

BETWEEN

**IN THE MATTER OF ARTICLE 40.4.2 OF THE
CONSTITUTION AND IN THE MATTER OF AN
APPLICATION FOR HABEAS CORPUS BY
WALTER MORRISSEY AT PRESENT IN CUSTODY IN
MIDLANDS PRISON**

JUDGMENT of Ms. Justice Faherty delivered on the 5th day of April, 2017

1. This is an application for a conditional order of *habeas corpus* made in writing by the applicant, who is in post-conviction custody and who is seeking an inquiry into the lawfulness of his detention.
2. On 8th July, 2013, the applicant was convicted in the Central Criminal Court of sexual assault upon a female person and intentionally or recklessly causing serious harm to the same individual. He was sentenced to thirteen years imprisonment in respect of each of the offences to run concurrently from 9th January, 2012.
3. The applicant says his detention is unlawful because he did not get a fair trial. In his written application, he states that on 24th December, 2016, he received a "doctored transcript" of his trial and that the transcript was "doctored" to reduce his chances of a successful appeal against conviction. He says that submissions are ready for the Court of Appeal. However the applicant asserts that they are incomplete as they are taken from "the doctored incomplete transcript". He contends that the Court of Appeal will be making a decision on submissions which are based on a "doctored incomplete transcript". He states that he cannot obtain his constitutionally guaranteed right to a fair hearing and a fair process without a full transcript of his trial.
4. What is clear from the within application is that the applicant has appealed his conviction to the Court of Appeal. Essentially, the applicant's submissions in this application speak to the mechanism which has been employed to put what occurred in the course his trial in the Central Criminal Court before the Court of Appeal, namely the procurement of a transcript of his trial.
5. It appears that the applicant has legal representation for the purposes of processing his appeal proceedings before the Court of Appeal. It seems to the court that if there is a deficiency in the transcript of the trial, in that it does not reflect what occurred in the course of his trial, then the applicant's immediate remedy is to instruct his legal representatives to investigate what he says is a "doctored" transcript of his trial. The court is satisfied that the applicant's complaint is not sufficient to allow the court to form an opinion as to whether or not he is in unlawful detention. As I have said, the thrust of his complaint relates to a transcript which he states is an incomplete record of what transpired at his trial.
6. Thus, I am not satisfied from the information before the court that there is any basis upon which this court could be satisfied to direct an inquiry pursuant to Article 40 of the Constitution in respect of the applicant's detention in Midlands Prison. Taking the applicant's case at its height, insofar as he has put information before the court for the purposes of this application, he states that he was convicted on foot of a trial which resulted in the imposition of two sentences of thirteen years for aggravated sexual assault and intentional or reckless serious harm to a named individual for which he received two sentences of thirteen years to run concurrently from 9th January, 2012. He alleges the trial was unfair, without further elaboration. Based on the information before the court, the court is satisfied that any complaint the applicant has in relation to the conduct of his criminal trial is, at this juncture, a matter more properly to be dealt with on appeal. I do not find any basis upon which this court could invoke the jurisdiction of an inquiry pursuant to Article 40 given the dearth of information which the court would otherwise expect from someone challenging the lawfulness of their detention, and in circumstances where, as appears from the applicant's own submissions, his legal representatives are presently engaged in an appeal process against his conviction.
7. For the reasons outlined above I refuse the relief sought.