Neutral Citation Number: [2011] IEHC 261

THE HIGH COURT

2010 86 JR

BETWEEN

SHARON BUCKLEY

APPLICANT

AND

DISTRICT JUSTICE WILLIAM HAMILL,

SUPERINTENDENT OF AN GARDA SÍOCHÁNA OF LUCAN GARDA STATION AND THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

Judgment of Mr. Justice O'Keeffe delivered on the 15th day of April, 2011

1. This is an application for an order of *certiorari* quashing the purported orders of the first named respondent of 12th August, 2008 and/or 28th September, 2009, reissuing warrants of execution against the applicant or in the alternative quashing the said warrants. An injunction was sought restraining the respondents from acting on foot of the warrants. A declaration was also sought that the failure of the respondents to execute the said warrants against the applicant was contrary to natural and constitutional justice and/or in breach of fair procedures.

2. The grounds upon which relief was sought are as follows:-

> "(i) The impugned order(s) re-issuing the impugned warrants infringe the provisions of the Courts (No. 2) Act 1991. These provisions state:-
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> > 1(1) Subject to *subsection* (2) of this section, in all cases of summary jurisdiction whenever an order has been made, upon the conviction of any person for an offence, for the payment of a penal sum or the performance of a condition and the penal sum has not been paid or the condition has not been performed, a warrant of committal to imprisonment for the non-payment of the penal sum or the non-performance of the condition may be issued by a justice of the District Court –
> >
> > (a) not later than six months from the expiration of the time fixed by the said order for the payment of the penal sum or the performance of the condition where –
> >
> > (i) the said order was made after the passing of this Act, or
> >
> > (ii) the said order was made before the passing of this Act and the time for the payment of the penal sum or the performance of the condition expired after the passing of this Act, and
> >
> > (b) not later than six months after the passing of this Act, where the time for the payment of the penal sum or the performance of the condition expired not earlier than the 1st day of July, 1989, and not later than the day before the passing of this Act.
> >
> > (2) This section shall apply notwithstanding either –
> >
> > (a) the references in section 23 of the Petty Sessions (Ireland) Act, 1851, to the times for the issue of any warrant, or
> >
> > (b) the issue before the passing of this Act of any warrant under the said section 23 for the non-payment of a penal sum or the non-performance of a condition."

3. In an affidavit on behalf of the applicant, Ms. Áine Flynn, Solicitor, stated that there were then twelve penal warrants of execution liable for execution against the applicant, these warrants having been obtained from the gardaí by the applicant's uncle, her solicitor in or around 28th October, 2009.

4. Five of these grounds related to summonses in respect of motoring offences which took place on 3rd June, 2006 and which were dealt with by the District Court on 16th May, 2007, in respect of which various fines were imposed upon the applicant to be paid within 28 days and in default of which imprisonment for a period of 28 days. Warrants of execution (to commit in default of payment of penalty) were issued by the District Court on 19th October, 2007, in respect of these convictions. Each of these warrants were reissued for a period of six months from 12th August, 2008 by Judge Hamill and such warrants were again reissued by Judge Hamill on 28th September, 2009 for a further period of six months from such date.

5. Six were in respect of motoring offences which occurred on 31st August, 2006, were heard by the District Court on 7th August, 2007 and in respect of which fines were imposed to be paid within a period of 90 days, and in default of which a period of imprisonment was imposed. Warrants of execution in respect of each of the charges were issued on 10th January, 2008 in respect of each of such charges. On 12th August, 2008, each of such warrants was reissued for a further period of six months from such a date by Judge Hamill and this was again renewed for a period of six months from 28th September, 2009, by Judge Hamill.

6. On 11th December, 2008, the applicant was convicted of a further motoring offence which took place on 18th November, 2007, and was ordered to pay a fine of €150 within 30 days. In default of payment he was imprisoned for five days unless such mentioned sum be sooner paid. A warrant of execution to commit the applicant was issued on 30th March, 2009. The warrant was reissued for a period of six months from 28th September, 2009, by Judge Hamill.

7. Ms. Flynn stated that she was informed by Mr. Charles Kelly, Solicitor, then acting for the applicant, that he sent a cheque in the sum of €150 on 3rd November, 2009, so as to discharge the fine of €150 imposed on 11th December, 2008 above referred to. The cheque was returned to him with a note from the gardaí that it was being returned because "*Sharon (that is the applicant) feels that attending at Mountjoy might be a better solution to her dilemma*". She said that Mr. Kelly confirmed to her that the gardaí had apparently suggested to the applicant that if she was to be lodged in Mountjoy Prison in respect of the matters she could expect to be released on temporary release very readily.

8. It is stated the applicant is of very limited means and unable to pay the sums imposed. Her solicitor stated that she did not take any steps in relation to the outstanding fines until she was contacted by a Garda Michael O'Keeffe now retired but at the time, the fines officer at Leixlip Garda Station.

9. Her solicitor stated that she was instructed that when the applicant became aware that the penal warrants were outstanding against her, she took initial steps to lodge appeals that she had attended at the office in the Richmond Courts and filed an application to extend time to appeal. She did not attend court to make the application to extend time as she was unwell. The applicant is a recovering drug addict. The applicant believed that Garda O'Keeffe contacted her again by telephone after his initial contact with her.

10. The applicant was not in court on any of the days when the fines were imposed.

11. It was stated that on Garda O'Keeffe's retirement, Garda Rowland of Leixlip Garda Station dealt with the execution of the warrants and first contacted the applicant around June/July 2009 when he called to her home. She stated she asked him if it would be possible for her to pay off the outstanding fines in instalments of approximately €100 *per* week but Garda Rowland replied that he doubted whether the applicant would be able to keep such repayments. Her solicitor stated that she asked him at least to let her try but heard nothing further about that proposal and at that time, her uncle, Mr. Charles Kelly, Solicitor, made contact on her behalf.

12. She stated that before Christmas 2009, Garda Rowland advised her that he could expect to be arrested on the penal warrants before the end of January 2010. He spoke to her again by telephone on 22nd January, 2010 and advised her that he would arrest her on 29th January, 2010.

13. Garda Rowland stated in an affidavit that he became involved in the case from August 2009, following the retirement of Garda O'Keeffe. In respect of the renewal of the eleven warrants by Judge Hamill on 12th August, 2008, he said he obtained from the Courts Service a document relating to such application. It was on a standard form, entitled form 26.4 described as Certificate as to Non-Execution of Warrant. It was dated 12th August, 2008, and was signed by Michael O'Keeffe. It stated in handwriting:-

> "Sharon Buckley applied to the courts on 8th May to have these cases appealed. It would appear that she did not go ahead with the appeals. I request that the warrants be reissued as they are out of date."

14. Garda Rowland stated that it would appear that the reason of the non-execution of the warrants and the application to reissue such warrants was that it was believed that the applicant was seeking to appeal the underlying convictions.

15. Garda Rowland referred to three applications being made by the applicant between 29th October, 2008, and 10th December, 2008 to set aside the convictions which he stated in themselves did not refer to the dates of the convictions that led to the impugned warrants and that he was unaware that these applications were moved.

16. He said that having taken up the position of warrant officer in August 2009 in Leixlip, he attended at the applicant's home in August 2009 and explained to her that if she was unable to pay the full amount of the fines of €4,600 that he would be applying to have the warrants reissued and executed against her by lodging her in prison. Sometime after this he was contacted by Mr. Kelly, solicitor on her behalf and he explained what the position was.

17. He said that on 20th August, 2009, he made an application to reissue the warrants. He set out in a certificate the following details, which formed the basis of the application:-

> "Sharon is aware of the penal warrants that exist for her at Leixlip station. She (+ her solicitor Charles Kelly) have assured me that when the warrants reissue she will give herself up to the gardaí to have these warrants dealt with + executed against her"

18. He said that all twelve warrants including the single offence were reissued for six months on 28th September, 2009 by Judge Hamill.

19. On 28th October, 2009, he faxed copies of the twelve warrants to Mr. Kelly. Mr. Kelly had stated that he would be in a position to deal with the warrants on behalf of the applicant. He, Garda Rowland, took this to mean that the applicant would pay the fines due, make herself available for execution of the warrants or have the matters appealed.

20. In relation to his conversation with the applicant in November 2009 when she stated that she thought that she might be able to pay €100 *per* week, he informed the applicant that he was unwilling to accept partial payments. He advised her that if he could accept partial payments which he could not, it would take a long time to discharge the debt. He referred to this conversation with her in August 2009 in relation to the warrants and that no attempt had been made by the applicant to pay the fines since then. He said that in November 2009, he had made the position perfectly clear to her and that there was nothing to go back to her about.

21. He received the €150 from Mr. Kelly on 3rd November, 2009, for payment of one of the fines. He informed Mr. Kelly and the applicant that he required €4,600 payment for all the fines and that the sum of €150 was insufficient to deal with the warrants in their entirety. As there was no indication from either of them as to how the balance of €4,450 was to be paid, he returned the cheque.

22. In relation to the applicant stating that the gardaí returned the cheque with a written note as follows:-

> "Sharon feels that attending at Mountjoy might be a better solution for her dilemma."

He said that he has no recollection of such a note. He said that when the applicant discussed her options with him, he explained to her that due to pressure of places in prison, a person in her position was likely to be released quickly and that such comment a may well have been made by him.

23. He said that when he attended the applicant's house in November 2009, for the purpose of arresting her and bringing her to Mountjoy Prison if she was unable to pay the fines, she had expressed anxieties about going to prison and about what would happen to her family. She asked not to go to prison prior to Christmas but said that she would make herself available after Christmas to be arrested and lodged in Mountjoy and on this basis he agreed not to execute the warrants prior to Christmas. He told her that it was his experience in executing penal warrants that it would be unusual for a person to have to serve their full number of days due to the pressure on prison spaces. He said that at all times he was seeking to assist her whilst at the same time complying with his duty to execute the warrants. The applicant suggested a lack of action on his part. On the contrary, it was the applicant who had asked that the matter be delayed.

24. He said he subsequently informed Mr. Kelly that he would not execute the warrants before Christmas on foot of the applicant's agreement to make herself available after Christmas. He stated that there was no reference to this agreement by the applicant in any of the papers before the court for obtaining leave to bring these proceedings.

25. He said that he again spoke to the applicant in January 2010, the date of which he could not recall and he told her he would execute the warrants on 29th January, 2010. He said that he informed her that if a prior date was more convenient that he would facilitate her in this regard. He explained to her that she had been given ample time since he had brought the warrants to her attention in August 2009.

26. On 28th January, 2010, the applicant sought and obtained leave to bring this application for judicial review.

27. He said it was the practice of the gardaí to try and facilitate someone which such person says he/she is bringing an application to extend time to appeal (a conviction) or when they say that they wish the execution of the warrant to be delayed over a particular period time such as Christmas. He asserted he acted in a *bona fide* manner in an attempt to deal with the matter fairly and in accordance with law.

28. In a replying affidavit, the applicant denied agreeing with Garda Rowland that once the warrants were reissued she would surrender herself to the gardaí. She told Garda Rowland that she wanted to stay out of prison and made offers to pay in instalments. No undertaking was given by her to make herself available after Christmas 2009 to be lodged in prison. She did ask Garda Rowland to hold off on arresting her over the Christmas period. She said that Garda Rowland had indicated to her that he would refer back to her about her proposal to pay by instalments.

29. In respect of €150 paid by her uncle, Mr. Kelly, this was not a down payment on the fines but was in respect of the most recent fine arising from the sole charge and should have led to the cancellation of such warrant.

30. She accepted that she spoke to Garda Rowland in January 2010 and asked him not to lodge her in prison.

31. She recalled Garda Rowland saying to her he would not stand in the way of any objections which she wished to make to the execution of the warrants.

32. Mr. Kelly swore on affidavit. He said that on 3rd November, 2009, he wrote to Garda Rowland enclosing a cheque for €150 to cover the fine imposed in respect of warrant No. 543708 which arose from the single offence conviction. The same was subsequently returned by Garda Rowland. The letter written by Garda Rowland stated:-

> "In relation to the above, I am returning the cheque for €150 as agreed. Sharon feels that attending Mountjoy (female prison) might be a better solution to her dilemma. Many thanks, I will keep in touch and inform you of any action I take regarding these penal warrants."

33. On 3rd November, 2009, Mr. Kelly wrote to Garda Rowland asking what evidence was laid before Judge Hamill on 12th August, 2008 and on 28th September, 2009 to justify the reissuing of the warrants and what attempts were made to execute the warrants before they were reissued in August 2008 and in September 2009.

34. In a replying affidavit, Garda Rowland stated that he had no recollection of the applicant advising him of any intention to bring proceedings regarding any of the warrants. The communications he had with her were that she would make herself available to be arrested and lodged. He said at all times he made it clear to the applicant that there was no point in paying in instalments since unless the amount of all of the warrants was cleared she would still have to be arrested and lodged in prison. He believed that the applicant fully understood this.

Statement of Opposition

35. The statement of opposition contends that the applicant is not entitled to relief by reason of delay in circumstances where the orders were made on 12th August, 2008 and 28th September, 2009 and the application for leave was not moved until 29th January, 2010. It is further contended that there was non-disclosure by the applicant in failing to say that the gardaí held off executing the warrants as the applicant was seeking to appeal the underlying convictions and secondly, that the warrant would be executed at a time that was convenient for the applicant.

36. It is further contended that she is not entitled to relief because of her conduct in failing to pursue her applications to extend time within which to appeal the underlying convictions and in asking the gardaí to hold off executing the warrants and then seeking judicial review.

37. It is further contended that she is not entitled to relief as the gardaí refrained from executing the warrants on her express promise to make herself available in January 2010 for execution of the warrants. Having obtained such a benefit from the gardaí on the strength of her promise. She was not entitled to judicial review.

38. It was denied that the reissuing of the warrants infringed the provisions of the Courts (No. 2) Act 1991. It was denied the warrants were not reissued from the appropriate court and it was denied that the respondent erred in law in reissuing the warrants. It was denied that the failure of the second respondent to execute the warrants was contrary to natural or constitutional justice or in breach of fair procedures.

Applicant's Delay

39. Following his appointment as warrant office, Garda Rowland contacted the applicant and told her that if she was unable to pay the full amount of the fines of €4,600 that he would be applying to have the warrants reissued and executed against her by lodging her in prison. The warrants were reissued by Judge Hamill on 28th September, 2009. On 28th October, 2009, Mr. Kelly requested

copies of the warrants. During the month of November 2009 Garda Rowland spoke to the applicant informing her that he could not accept partial payments. This appears to be the earliest time of engagements by or on behalf of the applicant following Garda Rowland's involvement commencing.

40. The application commenced on 28th January, 2010. In the circumstances I do not think there was delay on the part of the applicant's sufficient to disable her from brining this application. I do not know what information the applicant had in relation to the orders of 12th August, 2008.

Non-Disclosure by the Applicant
41. In the statement of opposition, it is claimed the applicant is not entitled to relief by way of non-disclosure of the reasons why the gardaí held off executing the warrants firstly on the basis that the applicant was seeking to appeal the underlying convictions and secondly the fact that the gardaí were assisting the applicant in ensuring that the warrants were executed at an appropriate time for the applicant.

42. Ms. Flynn, in her affidavit on behalf of the applicant refers to the applicant attending at the offices in Richmond Courts and filing an application to extend time to appeal. She did not attend. This seems to be a reference to events in October 2008. Ms. Flynn says that she instructed by the applicant that throughout all of the contacts with the gardaí, neither Garda Rowland nor Garda O'Keeffe attempted to arrest her in execution of the warrants.

43. I accept the submissions of the respondent that the impression is conveyed in Ms. Flynn's affidavit that there was only one application to extend time. It was not proceeded with. From the affidavit of Garda Rowland, it appears that there were at least three applications for extension of time to appeal the orders. This information should have been disclosed. No cross examination of Garda Rowland was sought.

44. Ms. Flynn at the conclusion of her affidavit on behalf of the applicant states that throughout all of the contacts with the gardaí (Garda Rowland and Garda O'Keeffe) neither of them attempted to arrest her in execution of the warrants. There has been no cross examination of Garda Rowland. At the time of making the application to the court, the applicant was seeking to convey the impression that the gardaí had failed in their duty to execute the warrants whereas in fact Garda Rowland asserts that he was trying to convenience the applicant as best he could, admittedly against the background that he could not accept her proposal to pay the fines by way of instalments. The onus is on the applicant to establish any factual matters which are put in the issue. Garda Rowland has challenged the evidence of the applicant on many fronts and in the absence of the applicant discharging the onus, the evidence of the garda has not been contradicted.

45. There should have been disclosure by the applicant of these matters to the court when the application was first made.

46. I accept the respondent's submission that the failure to put all relevant material before the court on making the application for leave may justify the leave order being set aside. (*Adams v. Director of Public Prosecutions* [2001] 2 ILRM 401 at 416).

Challenge to the Validity of the Warrants
47. The respondent submits that the Statement of Grounds does not sufficiently identify the precise basis of the challenge brought to the legal validity of the warrants. In particular, counsel for the respondent (Mr. Paul Anthony McDermott, B.L.) referred to the decision of the Supreme Court in *A.P. v. Director of Public Prosecutions* [2011] IESC 2 where Murray C.J. stated that in the interests of the good administration of justice, it was essential that a party applying for relief by way of judicial review set out clearly and precisely each and every ground upon which such relief is sought. The same principle he said applied to the various reliefs sought. He said:-

> "In short it is incumbent on the parties to judicial review to assist the High Court, and consequentially this Court on appeal, by ensuring the grounds for judicial review are stated clearly and precisely and that any additional grounds, subsequent to leave being granted, are raised only after an appropriate order has been applied for and obtained."

48. The respondent refers to para. (e)(i) of the Statement of Grounds which alleges that the reissuing of the warrants infringed the provisions of the Courts (No. 2) Act 1991 and then set out the text of the provision. The text of s. 1 of the Act is then set out in the Statement of Grounds. The respondent submits that the Statement of Grounds does not throw any light as to why specifically the applicant says there has been a breach of this section. During the course of their submissions, counsel for the applicant (Feichin McDonagh, S.C and Niall Nolan, B.L.) suggested that as a result of the provisions of s. 1(1) of the 1991 Act the warrant which was reissued was in effect a warrant issued by the District Court and was governed by the time limit set out in the section. They submitted that the District Judge had no jurisdiction to issue warrants on either 12th August, 2008 or 28th September, 2009 as both dates were beyond the six month period circumscribed by the Act for this purpose. Although "re"-issued, the warrants were clearly "issued" within the meaning of s. 1(1) of the Act of 1991 and one of the two dates, both outside the relevant six month period.

49. In my opinion, it is difficult to infer from a reading of the ground including the reference in its totality to the statutory provision set out in the section that this was the precise ground being relied upon. There should have been greater clarity in expressing the grounds of challenge, as stated by Murray C.J. in the *A.P.* case.

50. In oral submissions, the applicant's counsel relied upon the decision of MacMenamin J. in *Daly v. Judge Coughlan and Director of Public Prosecutions* [2006] IEHC 126 for the proposition that the onus was upon the State to demonstrate that the reissue of warrants was lawful (having regard to the peculiar knowledge principle as set out by Henchy J. in *Hanrahan v. Merck Sharp and Dohme*) and that the applicant could have been put on notice of the application to reissue. Counsel submitted that these grounds were covered by the existing grounds (iv) – (vi) of the Statement of Grounds. I do not accept that such grounds are adequate to cover the submissions advanced at the hearing by counsel for the applicant, having regard to the decision in the *A.P.* case.

51. In any event, I reject the submission made by the applicant in relation to the use of the words "*re-issued*" and "*issued*". I do so on the basis of the ordinary meaning of the words and also supported by the judgment of the Supreme Court in *The State (McCarthy) v. Governor of Mountjoy Prison* (Unreported, 26th October, 1967), later referred to in this judgment, where each of these words is considered as being different.

Execution of Warrants
52. It is claimed by the applicant that nothing is disclosed on the warrants providing a basis for the reissuing of the warrants. In this Court's opinion, the certificate of Garda O'Keeffe dated 12th August, 2008, and that of Garda Rowland of 20th August, 2009, are sufficient. I am satisfied that the reissuing court does not have to be the same court of the District Court as originally issued the warrants of execution (see the interpretation section of the District Court Rules).

53. It is contended that the first respondent erred in law in not having regard to the provisions of O. 26, r. 11 of the District Court Rules 1997 (as amended) in that there was no or insufficient evidence that the applicant could not be found by any members of An Garda Síochána. This rule provides for the reissuing of a warrant where a warrant is addressed, transmitted or endorsed for execution to any person and he/she is unable to find the person against whom the warrant has been issued or to discover where that person is or where he or she has goods, such a person having the execution of the warrant shall return the warrant to the court which issued the same and the court may reissue the said warrant, after examining any person on oath if the court thinks fit to do so concerning the non-execution of the warrant.

54. There has been a failure on the part of the gardaí to comply with O. 26, r. 11 as it was not a case of gardaí being unable to find the applicant. The respondent in turn refers to the District Court Rules, O. 12, r. 25 which provides that:-

> "Any non-compliance with any of these Rules shall not render any proceedings void."

55. It is to be noted that this particular rule has not been invoked by the judge making the orders.

56. Order 26 (S.I. No. 203 of 2007) is in substantially the same terms as Rule 78 of the District Court Rules referred to in the next paragraph.

57. The respondent referred to *The State (O'Hanlon) v. Hussey* (High Court, 5th May, 1986) where the court held that the reissue of a warrant was valid notwithstanding that the application was not made to a District Justice within the period of six months referred to in r. 78 of the District Court Rules. The court relied on the decision of the Supreme Court in *The State (McCarthy) v. Governor of Mountjoy Prison* (Unreported, 26th October, 1967) where the Supreme Court dealt with the similar problem.

58. In his judgment he stated:-

> "Chief Justice Ó Dálaigh with whose judgment the other members of the Supreme Court agreed, dealt in McCarthy's case at p. 8 et seq., of the written judgment, with a similar problem to that which arises for consideration in the present case, with reference to the validity of a warrant which the District Court purports to reissue after the period of six months referred to in Rule 78 of the District Court Rules has elapsed.

He concluded that the stipulation that the application for reissue of the warrant should be made at least within six months from the original issue of the warrant should be regarded as directory merely and not as mandatory and that the District Justice continued to have jurisdiction either to issue a new warrant or to re-issue an old one even thought a warrant had previously been issued and had not been executed for over six months from the date of issue. In reaching this conclusion he applied the judgment of the Divisional Court in *R. (Shields) v. JJ of Tyrone*, (1914) 2 I.R. 89, in which the Court has treated the provisions of Sec. 33 of the Petty Sessions Act as directory and not mandatory, and the Chief Justice went on to hold that the same reasoning was applicable in the case of Rule 78 of the District Court Rules as had been applied by the Divisional Court when considering Sec. 33 of the Petty Sessions Act. He said (at p. 12):-

> 'The District Justice's power to reissue an original warrant is in no way curtailed by the rule. The rule does impose a duty on the bailiff. It also indicates when a warrant is stale; but it effects no limitation on the power of the court to see that its orders are executed whether by means of a reissued warrant or a new warrant.'"

59. The Chief Justice also stated at p. 11 of *McCarthy's* case:-

> "Clearly a District Justice may reissue an original warrant which has been returned with endorsement within the time specified.
>
> Why not also outside such time and independent of whether or not the bailiff has been in default? The purpose of the warrant is to execute the Court's order; the bailiff's default is (unclear text) and the bailiff's superiors. But the court's duty and power to see if its orders are executed can be in no way dependent upon the default of a third party. The party against whom execution has not yet been made suffers no hurt: rather has he enjoyed what can be described as an unwarranted respite. A new warrant would be appropriate when the original warrant has been destroyed or lost and also, although not necessary so where a new bailiff is chosen. But in all other cases reason and principle, economy and dispatch, indicate that the original warrant should be reissued."

60. I conclude that the provisions of the District Court are directory and not mandatory as was decided by Ó Dálaigh C.J. in the *McCarthy* case when applied the reasoning of the Divisional Court in *R. (Shields) v. JJ of Tyrone*. The failure to comply with O. 26, r. 7 and r. 11 is not fatal to the orders made by the respondent.

Delay and Execution of Warrants

61. The applicant has submitted that there has been a delay in the execution of the court's warrants. Reliance was placed on the decision of the Supreme Court in *Cormack v. DPP* [2009] 2 I.R. 208. This case concerned delays in the issue of a bench warrant. It was decided, *inter alia*, in that case that an applicant should not be granted relief where he himself had contributed to the delay in executing a warrant nor should the gardaí automatically be assumed to be in default in relation to any delay. As I have already stated, the gardaí have put in issue the applicant's account of the reasons for the delay in executing the warrants. This has not been challenged by way of cross examination by the applicant. Without deciding on the precise issue as between the applicant's oral testimony and that of Garda Rowland, the evidence of Garda Rowland appears more consistent on this issue than that of the applicant, namely that it was to convenience the applicant for the reasons stated that the delay occurred following the appointment of Garda Rowland to execute the warrants. I therefore reject the applicant's submissions under this heading. I also conclude that the stance taken by Garda Rowland that there could not be payment by instalments was reasonable in the circumstances.

62. In conclusion, I am not satisfied the applicant has made out any case for relief.

63. As *certiorari* is a discretionary remedy, the lack of engagement by the applicant with all the facts from the outset of the application would disentitle the applicant to relief.