Neutral Citation Number: [2012] IEHC 287

THE HIGH COURT

JUDICIAL REVIEW

[2010 No. 916 J.R.]

BETWEEN

S.T. (A MINOR APPLYING BY HIS SISTER AND NEXT FRIEND, A.M.T.)

APPLICANT

AND

DISTRICT JUDGE DAVID ANDERSON

RESPONDENT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

NOTICE PARTY

Judgment of Ms. Justice Dunne delivered on 10th day of February, 2012.

This is an application for an order of *certiorari* by way of judicial review quashing the order of the respondent herein made on the 30th June, 2010 convicting and sentencing the applicant to eight months detention and six months consecutive detention on two charges, one of possession of stolen property contrary to s. 18 of the Criminal Justice (Theft and Fraud Offences) Act 2001 and trespass contrary to s. 11 of the Criminal Justice (Public Order) Act 1994. Further ancillary relief is sought.

Background
Following the conviction of the applicant, evidence was given by Garda Griffin in respect of the previous convictions of the applicant. They included nine road traffic offences, two public order offences and two offences contrary to the Misuse of Drugs Act. Only one custodial sentence had been imposed on the applicant previously, being a term of four months detention in respect of an offence contrary to s. 15 of the Misuse of Drugs Act.

Counsel on behalf of the applicant informed the respondent that the applicant was at that time under the supervision of the Probation and Welfare Services and due back before the Children's Court for an updated probation report the following week, that is on the 6th July, 2010. In those circumstances counsel on behalf of the applicant asked that the respondent not finalise matters that day. Ms. Annaleen Mackin, trainee solicitor who was in attendance on counsel on that day and who has sworn the grounding affidavit on behalf of the applicant, outlined in the affidavit that the respondent was told that there was an interim probation report dated the 25th May, 2010 before the Children's Court. That report had made recommendations including a requirement that the applicant secure an educational/training placement. He had obtained such a placement and it was submitted that he was engaging positively with the Probation and Welfare Service.

It is stated that the District Court clerk left the courtroom and returned to court "with what appeared to be the applicant's entire Children's Court file and handed it to the learned District Judge". The respondent asked for and was given a copy of s. 99 of the Children Act 2001. It was submitted by counsel on behalf of the applicant to the learned District Judge that as he was engaging with the Probation Services and other matters had been adjourned to the 6th July, 2010, that the respondent should order a further report or at the very least view the report scheduled for the 6th July, 2010.

Ms. Macken goes on in the affidavit to say that the only probation report that the respondent appeared to read was that of the 24th May, 2010. It is further stated by her that the learned District Judge "gave no indication that he had read or considered the probation report dated the 7th December, 2009, which sets out crucial background information regarding the applicant".

The affidavit goes on to assert that if the report on the 7th December, 2009 had been considered "properly or at all" in conjunction with an updated current report, a proper assessment of relevant factors for a sentencing Judge could have been carried out. However, the learned District Judge did not order a probation report. A discussion took place before him as to the status of the applicant in respect of bail at the time of the offence. There was also a reference made by the learned District Judge to "nineteen charges" although the context of this reference is not entirely clear. On hearing that the applicant was on bail on the 10th March, 2010, the date of the trespass offence, the learned District Judge, having had further submissions from counsel on behalf of the applicant, imposed sentence. Following the imposition of sentence, further matters were canvassed before the court. An issue was also raised in these proceedings in relation to the recognisances fixed by the learned District Judge in respect of an appeal from his decision. I do not need to concern myself with the issue in relation to recognisances as that issue is now moot.

A replying affidavit was sworn by Garda Andrew Lambe, the prosecuting Garda present on the 30th June, 2010. He takes issue with the assertion that the court clerk left the court at any stage of the proceedings. Rather, he explained that the court sergeant, Sergeant Moloney, left the court and returned with the charge sheets in respect of the applicant which had been remanded until the 6th July, 2010. Garda Lambe said that he had been informed and believed that there was no file known as the Children Court file on this or any other defendant. He confirmed that the charge sheets, to which the probation and welfare report dated the 25th May, 2010 related, were examined by the learned District Judge.

Garda Lambe said that he did not know what probation reports were before the court. He said that he had been advised that one District Judge was not bound by what another District Judge may or may not have decided. The learned District Judge could not make any assumption as to the basis upon which another District Judge may have decided to order a further probation report on a previous occasion. He also made the point that the learned District Judge in this case was in possession of additional information that would not have been known to a previous District Court Judge dealing with the applicant, namely, that the applicant had contested two

offences but had been convicted of those offences.

He finally stated that he was informed by a probation officer that the Probation and Welfare Service do not make recommendations in respect of convicted persons who do not accept their guilt.

A further affidavit was sworn on behalf of the applicant by Ms. Macken. In that affidavit she took issue with Garda Lambe's averments in respect of a number of matters, namely, the number of charge sheets that had been remanded to the 6th July, 2010, in respect of the applicant, the identity of the person who furnished the charge sheets to the learned District Judge and the issue as to whether or not the court clerk or Sgt. Moloney left the courtroom. She stated that Garda Lambe was not shown any documentation that the respondent was perusing and therefore could not state what documents were being read by the respondent.

Finally, an affidavit was sworn by Sgt. Caroline Moloney and she stated in her affidavit that when the learned District Judge asked what charges were before the court on the 6th July and requested the charge sheets in relation to those matters, she left the courtroom and retrieved the charge sheets that had been remanded to the 6th July, 2010 and brought those to the courtroom and handed them to the court clerk who then gave them to the Judge.

It is obvious that there is some degree of dispute between the parties as to precisely what documentation was before the learned District Judge. It is not entirely possible to resolve that issue on affidavit. However, having said that, I note that the averments in the affidavit of Sgt. Moloney have not been contradicted. To that extent, I accept the averments in her affidavit. In any event, the dispute as to what was before the learned District Judge does not have any significant bearing on the issue before the court.

The issues
The issues in this case centre on s. 99 of the Children Act 2001, ("the Act"). It provides as follows:

> "99(1) Subject to subsections (2) and (3), where a court is satisfied of the guilt of a child, it-
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> (a) may in any case, and
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> (b) shall, where it is of opinion that the appropriate decision would be to impose a community sanction, detention (whether or not deferred under section 144) or detention and supervision, adjourn the proceedings, remand the child and request a probation and welfare officer to prepare a report in writing (a 'probation officer's report') which-
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> (i) would assist the court in determining a suitable community sanction (if any) or another way of dealing with the child, and
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> (ii) would contain information on such matters as may be prescribed, including any information specifically requested by the court.
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> (2) The probation officer's report shall, at the request of the court, indicate whether, and if so how, in his or her opinion any lack of care or control by the parents or guardian of the child concerned contributed to the behaviour which resulted in the child being found guilty of an offence.
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> (3) The court may, in addition, request that a victim impact report be furnished to it in respect of any victim of the child where it considers that such a report would assist it in dealing with the case.
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> (4) The court may decide not to request a probation officer's report where-
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> (a) the penalty for the offence of which the child is guilty is fixed by law, or
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> (b) (i) the child was the subject of a probation officer's report prepared not
>
> more than 2 years previously,
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> (ii) the attitude of the child to, and the circumstances of, the offence or offences to which that report relates are similar to his or her attitude to, and the circumstances of, the offence of which the child has been found guilty, and
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> (iii) the previous report is available to the court and the court is satisfied that the material in it is sufficient to enable it to deal with the case.
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> (5) Where a court requests a report under this section, it may at any time summon as a witness any person whose evidence in its opinion would assist it in dealing with the case."

The provisions of s. 99(1)(b) impose an obligation on a Judge considering the imposition of a custodial sentence in respect of a child to obtain a probation and welfare report before imposing sentence. Section 99(1)(b) states that the court shall adjourn the proceedings and request such a report. Thus, it is mandatory in its terms. However, Section 99 goes on to provide at subs. (4) for an exception where the child was the subject of a probation officer's report prepared not more than two years previously, subject to the conditions set out ins. 99 (4).

There is no doubt that the learned District Judge had before him the report of the 20th May, 2010, prepared for the court hearing on the 24th May, 2010. It is not suggested that he had not read that report. The grounding affidavit notes that it is the only report that "the learned District Judge appeared to read". As previously mentioned, that report was prepared in respect of other proceedings and was a follow up report on the applicant. There was an earlier detailed report of the 7th December, 2009 prepared in respect of the applicant. A number of other reports were prepared for the court in respect of those proceedings as they were adjourned from time to time. There is no information before me as to whether or not those reports were put before the District Court. There is a suggestion in the grounding affidavit sworn on behalf of the applicant that those reports were before the learned District Judge and contained in the "applicant's District Court file" referred to previously in respect of the dispute as to whether the District Court clerk or the court sergeant left the courtroom during the course of the proceedings and as to what was provided to the learned District Court Judge on that person's return to court. The evidence on affidavit before me is such that it could not be said with any certainty or at all that the learned District Court Judge had the report of the 7th December, 2009, or any of the other interim reports prepared in respect of

the applicant save for that prepared for the 24th May, 2010.

Before looking at the legal submissions that were made in respect of this matter, I think it would be useful to refer very briefly to the probation report prepared for the 24th May, 2010. That report noted that the applicant had attended two out of a possible three appointments offered to him by the probation officer. He failed to attend an appointment on the 14th May and a phone call was made by his girlfriend on that date to say that the applicant had forgotten to attend his appointment. It was noted that he had been advised to make efforts to secure a placement in a Youthreach centre or a community training centre. He was on a waiting list for two of the centres and in the interim he was encouraged to meet with local employment services in Darndale but he had failed to do that. He was fortunate to be offered a place in a local Youthreach centre but he had failed to attend there as requested on the 18th May, 2010. He subsequently made contact with them and they requested that he attend a meeting with them on Monday, 24th May, 2010, the day he was due back in court.

It was also noted in that report that he had been referred to the Substance Abuse Service specific to young people in January 2010. He was offered three appointments with that service on the 13th January, the 27th January and the 26th March. He failed to attend all three appointments and that programme has closed his case. The applicant advised the probation officer on the 9th April, 2010 that he did not feel that he would benefit from counselling and he denied any current drug use. The report concluded as follows:

> "In light of the above information I would respectfully propose to the court that this case is adjourned for six weeks to give S. a final opportunity to engage with this service and with Youthreach".

Discussion

I now want to consider some of the authorities that were opened to me in the course of this case. I was referred to the decision in the case of *Mooney v. The Governor of St. Patrick's Institution* [2009] IEHC 522 which was referred to by counsel for the applicant and for the respondent in the course of their submissions. In that case, the applicant had pleaded guilty to an offence contrary to s. 9(1) of the Firearms and Offence of Weapons Act 1990. The weapon concerned was a screwdriver. A number of other charge sheets were before the court on that date and the remainder of the charges were adjourned. On the applicant's plea of guilty, the District Judge directed a probation officer's report and the applicant was remanded on bail to the 27th October, 2009. It appears that there were difficulties in relation to the applicant's attendance with the probation officer as his report that day noted the following:

> "I phoned Brian's mother on the 6th October to arrange an appointment for herself and Brian. She was unavailable to meet me until the 12th October due to work commitments. On the 12th October she phoned me and advised me that Brian had the flu and would not be able to meet me that week. I arranged to meet herself and Brian on the 19th October. They failed to attend. As a result I am unable to offer any further information to the court."

Given that report, it appears that the matter was further adjourned until the 1oth November, 2009. On that date the applicant and his mother were in court. The District Judge inquired of counsel as to why the applicant's second appointment with the probation and welfare officer had been missed and it appears that it was not possible to say precisely what the reason was but it may have been because the applicant was with his father or was in hospital. The District Judge was informed of this and was also told that the applicant's mother wanted a further opportunity to work with the Probation and Welfare Service.

At that point it appears that the District Judge said that he was not satisfied with the situation and stated that the applicant could be remanded in custody for a further week so that the applicant's mother could find out why the second appointment had been missed or the judge could immediately proceed the sentencing that day. The matter was put back in the list so that the choice of a remand for a week in custody or proceeding to sentence could be considered by the applicant and when the matter came back to court, the court was informed that the applicant's mother believed that the reason why the applicant missed the second appointment was that he was still suffering from flu. That explanation was found to be insufficient by the District Judge and he offered the same two choices to the applicant and when that was done, counsel on his behalf indicated that he wished to proceed to sentencing. Following further evidence, the District Judge imposed a sentence of 30 days detention. An application was brought thereafter for an inquiry pursuant to Article 40.4.2 of the Constitution of Ireland. Two grounds were relied on in respect of that application, namely, that the District Judge did not have a probation and welfare report before imposing sentence as provided for ins. 99(1)(b) of the Children Act 2001, and, further, it was submitted that the sentence imposed was one which did not comply with the provisions of s. 96 of the Children Act 2001.

Peart J. then went on to consider the issue as to whether or not the probation officer's report before the District Judge was a report which fulfilled the requirements of s. 99 of the Act. He noted that there was nothing in the section that dealt with the consequences that would flow from a failure of the child to cooperate in the preparation of the report. He stated at p. 11 of his judgment as follows:-

> "Clearly the question of whether or not to adjourn the matter again when it was before him on the 1oth November 2009 was a matter for the exercise of a discretion. On that occasion the District Judge was not satisfied with the explanation, such as it was, in respect of the second missed appointment. This was a view that he was entitled to have, particularly, in my view, since the applicant was in court with his mother, and presumably knows beyond a mere belief, exactly what the reason, if any, was.
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> The District Judge could have adjourned the matter further if he was satisfied to do so. Instead he took the view that if there was to be such a further opportunity for the applicant's cooperation, or for a full and proper explanation to be provided, the applicant should be remanded in custody. That was a matter for his discretion, and is not something which is prohibited by any provision of the Act. One could well imagine that he may have been of the view that a week in detention would ensure that the probation and welfare officer who was to prepare the report would be in a position to interview the applicant."

Peart J. then went on to say:-

> "In my view he complied with s. 99 by adjourning the matter and remanding the applicant on bail for such a report. On the 27th October, 2009, he had a report, albeit one which indicated that because the applicant had been unable to attend on the 12th October, 2009, due to flu, and that he again failed to attend on the 19th October, 2009."

Peart J. noted that on the 27th October, 2009, the matter was again adjourned because it appeared at that stage that the applicant was in hospital and the matter was put back to the 10th November, 2009.

He continued at p. 12 of the judgment as follows:-

> "The report which he had in his possession on the 27th October, 2009 and again on the l0th November, 2009, was one which he had requested pursuant to the provisions of s. 99 of the Act. While that section goes on to provide for the purpose and content of such a report, there will always be situations where by reason of a lack of cooperation by the child or parent(s) the probation officer cannot complete a full report such as would have been contemplated by the District Judge and the Act. It is a matter for any particular judge in such circumstances to exercise a discretion as to whether it is reasonable to adjourn the case further. The exercise of that discretion by acceding to an application for a further adjournment is not dependent upon the probation officer stating in the report available that there is no chance of ever being in a position to assist the court, though clearly such a statement would be relevant.
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> In my view the report was one which the Judge was entitled to regard as one completed in accordance with his request under s. 99 even though there is nothing in the report which addresses the matters referred to in section 99. The fact that it did not contain that material was not explained to the satisfaction of the District Judge, and again that it is a matter within the discretion of the judge."

Counsel on behalf of the applicant submitted that that case was clearly distinguishable from the facts of the present case. In this case there had been a report. The probation officer in the report before the court, albeit prepared for different court proceedings, had requested an adjournment. It was further submitted that one of the problems that appears to have influenced the District Judge in this case was that he appeared to rely on the fact that the applicant had pleaded not guilty.

Counsel for the respondent in dealing with that particular decision relied also on a passage from the judgement of Peart J. at p. 13 in which he stated:-

> "These provisions (s. 99 and s. 96) set out broad principles which must guide a judge when dealing with an offending child. There is nothing to suggest that the District Judge in this case failed to have regard to these provisions. The fact that he may be considered by the applicant to have dealt with him harshly cannot of itself be sufficient to indicate that the District Judge failed to observe the requirement that the appropriate penalty to be imposed, or any further remand in custody, should take the least restrictive form that is appropriate, and that a period of detention should be imposed only as a last resort.
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> Such a requirement allows a measure of discretion to the judge, and it does not preclude a decision such as the one arrived at in this case, where clearly the judge considered the matter of cooperation, and also the nature of the offence and that he had no previous convictions. The fact that the applicant may consider the sentence to be unreasonable or severe does not mean that it is unlawful. As Mr Kennedy has submitted, the sentence passed is at the lower end of any possible sentence for that offence, if a sentence was to be imposed. While a sentence is not mandated, and other non-custodial penalties are provided for, these are matters for the exercise of a wide discretion by a District Judge. The applicant's remedy is to appeal the sentence imposed if he considers it to be excessive, and not to achieve his release on the basis that it was imposed unlawfully and without jurisdiction."

In the course of submissions and in particular in the written submissions furnished on behalf of the applicant herein, it was emphasised on his behalf that having regard to the scheme of the Act, a custodial sentence should be the last resort considered by the court in relation to sentence. To that effect I was referred to the provisions of s. 96 of the Children Act and in particular s. 96(2) of that Act and to the decision of the Court of Criminal Appeal (Fennelly J.) in *DPP v. Hand* [2010] I.E.C.C.A. 113. In that case Fennelly J. stated at p. 2 as follows:-

> "But Section 96 of the Children Act, among other sections of that Act, enjoin the court, in effect, not to impose detention sentences on children, that is people under 18, unless as a matter of last resort. Section 96 of the Act, as amended by Section 136 of the Criminal Justice Act 2006, lays down a number of criteria to which the court has to have regard but the most material one is that a period of detention should be imposed only as a measure of last resort. In addition, however, subsection (5) provides that, when dealing with a child charged with an offence, the court should have due regard to the child's best interests, the interests of the victim of the offence and the protection of society. Section 143 provides that a court shall not make an order imposing a period of detention on a child unless it is satisfied that detention is the only suitable way of dealing with the child."

That passage is a useful description of the policy contained in the Children Act 2001.

Having regard to that policy, it was urged on the court that in this case the learned District Judge had before him a report which was positive in that it made clear that the probation officer was willing to give the applicant a final opportunity to engage with the probation and welfare service. It was further submitted to the learned District Judge that the applicant in the meantime and in compliance with their recommendation, had engaged with Youtreach and had been accepted on their programme.

Finally, it was submitted on behalf of the applicant that although there was a report prepared for the 24th May, 2010, that report did not contain sufficient information to satisfy the requirements pursuant to the provisions of s. 99 as set out above. Complaint was made that there was nothing in the report to indicate the circumstances of the offences or the applicant's attitude to them. The offences with which the applicant had been before the court in relation to the original report were different in nature to those being dealt with by the learned District Judge. It appears from the papers before me that the offences being considered in the probation service report compiled for the hearing on the ih December, 2009, involved the use of a vehicle without an NCT certificate, the use of a vehicle without road tax, giving a false name and address, threatening abusive insulting behaviour in a public place, intoxication in a public place and resisting a garda. That is the information on the cover sheet of the report prepared for the ih December, 2009 and it is also the information on the interim reports including the report for the court on the 24th May, 2010. This, it was said, contrasted with the offences for which the applicant was sentenced on the 24th May, 2010, namely possession of stolen property and trespass. It was pointed out that the report of the 24th May did not contain anything indicating either the circumstances of the offences or the applicant's attitude to them.

By way of response, it was submitted on behalf to the respondent that there was compliance with the provisions of the Children Act in that there was a probation report before the court, namely, that of the 24th May, 2010. It was clear from that report what the applicant's attitude was, as there was a significant level of non cooperation on the part of the applicant throughout the process. It was pointed out that during the course of the hearing, the learned District Judge asked for a copy of s. 99 of the Children Act 2001, to determine whether he was obliged to order a probation report and having considered the provisions of the Act concluded that he was not required to order a probation report. In those circumstances it was submitted on behalf of the respondent that this was a

case in which the alternative remedy of appeal was more appropriate to be pursued, rather than proceeding by way of judicial review.

It was reiterated on behalf of the applicant that it was always the wish of the applicant to have an up to date probation report before sentence was imposed. It was on that basis that the application for an adjournment to await the preparation of a report which was in train for a court hearing on the list of July. Reference was made to the comment made by the learned District Judge when he indicated that he was not required to order a probation report. He referred to the fact that the applicant had contested the charges and said that the probation services would not be willing to deal with somebody who did not accept responsibility for his actions. It does not appear to be contested in the affidavit sworn herein by Garda Lambe, that such a comment was made.

Decision
The provisions of s. 99 and in particular s. 99(4)(b) of the Act are central to the application in this case. It is provided therein that it is not necessary to request a probation officer's report subject to the conditions set out therein being met. There is no dispute but that one of those conditions was met, i.e., that the applicant in this case was the subject of a report within the previous two years. Indeed, there were a number of reports on the applicant commencing with that of the 7th December, 2009.

I want to deal with the point made on behalf of the applicant in relation to the construction of section 99(4)(b)(ii). It was pointed out that the offences before the court on the 24th May, 2009, were different from those before the court on the 30th June, 2010. One might make the observation that the exact circumstances are necessarily different in respect of every different offence committed by an individual, but that is a somewhat trite observation. Insofar as the attitude of the child and circumstances of the offences are concerned, I think that it is difficult to lay down precise parameters as to what should be taken into account. I think that in any given case the issue as to whether there is similarity surrounding the circumstances of the offences concerned is a matter for the discretion of the judge or court dealing with particular offences. What is clear is that the learned District Judge in this case did have access to the charge sheets in relation to the offences which were the subject matter of the probation report prepared for the 24th May, 2010. It is difficult to see how it could not be a matter for the discretion of the court as to whether or not the circumstances of the offences were similar or different. On this point I would have to say that I think that a District Court judge dealing with matters of this kind must be afforded a wide degree of latitude in terms of the exercise of his discretion to decide whether or not circumstances of offences are similar. It seems to me as a matter of course that although the offences may well be different, it does not necessarily follow that the circumstances of the offences must by reason of that fact alone, be different. S. 99 speaks of the circumstances of the offences and does not in any way limit the situation in which a report is required to those cases in which the offences are the same or similar. Thus, it is important to bear in mind that it is the circumstances of the offence that are required to be similar and not the offence. The fact that someone has committed an offence which is different does not mean that the circumstances in which the offence was committed are not similar. An individual may commit a myriad of different offences, but the surrounding circumstances may be the same in that, for example, the individual is committing offences for the purpose of supporting a drugs habit. Thus, while the actual circumstances surrounding the commission of an offence will necessarily be different, there may be common themes or threads running through the commission of different offences. For that reason it seems to me that in considering whether the circumstances are similar, a court has considerable latitude, and must have, in deciding if the provisions of s. 99(4)(b)(ii) are met. In those circumstances I do not think it could be said that the decision of the learned District Judge could be attacked on the basis that the circumstances in this case are not similar to those dealt with in the probation report.

The role of a probation report in cases such as this is important and, as is clear from the Act, can have an important bearing on the issue of whether or not to impose a custodial sentence. The scheme of the Act makes it clear that a custodial sentence should be the last resort. A report will usually set out details of an offender's background, their history of offending, if any, issues in relation to substance abuse, if any, the attitude of the offender to offending in general and the circumstances of the particular offence or offences concerned. There may be other relevant issues covered by the report, such as the level of education of the offender, the employment status of the individual concerned and so on. Recommendations will then be made with a view to lessening the risk of re-offending such as supervision, drug or drink abuse counselling and treatment and so on. Many other relevant issues may be dealt with in the course of a report, too numerous to mention. A probation officer's report is a useful and important tool in informing a court as to the appropriate sentence to be imposed on a convicted person whether custodial or otherwise. Nonetheless, it goes without saying that a court does not have to accept the recommendations of the probation officer's report.

The probation officer's report is prepared at the request of a court. It is provided to the court that made the request for the report. That court then makes the report available to the representatives of the prosecution and the defence. It is common place for the representatives of an accused person who has the benefit of a probation report in one court to provide that report to any other court that may be dealing with the same accused person. Indeed, so common place is this that it could be said to be the invariable practice. In this case, it is clear that the learned District Judge had access to the report of the 24th May, 2010. It is not clear, for the reasons explained above, whether or not he had any of the earlier reports. The report of the 24th May, 2010, was not prepared for the court hearing on the 301h June, 2010, but was prepared for other proceedings.

There is no suggestion whatsoever that the applicant in this case or his representatives were in any way precluded from producing to the court any other probation report to the learned District Judge.

The nub of the issue in this case seems to me to be that the report of the 24th May, 2010, albeit prepared for a different court in respect of other offences, recommended that the other proceedings be adjourned to allow for further engagement by the applicant with the probation service and with Youthreach. The other proceedings were adjourned and a further report was due to be furnished to that court on the 6th July, 2010. The learned District Judge herein decided not to accede to the request to adjourn the proceedings before him to await the further report due in respect of the applicant on the 6th July, 2010. It was completely within the discretion of the learned District Judge to adjourn the proceedings before him if he saw fit or to dispose of the matter. He chose to dispose of the matter and as that was a decision he was entitled to make, I can see no basis for quashing the decision. As I have already pointed out, the learned District Judge was not bound to follow the recommendation contained in the probation report.

I have considered all of the arguments put before the court in relation to this matter and it is my view that this is not a case in which the relief sought should be granted. The matters raised on behalf of the applicant seem to me to be matters that are more germane to an appeal as opposed to judicial review. In all the circumstances, I will refuse the relief sought herein.