

THE HIGH COURT

[2019 No. 66 SS]

IN THE MATTER OF SECTION 52(1) OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT 1961

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF GARDA JAMES CURTIS)

PROSECUTOR

AND

EUGENE MCLAUGHLIN

DEFENDANT

**JUDGMENT of Mr. Justice Twomey delivered on the 15th day of March, 2019**

1. This is a consultative case stated from Judge McHugh of the District Court. He asks:

"Notwithstanding Section 44 of the Road Traffic Act, 2010, do I have a residual discretion to dismiss the prosecution for speeding contrary to Section 47 of the Road Traffic Act, 1961, even though I have found the allegation proved, where I am satisfied that the accused did not receive actual notice of the fixed charge penalty notice (FCN)."

The answer to this question is No.

2. The judge does not have a discretion to dismiss the prosecution for speeding, where he has found the allegation proven.

3. The fact that the accused did not receive actual notice of the FCN does not alter that fact. This is because s. 44(10) of the 2010 Act makes clear that it is not a defence for an accused to show that he was not served with the FCN:

"Where a person served with a summons accompanied by a section 44 notice in respect of a fixed charged offence, it shall not be a defence for the person served with the summons to show that he or she was not served with a fixed charge notice in respect of the alleged offence in accordance with section 35."

4. In *Kennedy v. Gibbons* [2014] IEHC 67 at para. 26, Hogan J. made clear that where the Oireachtas makes mandatory the imposition of penalty points in regard to certain traffic offences, the District Court did not have a discretion to vary the penalty imposed:

"In the case of those traffic offences where the imposition of penalty points has been made mandatory by the Oireachtas via the enactment of the Road Traffic Act 2002 [.....] the District Court enjoys no jurisdiction to impose an informal sanction short of actual conviction such as accepting a donation to the poor box, as this would amount to an indirect circumvention of these statutory provisions"

5. Accordingly, in this case, the District Court does not have any discretion to dismiss the prosecution in this case.