

## THE HIGH COURT

2010 765 SS

BETWEEN

SIMON O'DWYER

APPLICANT

AND

THE GOVERNOR OF MIDLANDS PRISON

RESPONDENT

**Judgment of Mr. Justice Charleton delivered the 17th day of May 2010**

1. This appears to be a personal application by a prisoner who is at present in custody in Midlands Prisons. It is not an application that I am entitled to act upon.

2. The applicant seeks an inquiry into the legality of his detention pursuant to Article 40.4.2 of the Constitution. In an unsworn document, having the appearance of an affidavit, the applicant complains that the District Court orders whereby he is detained in custody are bad. He claims that the said orders failed to show jurisdiction on their face; that they do not demonstrate any offence; that they do not are bad for uncertainty; that the order of conviction and warrant of committal dated 4th February, 2010 does not permit the Governor of Midlands Prison to detain him and instead only permits the Governor of Limerick Prison to detain him; that the order of conviction is unclear as to whether he was before the court on foot of a summons or charge sheet; that there is no summons or charge sheet attached to the said order of conviction; that the order of conviction on 16th February, 2010 does not demonstrate on its face that the sentence is consecutive to the sentence referred to in the order of conviction of 4th February, 2010; that the charge sheet bearing the number 9783899 referred in the order of conviction of the 16th February, 2010 does not exist; that there is no copy charge sheet attached to such order of conviction; and that "they are null and void". I turn from that complaint to the documents apparently exhibited in the unsworn affidavit. The first is a warrant of committal which allows the accused to be conditionally released on his entering into a recognizance in the sum of €5,000 together with a cash lodgement of a similar sum. Another committal warrant records that the accused pleaded not guilty and was sentenced to four months imprisonment on the legal termination or the sentence imposed on Carrick-on-Suir District Court on 4th February, 2010. The first document is dated 4th February, 2010 and the second is dated 16th February, 2010.

3. The reason I can make no order on application such as this is that there is nothing in evidence before me which would suggest that the applicant is unlawful custody. The stipulation of O'Higgins C.J. in relation to the grant of an order of *habeas corpus* in *The State (McDonagh) v. Frawley* [1978] I.R. 131 is apposite:-

"The stipulation in Article 40.1... that a citizen may not be deprived of his liberty save in "in accordance with law" does not mean that the convicted person must be released on *habeas corpus* merely because some defect or illegality attaches to his detention. The phrase means that there must be such a default of fundamental requirements that the detention may be said to be wanting in due process of law.

4. There is nothing here which suggests to me that any such situation has arisen. The arguments advanced in the unsworn affidavit do not amount to a submission that the applicant is unlawfully detained. Rather, these arguments are as to the proper form of the document.

5. A more important point arises, however. On reading the papers, it is clear that the applicant was convicted on foot of charge sheets. The applicant must have had, pursuant to the ordinary rules of procedure, a copy of these charge sheets. The procedure of charging involves reading over the charge to the applicant and giving him a copy. Yet, the application which is before me refers only to two committal warrants addressed Limerick Prison and to Midlands Prison. I cannot be expected to make an order in circumstances where vital information is withheld.

6. I do not believe that any of the points raised by the applicant have substance. Were it to be the case that some information showed me that there was chance that the applicant was detained beyond the lawful period of his detention, then I would order the *habeas corpus* procedure to be invoked. There is no such suggestion. Instead, I am presented with a partial set of documents. Given that there is nothing to suggest either that the prisoner has been detained beyond the lawful term of his detention, not that there is fundamental want of justice in the manner of his conviction, his proper remedy lies in lodging an appeal.