

THE HIGH COURT

2019 No. 139 SS

IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLE 40.4.2 OF THE CONSTITUTION OF IRELAND

BETWEEN:

BEN GILROY AND JERRY BEADES

Applicants

– AND –

THE GOVERNOR OF MOUNTJOY PRISON

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 12th February, 2019.

1. The task of the High Court in Art.40 applications was described as follows by the Denham CJ in *Ryan v. Governor of Midlands Prison* [2014] IESC 54:

"13. The Court follows and applies the statement of law given in FX v Clinical Director of the Central Mental Hospital [2014] IESC 1, where it was stated at paragraphs 65 and 66:- '65. In general, if there is an order of any court, which does not show an invalidity on its face, then the correct approach is to seek the remedy of appeal and, if necessary, apply for priority. Or, if it is a court of local jurisdiction, then an application for judicial review may be the appropriate route to take...[W]here an order of the court does not show...invalidity on its face, the route of...habeas corpus is not the appropriate approach. 66. An order of the High Court which is good on its face should not be subject to an inquiry under Article 40.4.2 unless there has been some fundamental denial of justice. In principle the appropriate remedy is an appeal to an appellate court, with, if necessary, an application for priority.'"

2. The Supreme Court's decision in *Ryan* is obviously binding on this Court. So the first question to be addressed is whether there is any invalidity on the face of the Order of Committal of 16.01.2019 (the 'Order') (certified by the Deputy Governor of Mountjoy Prison on 04.02.2019 as being the order pursuant to which Mr Gilroy has been detained). The Order is addressed to the Commissioner and members of An Garda Síochána. It details Mr Gilroy's criminal contempt, the operative part then providing that "You are hereby commanded to arrest...Ben Gilroy and...lodge him in Mountjoy Prison there to be detained for a period of 3 months ...". Three concerns were raised concerning the face of the Order:

(1) it does not mention that Mr Gilroy is to be detained by the Governor of Mountjoy Prison. In *Carroll v. Governor of Mountjoy Prison* [2005] 3 IR 292, 297, Peart J. observes that "[T]he fact that the warrant to arrest is directed to the superintendent, An Garda Síochána and commands the arrest of the applicant and his lodgement in Mountjoy Prison is a sufficient authority to the governor of that place to receive him for the purpose of undergoing the sentence of the court." That finding, binding on this Court, has the result that the fact that the Order does not mention that Mr Gilroy is to be detained by the Governor of Mountjoy Prison does not fall at law to be treated as a flaw.

(2) it has been wrongly endorsed by the member of An Garda Síochána who brought Mr Gilroy to Mountjoy Prison. The following handwritten and signed endorsement appears on the Order: "Executed warrant by lodging Ben Gilroy in Mountjoy Prison on 17th January 2019". No issue was raised as to the struck-out year. What was raised in issue was the mention of "17th January". This has been explained on affidavit by the relevant Garda as a human error; it should have read '16th January'; and that Mr Gilroy was lodged on 16.01.2019 is borne out by a Mountjoy Prison computer record exhibited in evidence before the court. So the mistaken reference to "17th January" has been explained away.

(3) it names the wrong plaintiff. Even if the wrong plaintiff is named in the title to the proceedings ("*Allied Irish Banks plc*" versus "*Allied Irish Banks, plc*" which it was submitted are two different institutions), it was not disputed that the record number is correct, nor is it disputed that in proceedings bearing that record number the committing judge found Mr Gilroy guilty of criminal contempt. So if there is a flaw in the name of the financial institution that is party to the proceedings it is not a fatal flaw.

3. A number of further points were raised, in effect claiming a fundamental denial of justice to Mr Gilroy. These points focused in part on the committing Judge's conduct of the substantive proceedings, a matter more properly for appeal. Two further points arose:

(1) Mr Gilroy claims that when he was brought from the court to the Garda station on 16.01.2019, he asked whether he was under arrest and was told that he was not under arrest but neither was he free to leave. Counsel for the Governor indicated that what happened to Mr Gilroy in this regard is no different from what happens to however many people are sentenced to imprisonment each week: sentence is pronounced, the prisoner is led away, and the relevant documentation issues thereafter. Why is this process legally unobjectionable? It seems to the court that it is because a judge's order takes effect once uttered in court; the documentation that follows is but the formalisation of such order; as a result, the prisoner is at all times detained pursuant to a lawful court order.

(2) it was suggested that a different committal process used to operate before a now retired judge of the Court of Appeal (when a High Court judge). That judge, it is claimed, would allow time between the order for, and the effecting of, committal. Sometime in 2017, it is claimed, this process changed and the type of process to which Mr Gilroy was exposed came into play. Whatever the previous practice of another High Court judge (even a number of High Court judges) may have been, it does not follow that a difference in approach on the part of the committing judge here (a) represents a change in the law or (b) is inconsistent with law. Two judges can approach matters differently; one may take a rigorous approach to achieve a particular end, another may consider that a more nuanced approach suffices to reach the same end (and it may); yet both can still be acting in conformity with law; that is the nature of individual judgment.

4. For the above reasons, the court is coerced as a matter of law to conclude that Mr Gilroy's detention at Mountjoy Prison pursuant to the Order is in accordance with law.