THE COURT OF APPEAL

Finlay Geoghegan J.
Irvine J.
Mahon J.

[Appeal No. 2014/1433]

[Article 64 Transfer]

In the Matter of an Inquiry under Article 40.4 of the Constitution

Between

Damien McCabe

Applicant/Respondent

And

Governor of Mountjoy Prison

Respondent/Appellant

And

And In the Matter of Plenary Proceedings

Between

Damien McCabe

Plaintiff/Respondent

And

Ireland and Attorney General

Defendants/Appellants

And

The Director of Public Prosecutions

Notice Party/Appellant

Judgment delivered on the 22nd day of July 2015 by Ms. Justice Finlay Geoghegan

1. This appeal and cross appeal, raises once again interpretative difficulties of s. 99 of the Criminal Justice Act 2006. As recently observed by O'Donnell J. in the Supreme Court in *DPP v Carter* and *DPP v Kenny* [2015] IESC 20, at para. 1:

> "Section 99 of the Criminal Justice Act 2006 ('the 2006 Act') is an apparently innocuous procedural provision. It has already been amended twice in its short life (s. 60 of the Criminal Justice Act 2007, and s. 51 of the Criminal Justice (Miscellaneous Provisions) Act 2009). Nevertheless it has given rise to innumerable practical difficulties and problems of interpretation. . . . One thing is clear and beyond dispute: s. 99 is in need of urgent and comprehensive review."

2. The factual background to the High Court proceedings is as follows. Mr. McCabe was convicted in the District Court on the 24th June, 2013 of a road traffic offence, and sentenced to five months imprisonment. He appealed his conviction and sentence to the Circuit Court. On the 29th October, 2013, the Circuit Court upheld his conviction, but altered the sentence to one of six months suspended for a period of two years on conditions. On the 26th May, 2014, he was convicted of a public order offence before the District Court. He was then remanded to the Circuit Court pursuant s. 99(9) of the 2006 Act. On the 27th May, 2014, the Circuit Court made an order "that said suspension be revoked and [Mr. McCabe] shall serve the entire sentence of six months". Mr. McCabe was remanded in custody to the District Court on the 28th May, 2014, for the purpose of that court imposing sentence in relation to the public order offence. The District Court at the time of the High Court judgment had adjourned its decision as to sentence presumably by reason of the intervening High Court proceedings.

3. On the 28th May, 2014, the High Court (Hogan J.) made an order for an inquiry pursuant to Article 40.4.2 of the Constitution. The return of the Governor of Mountjoy Prison certified that Mr. McCabe was held pursuant to the committal warrant of the Circuit Court of the 27th May, 2014. The legality of Mr. McCabe's detention in the Article 40 application was challenged on three grounds: (1) that the word "convicted" in s. 99(9) of the 2006 Act, as amended, can only refer to a person sentenced by the District Court; (2) that the warrant was bad on its face and (3) that the absence of a right of appeal against the decision of the Circuit Court to reactivate the suspended sentence in the case of Mr. McCabe rendered s. 99 of the 2006 Act or parts thereof unconstitutional.

4. In the Article 40 application, in accordance with established principles Hogan J. initially decided the non constitutional grounds of challenge. In a judgment delivered on the 3rd June, 2014, he held against the applicant and in favour of the validity of the warrant in relation to grounds (1) and (2) above.

5. Thereafter it was suggested by the trial judge that rather than proceeding with a hearing in relation to the constitutional ground of challenge in the Article 40 proceeding, that separate plenary proceedings should be commenced on behalf of Mr. McCabe. This appears to have been by reason of the challenge to the validity of s. 99 and the provision for a case stated in such circumstances in Article 40.4.3. On the 3rd June, 2014, in the Article 40 proceedings, an order was made giving Mr. McCabe liberty to issue a plenary summons raising the constitutional issues already identified and staying execution on the committal warrant. Mr. McCabe was also admitted to bail on terms.

6. Plenary proceedings were commenced on behalf of Mr. McCabe against Ireland and the Attorney General on the 27th June, 2014. In those proceedings a declaration was sought that s. 99 was invalid having regard in particular to Articles 34.3.4, Article 38 and Article 40.1 of the Constitution. In addition a declaration was sought that the Oireachtas was obliged to enact legislation such as would have provided for an appeal against the decision from the Circuit Court made on the 27th May, 2014, activating the suspended sentence. The statement of claim expressly pleaded that the Oireachtas had not provided a right of appeal in respect of the order of the 27th May, 2014, and reference was made to s. 18(3) of the Courts of Justice Act, 1928. In the defence and in subsequent submission to the High Court, the only potential type of appeal identified as being available to Mr. McCabe in the circumstances in which the Circuit Court made its decision to activate the suspended sentence, was the provision made by s. 16 of the Courts of Justice Act, 1947, for a reference by the Circuit Court to the Supreme Court of a case stated on a question of law. It was not expressly pleaded, nor was a submission made to the High Court that Mr. McCabe had a right of appeal pursuant to s. 99(12) of the 2006 Act, to the Court of Criminal Appeal.

7. On the 30th September, 2014, Hogan J. delivered a written judgment in the plenary proceedings. He conveniently summarised his principal conclusions at paras. 53 to 56:

> "53. First, the starkly different treatment of the rights of appeal of convicted persons whose suspended sentence in respect of summary offences was originally imposed by the Circuit Court rather than the District Court is not objectively justifiable and amounts to a breach of the equality guarantee in Article 40.1. This is especially so given that s. 99(12) of the 2006 Act (as amended) pre-supposes that all such offenders will enjoy a right of appeal against the re-activation of such a sentence and as s. 99(10) makes it clear that such re-activation was not intended to operate automatically in every single case.
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> 54. Second, the failure to provide a right of appeal against the re-activation of a suspended sentence by a court of local and limited jurisdiction involves a failure to provide a right of appeal in the manner determined "by law" for the purposes of Article 34.3.4, at least, where, as here, no objective justification for such failure has been supplied. By failing to providing for such a right of appeal, the Oireachtas has failed to comply with fundamental constitutional norms in the sense identified by Henchy J. in *King v. The Attorney General* [1981] I.R. 233 and, more recently, by O'Donnell J. in *Murphy v. Ireland & Ors* [2014] IESC 19.
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> 55. Third, given the unconstitutionality which has been just identified relates not to what is contained ins. 99 of the 2006 Act, but rather to that which it does not contain, it would be both inappropriate and unnecessary to make a formal declaration of unconstitutionality invalidating s. 99 itself.
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> 56. Fourth, the plaintiff is nonetheless entitled to a real remedy to ensure that his constitutional rights are not further infringed. In these circumstances, adapting by analogy the solution devised by the Supreme Court in *Carmody* in respect of the unconstitutional legislative omission identified in that case, I propose to grant an order declaring that it would be unconstitutional to give effect to the re-activated sentence in the absence of a statutorily conferred right of appeal against the decision of the Circuit Court to re-activate the sentence."

8. As appears from the earlier part of his judgment, those conclusions were reached upon what appears to have been the agreed position between plaintiff and defendants that notwithstanding the terms of s. 99(12) of the 2006 Act, Mr. McCabe had no statutory right to appeal the decision of the Circuit Court to reactivate the suspended sentence to the Court of Criminal Appeal. At para. 9 of his judgment, the trial judge having set out s. 99(12) stated:-

> "9. The dilemma which was presented for the plaintiff was that as the suspended sentence in his case was imposed by the Circuit Court, the decision to re-activate that sentence was taken by that Court. The difficulty, however, is that in summary prosecutions, the decision of the Circuit Court on appeal is final and unappealable. There is, of course, a statutory right of appeal from the Circuit Court to the Court of Criminal Appeal, but this is in respect of prosecutions on indictment only: see s. 63 of the Courts of Justice Act 1924 and s. 31 of the Criminal Procedure Act 2010."

9. Later in the judgment having concluded that there was a constitutional right to appeal the decision of the Circuit Court to re-activate the sentence he expressly considered whether the provisions of s. 16 of the 1947 Act, and its case stated procedure met the constitutional requirement. He concluded that it did not at para. 25 of his judgment. This was the only available form of statutory appeal then relied upon by the defendants.

10. The only High Court Order following delivery of the judgment in the plenary proceedings, produced on appeal was an order made in the Article 40 proceedings which refers also to the plenary proceedings and the fact that both proceedings came on before the judge on the 30th September, 2014. The order refers separately initially to both sets of proceedings and then states:-

> "And the court being of the opinion in so adjudging that the said return to the Order made herein and dated the 28th day of May 2014 is insufficient to justify the detention of the Applicant as aforesaid.
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> IT IS ORDERED that the applicant be released forthwith from such detention.
>
> AND IT IS ORDERED That the within proceedings and the related plenary proceedings be consolidated."

11. An order was then made for the applicant to recover costs against the respondent including reserved costs and subsequent orders relating to a stay on the order for costs on certain terms. In the course of the appeal it was indicated that the intention of the trial judge was to consolidate the article 40 and plenary proceedings for the purposes of costs only. No issue arose in the appeal as to the entitlement of the High Court to consolidate an application under Article 40 of the Constitution with plenary proceedings.

12. I have recorded the form of order made because it is relevant to the relief to be granted on appeal.

Appeal

13. On the 24th October, 2014, the respondent in the Article 40 proceedings and defendants in the High Court proceedings appealed to the Supreme Court the judgment delivered in the plenary proceedings on the 30th September, 2014 and the order of the same date. The appeal was entitled in the consolidated proceedings.

14. By direction of the Chief Justice given with the concurrence of the other judges of the Supreme Court pursuant to Article 64 of the Constitution on the 29th October, 2014, the appeal was transferred to this Court.

15. The appeal came before Kelly J. in the Court of Appeal for directions on the 4th December, 2014. Counsel for Mr. McCabe indicated that they wished to serve a notice of cross appeal and were given liberty to do so. That notice of cross appeal was served on the 11th December, 2014, and in addition to seeking alternative relief and orders pursuant to the conclusions of the trial judge in the plenary proceedings, it also sought to cross appeal from the judgment of the trial judge delivered on the 3rd June, 2014, in the Article 40 proceedings. Mr McCabe was permitted to pursue the cross appeal.

16. Accordingly, at the hearing of the appeal before this Court, following full written submissions, there were two sets of issues. They were referred to as the constitutional issues and sub-constitutional issues. The former were the issues raised on the notice of appeal and notice of cross appeal in relation to the judgment of the trial judge in the plenary proceedings. The sub-constitutional issues were those raised by the notice of cross appeal in relation to the judgment of the trial judge in the Article 40 proceedings.

17. I read in draft the judgment of Mahon J. in relation to the sub-constitutional issues on the cross appeal and agree with his conclusion that the cross appeal of Mr. McCabe against the determinations made in the judgment of the 3rd June, 2014, should be dismissed for the reasons given.

18. I propose in this judgment considering the issues raised by the notices of appeal and cross appeal in relation to the judgment given in the plenary proceedings and the consequences for the order made by the trial judge in the Article 40 proceedings on the 30th September, 2014, in the light of all the judgments of this Court.

Section 99(12) of the Criminal Justice Act 2006.
19. The appellants in their notice of appeal against the conclusions of the trial judge on the constitutional issues, added as an alternative and final ground of appeal:-

> "In the alternative, in failing to hold that, having regard to the presumption of constitutionality and the double construction rule, s. 99(12) of the Criminal Justice Act 2006 (as amended), may properly be interpreted as providing that where a suspended sentence which had been imposed by the Circuit Court in the exercise of its appellate jurisdiction is later revoked by that court in accordance with s. 99(10) of the Act of 2006, the person whose sentence is thereby revoked has a statutory right to appeal to the Court of Criminal Appeal."

20. As appears from the history of these proceedings, in the High Court already set out in this judgment, no plea to this effect was made in the defence delivered and no submission to this effect was made to the High Court. However, since the service of the notice of appeal, Mr. McCabe and his representatives were aware that the appellants proposed, if permitted, to rely on this ground of appeal in reliance on s.99 (12) of the 2006 Act.

21. The issue raised by this ground of appeal is the interpretation of s. 99(12) of the 2006 Act and in particular whether it grants a statutory right of appeal from a decision of the Circuit Court to revoke a suspended sentence which had been imposed on the hearing of an appeal from the District Court. That issue was not raised before the High Court judge.

22. It is not suggested that the circumstances in which this Court may or should hear and determine an issue which was not tried in the High Court should differ in any away from the prior jurisdiction of the Supreme Court hearing an appeals from the High Court. The principle as stated by Finlay C.J. in *K.D. v. M.C.* [1985] I.R. 697, at p. 701, "that, save in the most exceptional circumstances, the court should not hear and determine an issue which has not been tried and decided in the High Court. To that fundamental rule or principle there may be exceptions, but they must be clearly required in the interests of justice".

23. The court permitted submissions in relation to the issue. The issue is a question of law. It arises in circumstances as will appear below where the Oireachtas has expressly purported to provide an appeal from a decision such as at issue in these proceedings and yet by reason of other and prior legislative provisions a view appears to have been taken by both sides in the High Court that the appeal provided for in s. 99(12) did not apply to the decision of the Circuit Court to activate the suspended sentence imposed on Mr. McCabe. The issue of the interpretation of s. 99(12) is one of general importance. The interests of justice require that the court consider the issue prior to determining the constitutional issues raised on behalf of Mr. McCabe. It would be contrary to the public interest and the interests of justice if the Court were now to determine this appeal without considering the proper interpretation of s. 99(12) of the 2006 Act because it had not been raised in the High Court. However Mr McCabe should not be prejudiced by the Court's agreement to consider the issue. I will return to this.

24. The scheme created by s. 99 of the 2006 Act, as amended, insofar as relevant to the issue of the right of appeal created by s. 99(12) is evident from ss. (1),(2), (9) and (10) which provide:-

> "99. Power to suspend sentence
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> (1) Where a person is sentenced to a term of imprisonment (other than a mandatory term of imprisonment) by a court in respect of an offence, that court may make an order suspending the execution of the sentence in whole or in part, subject to the person entering into a recognisance to comply with the conditions of, or imposed in relation to, the order.
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> (2) It shall be a condition of an order under subsection (1) that the person in respect of whom the order is made keep the peace and be of good behaviour during—
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> (a) the period of suspension of the sentence concerned, or
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> (b) in the case of an order that suspends the sentence in part only, the period of imprisonment and the period of suspension of the sentence concerned,
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> and that condition shall be specified in the order concerned.
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> (...)
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> (9) Where a person to whom an order under subsection (1) applies is, during the period of suspension of the sentence concerned, convicted of an offence, being an offence committed after the making of the order under subsection (1), the court before which proceedings for the offence are brought shall, before imposing sentence for that offence, remand the person in custody or on bail to the next sitting of the court that made the said order.

(10) A court to which a person has been remanded under subsection (9) shall revoke the order under subsection (1) unless it considers that the revocation of that order would be unjust in all the circumstances of the case, and where the court revokes that order, the person shall be required to serve the entire of the sentence of imprisonment originally imposed by the court, or such part of the sentence as the court considers just having regard to all of the circumstances of the case, less any period of that sentence already served in prison and any period spent in custody other than a period spent in custody by the person in respect of an offence referred to in subsection (9) pending the revocation of the said order.

(11)...

(12) Where an order under subsection (1) is revoked in accordance with this section, the person to whom the order applied may appeal against the revocation to such court as would have jurisdiction to hear an appeal against any conviction of, or sentence imposed on, a person for an offence by the court that revoked that order."

25. As appears the statutory scheme created by s. 99 in relation to the suspension of sentences and subsequent revocation (as it is put) of the suspension or as is sometimes stated the activation of the suspended sentence is the following. The court is now given an express statutory power to suspend a sentence pursuant to s. 99(1). It may do so subject to the person entering into a recognisance to comply with the conditions imposed. Section 99(2) now makes it mandatory to impose (amongst others) a condition that a person keep the peace and be of good behaviour during one of the periods specified in that subsection. If during the relevant period a person is convicted of a second offence, then pursuant to subs. (9) the court before whom the person is convicted must before imposing sentence for the second offence remand the person to the next sitting of the court that made the order suspending the first sentence.

26. The court which imposed the first suspended sentence is then bound to revoke the order suspending the sentence unless it considers that the revocation would be unjust in all the circumstances of the case. Where an order of revocation is made, the convicted person may be required to serve either the entirety of the sentence originally imposed or such part of the sentence as the court which revokes the suspension considers just less periods already spent in custody.

27. It is to that scheme that the Oireachtas has then given a right of appeal in s.99 (12). In accordance with the ordinary meaning of the words used in s. 99(12) in the context of the statutory scheme created by the section, it appears to me that the following is the position:

(1) A statutory right to appeal is expressly given against all decisions to revoke orders made pursuant to s.99(1) to suspend all or part of a sentence.

(2) The decision to revoke or revocation is made pursuant to s. 99(10). In making such an order a court is now exercising a statutory jurisdiction created by s. 99(10).

(3) The description of the court to which the appeal may be taken is such court as would have jurisdiction to hear "an appeal against any conviction of, or sentence imposed on a person for an offence by the court that revoked that order" [emphasis added]. The wording of s. 99(12) does not require that the appeal court have jurisdiction to hear appeals against all convictions for all offences.

(4) Importantly, by the words used, the court to which the appeal may be brought is not limited to a court with jurisdiction to hear an appeal against the original sentence suspended pursuant to s.99(1). Rather it includes a court with jurisdiction to hear an appeal against "any. . . sentence imposed . . . for an offence by the court" that makes the revocation order.

28. On the facts herein the Circuit Court revoked the order to suspend the first sentence. The Court of Criminal Appeal (and now the Court of Appeal) is a court which has jurisdiction to hear an appeal against a conviction or sentence imposed by the Circuit Court albeit in cases of trial on indictment pursuant to s. 63 of the 1924 Act. Nevertheless it is a court which comes within the general description in s.99(12) of a court which "would have jurisdiction to hear an appeal against any conviction of, or sentence imposed on, a person for an offence by the court that revoked that order".

29. Accordingly I would interpret s. 99(12) as giving by its express terms a statutory right of appeal to the Court of Appeal (and previously the Court of Criminal Appeal) against all orders made by the Circuit Court pursuant to s.99(10) to revoke a suspended sentence irrespective of the nature of the proceeding in which it imposed the first sentence and suspended all or part of the sentence pursuant to s.99(1).

30. The remaining issue is whether s. 18(3) of the Courts of Justice Act 1928, (as amended by s. 58 of the Courts of Justice Act 1936) precludes such an appeal where the s.99(1) order was made in respect of a sentence imposed in an appeal from the District Court. The operative part of that section provides:

"Every appeal under this section from an order of a justice of the District Court shall lie to the judge of the Circuit Court . . . and the decision of such judge on such appeal shall be final and conclusive and not appealable."

31. I do not consider that a decision or order made pursuant to s.99 (10) of the Act of 2006 to revoke an order made pursuant to s. 99(1) suspending part or all of a sentence, is a decision on the appeal from the District Court within the meaning of s. 18(3). The decision on the appeal was the first sentence imposed including the order pursuant to s. 99(1) that the sentence be suspended. The order to revoke the suspension of the sentence is made pursuant to s. 99(10) and is a separate and distinct decision made in exercise of a different statutory jurisdiction. On the facts of this appeal it was not even made by the same Circuit Judge. Irrespective of whether it was made by the same Circuit Judge or not it is a separate and distinct decision and requires in accordance with s.99 (10) the exercise of discretion having regard to different considerations beyond those which would have arisen at the time of the hearing of the appeal.

32. Whilst it is true that a Circuit judge who makes a decision pursuant to s. 99(10) to revoke an order made pursuant to s. 99(1) that a sentence be suspended then activates or reactivates a sentence in whole or in part imposed on the hearing of the appeal. However, where a person is remanded under s.99(9) by reason of conviction of a second offence the Circuit Judge is making a new and different decision under s. 99(10) as to the period of suspended sentence then to be served from the decision taken by the Circuit Judge hearing the appeal from the District Court. It is not a decision on the appeal.

33. I find support for the view that it is a separate decision and sentence in the judgment of the Court of Criminal Appeal delivered by Denham J. (with Feeney and McGovern JJ.) in *Richard Kiely v. Director of Public Prosecutions* (Unreported, Court of Criminal Appeal, 19th February, 2008). The applicant had pleaded guilty to several driving offences before the Circuit Court and on the 18th October, 2006, the Circuit Court had imposed aggregate consecutive sentences of six years imprisonment with the entire six years suspended on conditions. Subsequently in 2007 the applicant was convicted in the District Court of public order offences. The circuit judge reactivated four years of the sentence on the 8th March, 2007, and suspended the last two years on further conditions. In its judgment the Court per Denham J. stated at the outset:-

> "This is not an appeal from the sentencing on the 18th October, 2006. This is an appeal from the reactivated sentence, the sentence imposed on the 8th March, 2007. On the reactivation of the sentence the trial judge has a discretion, which is under appeal."

34. The court then considered whether or not the trial judge had erred in principle in the reactivation and the discretion exercised under s. 99(10) of the 2006 Act.

35. A submission was also made on behalf of Mr. McCabe that there was no procedure for appeal to the Court of Criminal Appeal or now to this Court for an appeal pursuant to s. 99(12). Whilst there may not be any express reference to an appeal pursuant to s. 99(12) in the Rules of Court, nevertheless O. 86C, r. 3(1) of the Rules of the Superior Courts (which is the successor to O. 86, r.4(1) RSC applicable in May 2014), sets out a procedure for any convicted person who wishes to appeal to the Court of Appeal on a notice of appeal in Form No. 9. That form permits the person to indicate that he or she is appealing against sentence only. An applicant such as Mr. McCabe would of course only have a right of appeal against the reactivated sentence. As appears from the judgment of the Court of Criminal Appeal referred to in Kiely such appeals have been brought to that Court against a reactivated sentence pursuant to section 99.

36. My conclusion therefore is that Mr. McCabe had a statutory right of appeal pursuant to s. 99(12) of the 2006 Act, against the order of the Circuit Court made on the 27th May, 2014, to reactivate the sentence and to require that he serve the full six months custodial sentence. This as appears from the above, is a new right of appeal given by section 99(12). By reason of this conclusion, it is unnecessary to consider the remaining grounds of appeal against the conclusions reached by the trial judge in the plenary proceedings. His constitutional conclusions were premised on the absence of a statutorily conferred right of appeal for Mr. McCabe against the decision of the Circuit Court to re-activate the sentence.

37. It remains to consider what order should be made in the appeal having regard to the conclusion reached in this judgment (with which I am aware my colleagues concur) and the conclusion reached in the judgment to be delivered by Mahon J. (with which I and Irvine J. also concur).

38. In the High Court no order was made in the plenary proceedings pursuant to the judgment of the 30th September, 2014, save the order of consolidation and order for costs. Costs will be separately dealt with when the parties have had an opportunity of considering these judgments.

39. In the High Court, the operative order of the 30th September, 2014, made in the Article 40 proceedings was that the applicant be released from detention by reason of the opinion of the trial judge that the return to the order was "insufficient to justify the detention of the applicant". That it appears was by reason of the conclusions reached in his judgment in the plenary proceedings that it would be unconstitutional to give effect to the re-activated sentence in the absence of a statutorily conferred right of appeal against the decision of the Circuit Court to re-activate the sentence.

40. As has been set out in this judgment, the appellants did not submit at any stage in either proceedings in the High Court that s. 99(12) should be interpreted as granting the right of appeal to Mr. McCabe to the Court of Criminal Appeal against the reactivation of the sentence by the Circuit Court on the 27th May, 2014. Whilst this Court has exceptionally and in the interests of justice permitted the appellants to include this successful ground of appeal it is also in the interests of justice that Mr. McCabe should not be prejudiced by this late albeit correct change of approach by the appellants.

41. It follows from the decisions on this appeal that the warrant of the Circuit Court of the 27th May, 2014, is valid. Mr. McCabe was released pursuant to the order of the High Court of the 30th September, 2014, made in the Article 40 proceedings. In order that Mr. McCabe not be prejudiced by the leave given to the appellants to pursue the successful ground of appeal, notwithstanding the validity of the warrant, it is in the interests of justice that the Court should not vacate the High Court order for the release of Mr. McCabe and for clarity should place a permanent stay on the execution of the warrant of the Circuit Court issued on the 27th May, 2014.

42. I would propose therefore that the following orders be made on the appeal and cross appeal:-

> 1. A declaration that s.99(12) of the Criminal Justice Act 2006 (as amended) provides a right of appeal to the Court of Appeal against any order of the Circuit Court made pursuant to s. 99(10) of the Act of 2006, to revoke an order made pursuant to s. 99(1) suspending a sentence and to reactivate in whole or in part the suspended sentence including in circumstances where the suspended sentence was imposed on the hearing of an appeal from the District Court.
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> 2. An order that the execution of the warrant of the Circuit Court issued on 27th May, 2014 committing Mr. McCabe to prison be permanently stayed.
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> 3. An order dismissing the cross appeal.
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> 4. No variation to the substantive order of the High Court of 30th September, 2014.

43. I would add that this Court's decision does not in any way affect the proceeding before the District Court in respect of the public order offence of which Mr McCabe was convicted and may remain to be sentenced.