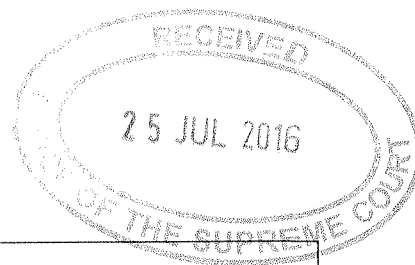


SUPREME COURT
Respondent's Notice



Supreme Court record number	2016/86
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[Title and record number as per the High Court proceedings]

John Wilkinson	V	Governor of the Midlands Prison
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Date of filing	25 th July, 2016
Name of respondent	Governor of the Midlands Prison
Respondent's solicitors	Chief State Solicitor's Office
Name of appellant	John Wilkinson
Appellant's solicitors	John M. Quinn

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	Governor of the Midlands Prison
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The respondent was served with the application for leave to appeal and notice of appeal on date

11th July, 2016

The respondent intends :

to oppose the application for an extension of time to apply for leave to appeal

not to oppose the application for an extension of time to apply for leave to appeal

to oppose the application for leave to appeal

not to oppose the application for leave to appeal

to ask the Supreme Court to dismiss the appeal

to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court

Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:

Respondent's Representation

Solicitor Eileen Creedon			
Name of firm	Chief State Solicitor's Office		
Email	contact@csso.gov.ie		
Address	Osmond House, Little Ship Street,	Telephone no.	4176100
		Document Exchange no.	186
Postcode	Dublin 2	Ref.2016/02168	
How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Sean Gillane SC		
Email	sean@3arransquare.com		
Address	Law Library, Four Courts	Telephone no.	8172715
		Document Exchange no.	810087
Postcode	Dublin 7		

Counsel			
Name	Tony McGillicuddy		
Email	tmcgillicuddy@lawlibrary.ie		
Address	Law Library, Four Courts	Telephone no.	8175980
		Document Exchange no.	810292
Postcode	Dublin 7		

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

How would you prefer us to communicate with you?			
<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

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3. Information about the decision that it is sought to appeal

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

1. The Respondent considers that the information provided by the Appellant is incomplete. Furthermore, paragraph (v) is in the nature of submissions and does not outline relevant facts at all.
2. Thus, the following information is provided to clarify the Order appealed against. The relevant materials for the Article 40 Application are as follows:
 - a. Affidavit of John Quinn and exhibits thereto;
 - b. Affidavit of Danny Robbins of the 29th April, 2016;
 - c. Affidavit of Danny Robbins of the 8th June, 2016.
3. The Appellant herein was sentenced to nine months imprisonment on the 20th January, 2016 in Carlow District Court. The said sentence commenced on that date.
4. Recognisances for the purposes of an Appeal of the nine month sentence were imposed on the 20th January, 2016 and were fixed in the Appellant's own bond of €1,000.00 with a cash lodgement of €250.00. Those recognisances were not entered into at that time and, therefore, the Appellant was serving that sentence on the 13th April, 2016 when he was sentenced in Athlone District Court.
5. On the 13th April, 2016 at Athlone District Court a sentence of 3 months imprisonment was imposed on the Appellant which said sentence was consecutive to the sentence imposed in Carlow District Court on the 20th January, 2016. The terms of the Committal Warrant itself provide that the three month sentence was to commence on "*legal expiration of sentence of nine months imposed on Case No. 2015/109689-1 in Carlow on 20th January, 2016.*" (emphasis added)
6. Recognisances for the purposes of an Appeal in relation to the three month sentence imposed on the 13th April, 2016 were fixed in the Appellant's own bond of zero and an independent surety of €2,500.00 of which the entire said amount was to be lodged in cash. The Appellant never entered into any such recognisances for the purposes of an appeal.
7. At this juncture, it is noted that the District Judge who sentenced the Appellant in Athlone District Court on the 13th April, 2016 was entitled to make the said sentence consecutive to the sentence that he was serving at that time. Furthermore, as a matter of fact and law the Appellant was serving the 9 month sentence imposed in Carlow District Court at that time. Thus, the order made in Athlone District Court on the 13th April, 2016 cannot be impugned on that basis.
8. The High Court (Mr. Justice White) heard the Article 40 proceedings on the 29th April, 2016 and determined same on the 3rd May, 2016 and made final orders on the 12th May, 2016. It is accepted that the High Court was not informed that at the time of those proceedings the Appellant was also being detained on foot of a warrant lodged in the Midlands Prison on the 27th April, 2016 which commanded the Appellant's detention for 60 days. The said warrant expired on the 10th June, 2016. Moreover, it is also accepted that Danny Robbins' Affidavit of the 29th April was incorrect about the processing of the appeal against the 9 month sentence imposed on the 20th January,

2016. The circumstances in which that occurred are explained in the Affidavit of Danny Robbins of the 8th June, 2016.

9. On the 26th May, 2016 the Appellant lodged the relevant Notice of Appeal and entered into the recognisances for the purposes of the Appeal against the Order made on the 20th January, 2016 in Carlow District Court. As outlined above, no appeal has been brought against the three month sentence imposed on the 13th April, 2016 in Athlone District Court.
10. The Affidavit of Danny Robbins, Governor of the Midlands Prison, of the 8th June, 2016 states that the Respondent herein held the Appellant herein in detention from the 26th May, 2016 onwards on foot of the Committal Warrant issued by Athlone District Court on the 13th April, 2016.
11. Furthermore, the Governor stated in his Affidavit that the prison authorities processed the appeal against the 9 month sentence imposed in Carlow District Court on the 20th January, 2016 on the 26th May, 2016 and held the Appellant on foot of the Committal Warrant for the three month sentence from that date onwards. The Appellant's release date is now the **25th July, 2016**.
12. Other factual details are also relevant. During the course of argument in the Article 40 application and in answer to a question from the Learned Trial Judge the Appellant's legal team confirmed that the Appellant had not confined his appeal against the sentence imposed on the 20th January, 2016 to one against sentence only. Thus, the Appellant's appeal against that order is a full appeal.
13. The Court of Appeal had before it the Affidavit of Danny Robbins of the 8th June, 2016 and decided to hear the appeal notwithstanding the unfortunate and deeply regretted errors which occurred about the factual information put before the High Court. This is set out in paragraph 12 of the judgment.
14. Paragraph (v) of the Appellant's Notice is incorrect wherein it asserts that the Respondent was "*unable to point to a live and operative committal warrant that currently authorises the detention of the Appellant.*" The Appellant's detention was justified by the Respondent on the basis of the Committal Warrant issued by the District Court on the 13th April, 2016 which became operative on the 26th May, 2016 upon the appeal against the sentence imposed on the 20th January, 2016 having been processed. That warrant was the sole basis justifying the Appellant's detention from the 10th June, 2016 onwards and was, therefore, the only basis upon which the Court of Appeal issued its judgment upholding the Respondent's detention of the Appellant on the 24th June, 2016.

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)-

- * the decision in respect of which leave to appeal is sought does not involve a matter of general public importance
- * it is not, in the interests of justice, necessary that there be an appeal to the Supreme

Court

1. The Respondent contends that the decision sought to be appealed against does not involve a matter of general public importance and that it is not necessary in the interests of justice that there be an appeal to the Supreme Court.
2. The Respondent denies that the Appellant is "currently in unlawful detention" as is asserted at paragraph (ii). Further, it is noted that the Appellant's sentence will expire on the **25th July, 2016**. Accordingly, it is submitted that the Appellant must show that this Honourable Court should hear a case which will be a moot in the near future.

In that regard, the Appellant must show that the case would be of systemic importance and the fact that the person concerned was in custody is not sufficient of itself to discharge that threshold test. The relevant authorities appear to include the decisions by the Supreme Court in *Lofinmakin v. Minister for Justice* [2013] 4 I.R. 274, *Shui Jie Liu v. Governor of the Dóchas Centre* (Unreported) Supreme Court, 27th June, 2013 and *Farrell v. Governor of St. Patrick's Institution* [2014] 1 I.R. 669.

3. Insofar as the Appellant highlights the wording "legal expiration" in the Committal Warrant and asserts that it is found in many committal warrants, it is submitted that the High Court and the Court of Appeal adopted an interpretation of that phrase in accordance with what had been said by Barron J. in *State (Gleeson) v. Martin* [1985] I.L.R.M. 577 at page 581. Barron J. stated:

In Gleeson's case and in McKeon's case it was also contended that the expression 'legal expiration' was uncertain since the convicted person could not know in advance what remission, if any, of a sentence he would receive. It was submitted on behalf of the respondents that, where sentences were imposed consecutively, remission was granted only upon the basis of a combined sentence and that accordingly a two year sentence or a three year sentence expired in two or three years as the case might be and not sooner. This does not seem to me to be correct since in the event of a six months sentence to run consecutively with a three year sentence the convicted person might be entitled with remission to be released within three years. I would regard the expression 'legal expiration' to be clear and to mean upon the actual determination of the sentence whenever that legally occurs. I do not regard any of the impugned orders as being void for uncertainty. (emphasis added)

4. Barron J. made it clear in that paragraph that "legal expiration" refers to the "actual determination of the sentence" whenever that "legally occurs." Thus, the term of art can be considered in the context of the factual and legal context in which it arises and must be applied in those given circumstances by the courts. No further definition of "legal expiration" is required or desirable and there is no issue of systemic importance in the arena of criminal procedure to be considered in those circumstances.
5. The assertions made at paragraphs (iv) and (v) are hypothetical in nature. Furthermore, the assertions made in paragraph (iv) are unclear and apt to mislead where the Appellant refers to a prisoner receiving "a consecutive sentence from the District Court... and who wishes to appeal the sentence but is unable to meet the recognisances set on the consecutive element of the sentence." The true position is that there are two sentences in the scenario outlined by the Appellant; there is a sentence imposed by a court and a further sentence which is made

consecutive to the first sentence. The failure to delineate that fact in the Appellant's submissions is confusing and is at the heart of the Appellant's misconceptions about the effect of the judgment of the Court of Appeal.

6. It is accepted that the Learned Trial Judge in the High Court (White J.) noted that the Superior Courts had not yet dealt with this scenario. However, it is submitted that the upholding of the judgment of White J. by the Court of Appeal shows that this situation has been considered by the Superior Courts and there is no point of law of general public importance warranting further review by this Honourable Court.

Furthermore, the Superior Courts have addressed the implications of an appeal from the District Court to the Circuit Court on multiple occasions and there is no necessity for this Honourable Court to address the point again in the interests of justice. As outlined in the Respondent's legal submissions to the Court of Appeal the following cases have assessed these issues: *State (McLoughlin) v. Shannon* [1948] I.R. 439, *State (Aherne) v. Cotter* [1982] I.R. 188 (including the consideration of *Ex parte M'Fadden* (Judgments of the Superior Courts in Ireland (1903 Ed. Page 168) by Walsh and Henchy JJ.), *Attorney General v. Mallen* [1957] IR 344, *State (Caddle) v. McCarthy* [1957] IR 361 and *Connors v. Governor of Dorcas Centre and Minister for Justice and Equality* (Unreported) 1st and 15th April, 2015 [2015] IEHC 243.

7. The Respondent rejects the Appellant's assertions that this case has anything to do with a prison governor "*deeming*" a sentence to be spent or determined as appears to be suggested at paragraph (vii) of the Appellant's Notice. Either the Respondent was correct in law or not in deciding that the sentence imposed on the 13th April, 2016 became operative from the 26th May, 2016 onwards.

That is a question of law and the High Court and the Court of Appeal decided that the Respondent had adopted a correct approach to the law. Hence, it was a question of interpreting the contents of the relevant warrants and the statutory provisions concerning appeals from the District Court to the Circuit Court in the correct manner.

8. Paragraphs (viii) and (ix) of the Appellant's Notice make the erroneous assertion that the consecutive sentence is "*effectively abandoned*" by reason of the commencement of the said sentence on the 26th May, 2016. It is also wrong to assert that the intentions of the sentence judge who imposes the consecutive sentence are "*set at nought*." Furthermore, the contention that "*unmeritorious appeals*" would be lodged to "*magic away*" a consecutive element of a sentence ignores the fundamental point that there must be two sentences in question, namely the first sentence and a consecutive sentence. The Appellant's assertions in that regard are wrong in every regard.

9. In answer to these points the Respondent contends that the said consecutive sentence came into effect at the "*legal expiration*" of the 9 month sentence imposed on the Appellant on the 20th January, 2016. That "*legal expiration*" occurred on the 26th May, 2016. Accordingly, there is no scope whatsoever for asserting that the consecutive sentence was "*abandoned*" in any way as the sentence in question only became operative on a date subsequent to being passed by the District Judge on the 13th April, 2016.

Indeed, the consecutive sentence was given effect to in accordance with the directions of the District Judge in question. The 3 month consecutive sentence has been applied on the 26th May, 2016 in accordance with the intentions of the

District Judge on the 13th April, 2016 as it became operative upon the legal expiration of the 9 month sentence which occurred on the 26th May, 2016. It cannot have two commencement dates and the Appellant's submissions ignore that fundamental point.

10. The time that the case would take is not a relevant factor as to whether it is in the interests of justice for the Supreme Court to grant leave to appeal. In addition, it is also not relevant to the question of whether the matter is one of general public importance.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc. in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

- i. The Court of Appeal was correct to decide that the processing of the appeal against the sentence imposed on the 20th January, 2016 on the 26th May, 2016 had the effect of bringing forward or triggering the commencement date of the second sentence. As outlined by Barron J. in *State (Gleeson) v. Martin*, the "legal expiration" refers to the "*actual determination of the sentence*" whenever that "*legally occurs*."

Thus, the term of art must be applied in accordance with the relevant statutory provisions. The Court of Appeal cited s.59 of the *Courts of Justice Act, 1936* and s.23 of the *Courts of Justice (District Court) Act, 1946* in that regard at paragraphs 17 and 19 respectively of its judgment and was correct to highlight those provisions.

- ii. The Court of Appeal was correct in upholding the decision of the High Court that the Respondent had justified the Appellant's detention as being in accordance with law.
- iii. All of the Appellant's submissions under this heading ignore and avoid the statutory provisions concerning appeals from the District Court to the Circuit Court. The Appellant's arguments, as outlined in sub-paragraphs (a) – (d) inclusive, fail to address the relevant statutory provisions at all and contend, without any supporting statutory context or case law, that the sentence imposed in the District Court on the 20th January, 2016 continues to exist and operate in some way.

The correct legal position, as accepted by the High Court and the Court of Appeal, is that the sentence imposed on the 20th January, 2016 is stayed and that the making of a new order by the Circuit Court in exercising its appellate jurisdiction and the issuance of a fresh instrument to give effect to that new order means that the sentence imposed on the 20th January, 2016 is of no effect whatsoever from the 26th May, 2016 onwards.

The following statutory provisions all assist to support this viewpoint and some of them were cited by the Court of Appeal.

- a) Section 18 of the *Courts of Justice Act, 1928* (as amended by s.58 of the *Courts of Justice Act, 1936* and s.100 of the *Criminal Justice Act, 2006*) provides for the jurisdiction of the Circuit Court to adjudicate on appeals from the District Court in criminal matters. Section 18 provides:

"(1) An appeal shall lie in criminal cases from a Justice of the District

Court against any order (not being merely an order returning for trial or binding to the peace or good behaviour or to both the peace and good behaviour) for the payment of a penal or other sum or for the doing of anything at any expense or for the estreating of any recognizance or for the undergoing of any term of imprisonment by the person against whom the order shall have been made, including an order under section 100 (1) of the Criminal Justice Act 2006”

(2) Where immediately before the commencement of Part III of the Principal Act an appeal lay in a criminal case at the instance of a complainant or prosecutor against an order of a District Justice appointed under the District Justices (Temporary Provisions) Act, 1923 (No. 6 of 1923) an appeal of the like kind shall lie in such criminal case at the instance of a complainant or prosecutor from an order of a Justice of the District Court.

(3) Every appeal under this section from an order of a Justice of the District Court shall lie to the Judge of the Circuit Court within whose circuit the courthouse in which such order was made is situate, and the decision of such Judge on such appeal shall be final and conclusive and not appealable.”
(emphasis added)

- b) Accordingly, s.18 of the *Courts of Justice Act, 1928* (as amended) sets out that the jurisdiction of the Circuit Court can be invoked against “*the undergoing of any term of imprisonment by the person against whom the order shall have been made*”. Following that, s.18(3) of the 1928 Act makes it clear that the “*decision*” of the Circuit Court judge on such an appeal is final and conclusive. Thus, the decision made by the Circuit Court can only relate to the “*order*” that is appealed.
- c) Section 59 of the *Courts of Justice Act, 1936* clarifies the territorial jurisdiction of the Circuit Court for such appeals and provides:

“Notwithstanding anything contained in any other enactment and, in particular, notwithstanding anything contained in section 18 of the Courts of Justice Act, 1928 (No. 15 of 1928), as amended by this Act, every appeal which lies to the Circuit Court from an order of the District Court in a criminal case, under the Licensing (Ireland) Acts, 1833 to 1927, or under the Registration of Clubs Acts, 1904 to 1927, shall lie to the judge of the Circuit Court within whose circuit is situate the licensed premises or the club premises on or in respect of which the offence the subject of such order was committed or to which such order otherwise relates.” (emphasis added)

- d) Again, it provides that the appeal is against “*an order of the District Court in a criminal case*” and that it relates to the “*offence the subject matter of such order*”. It is submitted that this re-enforces the point that the Circuit Court has

jurisdiction to deal with an appeal against the order that is so appealed but the jurisdiction is confined to that order alone.

- e) Following that, the Oireachtas has legislated for the manner in which the decision of the Circuit Court on an appeal against an order of imprisonment imposed in the District Court in a criminal case is to be enforced. In this regard, the key provision is s.23 of the *Courts of Justice (District Court) Act, 1946*. Section 23 provides:

*"Where an appeal from the District Court in any matter is **determined** (whether before or after the passing of this Act) by the Circuit Court, then, unless the Circuit Court has issued the instrument necessary to enforce its **decision**, the District Court shall issue the said instrument."* (emphasis added)

- f) Section 23 of the 1946 Act thus refers to an appeal from the District Court being "*determined*" and to the instrument necessary to enforce its "*decision*". As already outlined above, s.18 of the *Courts of Justice Act, 1928* referred to the "*decision*" of the Circuit Court on an appeal. Hence, it is clear that the Circuit Court embarks on its own hearing of the matter to provide a fresh determination of the case.

- g) Both the District Court Rules and the Circuit Court Rules give effect to these statutory provisions. They provide that either the Circuit Court itself or, if necessary, the District Court can issue the relevant committal warrant to enforce the decision of the Circuit Court upon the appeal before it. Thus, they give effect to s.23 of the *Courts of Justice (District Court) Act, 1946*.

- h) Order 101, Rule 13 of the District Court Rules provides:

"When form 101.7, referred to in rule 12, is returned with the County Registrar's certificate duly completed thereon, and if the Circuit judge has not caused the necessary warrant to enforce the order to be issued, the Clerk shall forthwith prepare and the Judge of the District Court shall issue the necessary warrant, or warrants, and taken all further steps required for the execution of the conviction or order as confirmed or varied and for the enforcement of payment of any costs, compensation or expenses awarded by the Circuit Court. In criminal cases, the superintendent of An Garda Síochána shall inform the clerk of any case in which the Circuit judge has not caused the necessary warrant to be issued." (emphasis added)

- i) The Circuit Court Rules also give effect to the statutory provisions outlined above. Order 41, Rule 5 of the Circuit Court Rules provides:

"Whenever an appeal in a criminal case from a justice of the District Court to a judge of the Circuit Court shall not have been prosecuted, or the original order shall have been confirmed or varied upon appeal, or either party shall

upon appeal have been ordered to pay a specified sum for costs, the Circuit judge may direct the issue by the County Registrar of all warrants necessary and proper for the execution of the original order or of such varied order and to enforce the payment of such costs.

j) Order 41, Rule 6 of the Circuit Court Rules provides:

"Where the order of the Justice of the District Court as confirmed or varied on appeal directs the imprisonment of any person the Judge of the Circuit Court may, upon confirming or varying the said order, or at any time before the issue of a formal warrant by a justice of the District Court or by the County Registrar for the execution of such order so varied or confirmed, direct that such person be taken into custody forthwith, or detained in custody, and imprisoned pending the issue of such warrant."

k) These Circuit Court Rules provisions re-iterate the statutory position, as set out in s.23 of the *Courts of Justice (District Court) Act, 1946*, that a new warrant will be issued by the Circuit Court or the District Court after an appeal has been heard and decided upon by the Circuit Court. Order 41, Rule 5 provides that the Circuit Court judge can direct the County Registrar to issue the warrant for the enforcement of the original order or the varied order while Order 41, Rule 6 provides that the Circuit Court can direct that the appellant in question be taken into custody pending the issue of the warrant.

l) Also relevant are the provisions of Order 25 of the District Court Rules as that concerns the execution of committal warrants. Order 25, Rule 9(3) of the District Court Rules, as amended, provides:

"Where such warrant has been issued and executed before notice of appeal is given, or before a recognizance is entered into, the appellant shall, on notice of appeal being given and the recognisance being entered into, forthwith be discharged from custody or from prison. Where such warrant is a warrant of distress, such distress shall be returned to the owner."
(emphasis added)

m) Again, this confirms that the filing of the notice of appeal and the entry of the recognisances is necessary for the appeal to act as a stay on the order which is being appealed. There is only one warrant for each conviction order. The Appellant in this case exercised his rights of an appeal after the committal warrant was issued in relation to the sentence imposed on the 20th January, 2016 and executed. Thus, Order 25, rule 9(3) of the District Court Rules applied in his

case.

- n) Order 25, Rule 9(4) of the District Court Rules provides:

"Save where otherwise provided by statute or by rules of court, the order appealed from shall be entirely suspended until the appeal is decided or the appellant fails to perform the condition of the recognizance, as the case may be. This rule shall not be taken to override any statute expressly authorising or directing the levy of any sum to be made notwithstanding an appeal."

- o) This provision is in conformity and consistent with the legislative provisions outlined above. Order 25, Rule 9(4) refers to the "order appealed from" being "entirely suspended" until such time as the appeal is "decided" by the Circuit Court. The reference in that rule to the suspension of the order does not undermine the jurisdiction of the Circuit Court on the appeal or override the other rules of court whereby a stay is placed on the District Court order.
- p) The Respondent's legal submissions to the Court of Appeal outline these statutory provisions and the case law which has interpreted same. While those legal submissions were filed before the factual error in Danny Robbins' first affidavit were discovered, nevertheless the Respondent relies on them insofar as they set out the manner in which the Superior Courts have addressed these provisions in previous case law.
- q) The Respondent refers to *State (McLoughlin) v. Shannon* [1948] I.R. 439, *State (Aherne) v. Cotter* [1982] I.R. 188 (including the consideration of *Ex parte M'Fadden* (Judgments of the Superior Courts in Ireland (1903 Ed. Page 168) by Walsh and Henchy JJ.), *Attorney General v. Mallen* [1957] IR 344, *State (Caddle) v. McCarthy* [1957] IR 361 and *Connors v. Governor of Dorcas Centre and Minister for Justice and Equality* (Unreported) 1st and 15th April, 2015 [2015] IEHC 243. The relevant extracts are in the written submissions for the Court of Appeal hearing.

- iv. The Appellant's arguments on this issue are misconceived and wrong in law and in fact. The Court of Appeal was correct in holding that the appealing of the first sentence (imposed on the 20th January, 2016) did not have the effect of staying the sentence that is not appealed (the sentence imposed on the 13th April, 2016).

Remarkably, the Appellant's submissions fail to address this singular and significant issue, namely that the stay imposed on one sentence did not have any effect whatsoever, either expressly or impliedly, on a sentence that was not appealed by the Appellant. The Appellant never processed an appeal against the sentence imposed on

the 13th April, 2016 and it could not be affected by the appeal against the sentence imposed on the 20th January, 2016. The Respondent justified the Appellant's present detention on the basis of the warrant of the 13th April, 2016 and the Court of Appeal upheld the detention on that basis in its decision of the 24th June, 2016.

- v. The judgment of the Court of Appeal does not “*do violence to the straightforward language used in the committal warrant.*” As outlined above, the Appellant had only appealed against one sentence, namely that imposed on the 20th January, 2016. No stay could operate against the sentence imposed on the 13th April, 2016 as no appeal had been processed against that sentence.
- vi. The Court of Appeal was correct in upholding the High Court Judgment to the effect that the sentences imposed on the 20th January, 2016 had been legally determined once the appeal in respect of it was processed on the 26th May, 2016. The relevant statutory provisions all show that, in the words of the Court of Appeal at paragraph 23, a “*new instrument*” will issue to enforce the decision. Thus, it is submitted that it is clear that the original sentence was determined or expired. The statutory provisions referred to above all support this.
- vii. Neither the Court of Appeal nor the High Court engaged in “*rewriting*” the District Court Rules in the manner that is asserted by the Appellant. The Court of Appeal interpreted the relevant statutory provisions and held, at paragraph 23, that a “*new instrument*” would have to be issued to enforce the decision made by the Circuit Court on the appeal of the sentence imposed on the 20th January, 2016. The statutory provisions outlined above all show that this is correct in that a new warrant will have to issue to enforce the decision of the Circuit Court, whatever that decision may be.
- viii. The points made in relation to paragraphs (iv) – (vii) are repeated in relation to this matter.
- ix. The Respondent rejects the contention that there is uncertainty as to the commencement of the Appellant's sentence. The commencement of the consecutive sentence arose as a matter of law once the Appellant's appeal papers for the sentence imposed on the 20th January, 2016 were processed. Notwithstanding the unfortunate confusion which occurred about that particular date which has been explained by Danny Robbins in his Affidavit of the 8th June, 2016 and is deeply regretted by the Respondent, that date is ascertainable and certain and is not arbitrary or capricious in nature.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Tony McGillicuddy BL
Sean Gillane SC

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

The relevant matters have already been set out above.

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions?

Yes

No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union?

Yes

No

If Yes, please give details below:

Will you request a priority hearing?

Yes

No

If Yes, please give reasons below:

If leave is granted the Respondent is anxious that the litigation in respect of same is concluded as soon as possible.

Signed: *Eileen Creedon*
(Solicitor for) the respondent

Please submit your completed form to:

**The Office of the Registrar to the Supreme Court
The Four Courts
Inns Quay
Dublin**

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.