering what happened in the District Court since this matter was last before me I had better make clear that it is not my intention, either in this case or in any other case, to supervise in an ongoing manner the conduct of any particular prosecution. My objective in adjourning the matter and requiring further information was to enable me to find out more precisely what happened in the District Court to ascertain whether the applicant has arguable grounds for his complaint. Adjourning the matter has had the beneficial effect of the applicant being able to now regularise his position and discharge his solicitor with leave of the District Court and represent himself.
9. Under those circumstances and given the limited nature of the relief sought in the statement grounding the application for judicial review, I am of the opinion that no further benefit would be served in granting leave.
10. While I am refusing the leave application on that basis the applicant can take some satisfaction from the fact that the object of this application has in fact been achieved. In short this is a case where the applicant should quit while he is ahead, in a situation where any further consideration of the present judicial review application is in fact moot.

Postscript

11. For clarity I should record that on 11th April, 2016, the applicant made a second judicial review application [2016 No. 228 JR] in which he alleged in effect that the stay granted by me continued to operate after I had refused leave and while his appeal against that decision [2016/8] was pending to the Court of Appeal, and that therefore the District Court ought not to have fixed a date for hearing of the criminal proceedings during that period. In a (possibly misguided) attempt to avoid further procedural confusion I directed him to put the Director on notice of the second judicial review application and stayed the further substantive processing of the criminal proceedings for the time being. The second leave application is now listed for hearing on notice on 9th May, 2016.