No. 1

O. 58, r. 15

SUPREME COURT

Record No:

Application for Leave to Appeal

Part I

The information contained in this part will be published. It is the applicant's responsibility to also provide electronically to the Office a redacted version of this part if it contain information the publication of which is prohibited by any enactment or rule of law or order of the Court

1. Date of Filing:

22nd March 2019

2. Title of the Proceedings: *[As in the Court of first instance]*

IN THE MATTER OF AN INQUIRY PURSUANT TO ARTICLE 40.4.2 OF THE CONSTITUTION OF IRELAND 1937

Between:-

MERVIN WHITE

APPLICANT

-AND-

THE GOVERNOR OF MOUNTJOY PRISON

RESPONDENT

3. **Name of Applicant:**

Mervin White.

What was the applicant's role in the original case:

Applicant.

4. **Decision of Court of Appeal (where applicable):**

Record No: 2017 No. 543

Date of Order: 16th January 2019

Perfection Date: 12th March 2019

Date of Judgment: 16th January 2019

Names of Judges: Birmingham P., Edwards and McCarthy JJ.

5. **Decision of the High Court:**

Record No: 2017 / 882 S.S.

Date of Order: 13th November 2017

Perfection Date: 15th November 2017

Date of Judgment: 6th November 2017

Names of Judge: Noonan J.

Where this application seeks leave to appeal directly from an Order of the High Court has an appeal also been filed in the Court of Appeal in respect of that Order?
N/A

Yes ☐ **No** ☐

6. **Extension of Time:** **Yes** ☐ **No** ☑

If an application is being made to extend time for the bringing of this application, please set out concisely the grounds upon which it is contended time should be extended.

7. Matter of general public importance:

If it is contended that an appeal should be permitted on the basis of matter(s) of general public importance please set out precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance justifying appeal to the Supreme Court.

This section should contain no more than 500 words and the word count should appear at the end of the text.

Jurisdiction of District Court Judge to Reissue Committal Warrant

1. These proceedings are centred on a fundamental question of general public importance: in what circumstances does a District Court judge have jurisdiction to reissue a warrant authorising the committal of a person to custody?

2. The Applicant contended that the District Court's jurisdiction to reissue a committal warrant is confined to the situation envisaged by O. 26 of the District Court Rules and s. 33 of the Petty Sessions (Ireland) Act 1851, where the warrant had not been executed within its six month life span because the subject of that warrant could not be located. However, the Court of Appeal held that a District Court judge has jurisdiction to reissue going beyond what is set out in statute, in circumstances where a stay on proceedings had been in force as a result of judicial review proceedings.

3. It is in the public interest to have a definitive ruling by the Supreme Court as to the extent of the District Court's jurisdiction to reissue committal warrants. The question touches on important matters such as the consequences of judicial review proceedings for the subsequent enforcement of committal warrants; whether the District Court has an inherent jurisdiction going beyond the bounds of statute and the range of that jurisdiction; and the District Court's ability to impact on the constitutional right to liberty. The proceedings may point to a major lacuna in the law.

Correct Interpretation of a Supreme Court Authority:

4. In the Court of Appeal, the Applicant relied on the Supreme Court's decision in *Buckley v. Judge Hamill* [2016] IESC 42 ('*Buckley*') as authority to support his contention as to the limited jurisdiction of a District Court judge to reissue a committal warrant.

5. However, the Court of Appeal relied on certain authorities which were distinguished in *Buckley*, and on comments made in *Buckley* itself, to hold that a District Court judge had the jurisdiction to reissue a warrant in circumstances going beyond the scope of O. 26 of the District Court Rules and s. 33 of the Petty Sessions (Ireland) Act 1851.

6. The Applicant respectfully contends that this was an incorrect interpretation of *Buckley*. These proceedings raise an issue of general public importance in relation to the scope of this Court's decision in *Buckley* and whether the Court of Appeal correctly applied it.

Requirement for a Judicial Inquiry:

7. The Applicant relied on the decision in *Daly v. Judge Coughlan* [2006] IEHC 126 to argue that a District Court judge must conduct a judicial inquiry before reissuing a warrant and that the warrant must establish on its face that this inquiry took place. The Court of Appeal held that this argument was misconceived.

8. An appeal to the Supreme Court would definitively establish the requirements of a District Court judge in dealing with an application to reissue, and what must be

endorsed on a warrant to give it jurisdiction. These are matters of general public importance.

Word count – 500

8. Interests of Justice:

If it is contended that an appeal should be permitted on the basis of the interests of justice, please set out precisely and concisely, in numbered paragraphs, the matters relied upon.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. These proceedings concern a challenge to the lawfulness of the Applicant's detention. Given that they involve an issue relating to fundamental constitutional rights, it is in the interests of justice for an appeal to be permitted in order to definitively determine the lawfulness of the Applicant's detention.

2. In addition, it is in the interests of justice to permit an appeal in the particular circumstances of this case where the Court of Appeal conducted the first judicial assessment of the merits of the jurisdictional argument which was put forward by the Applicant.

3. The learned High Court Judge took the view that the jurisdictional argument was not one which could be raised in an Article 40 inquiry and instead could only be advanced in judicial review proceedings. Therefore the High Court did not consider the actual merits of the argument that was made. The Court of Appeal did not agree with the High Court Judge's conclusion on whether it was appropriate to advance that argument and went on to consider the merits of the argument raised, at the express invitation of the Applicant.

4. The Applicant fully agrees that this was the correct course of action for the Court of Appeal to take in the circumstances of the case and does not raise any issue whatsoever with the correctness of same. However, it is respectfully submitted that, as a matter of general principle, it is in the interests of justice for a decision made by one judicial body to be subject to appellate review. The Court of Appeal's decision on the merits of the Applicant's jurisdictional argument was, in effect, the first judicial assessment of the merits of that argument. It is appropriate to permit an appeal to the Supreme Court to ensure an appellate review of that decision.

Word count – 300

9. Exceptional Circumstances: Article 34.5.4:

Where it is sought to apply for leave to appeal direct from a decision of the High Court, please set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 300 words and the word count should appear at the end of the text.

Not applicable.

10. Grounds of Appeal

Please set out in the Appendix attached hereto the grounds of appeal that would be relied upon if leave to appeal were to be granted.

11. Priority Hearing: Yes ☑ No ☐

If the applicant seeks a priority hearing please set out concisely the grounds upon which such priority is sought.

This section should contain no more than 100 words and the word count should appear at the end of the text.

The Applicant is challenging the lawfulness of his detention through an Article 40 inquiry. Although the Applicant has been on bail for the duration of this challenge thus far and remains on bail at present, it is appropriate as a matter of principle that his Article 40 challenge be resolved in a particularly expeditious fashion. It is respectfully submitted that granting a priority hearing would achieve this aim, and mean that the Applicant would obtain legal certainty in early course as to whether he is required to be detained under the existing warrant.

Word count – 93

12. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union please identify the matter and set out the question or questions which it is alleged it is necessary to refer.

Not applicable.

Appendix

Notice of Appeal

1. Title of the Proceedings: *[As in the Court of first instance]*

IN THE MATTER OF AN INQUIRY PURSUANT TO ARTICLE 40.4.2 OF THE CONSTITUTION OF IRELAND 1937

Between:-

MERVIN WHITE

APPLICANT

-AND-

THE GOVERNOR OF MOUNTJOY PRISON

RESPONDENT

2. Grounds of Appeal:

Please set out in numbered paragraphs the Grounds of Appeal relied upon if leave to appeal were to be granted.

Ground 1: the Court of Appeal erred in law in holding that the District Court judge had jurisdiction to reissue the committal warrant at issue in these proceedings.

1. The Applicant was detained in Mountjoy Prison on foot of a committal warrant relating to a two month custodial sentence.

2. This warrant was originally issued by the District Court on 10th December 2014. The Applicant instituted judicial review proceedings in which he sought to quash this warrant on the basis that he had been sentenced in his absence. A stay on *"the... proceedings dated the 10th day of December 2014"* was put in place during the course of the judicial review proceedings. The Applicant was unsuccessful in the proceedings and appealed. The Court of Appeal dismissed his appeal on 14th June 2017. However, a stay was put in place by the Court of Appeal until 31st July 2017. An application was then made by the Gardaí to reissue the original committal warrant dated 10th December 2014. The warrant was ultimately executed on 8th August 2017, and the Applicant was detained in Mountjoy Prison on foot of the re-issued warrant on that date.

3. The Applicant challenged the legality of his detention on foot of this re-issued warrant in Article 40 proceedings. He relied on the Supreme Court's decision in *Buckley v. Judge Hamill* [2016] IESC 42 as authority for the proposition that the District Court's jurisdiction to reissue a committal warrant is confined to the situation envisaged by O. 26 of the District Court Rules and s. 33 of the Petty Sessions (Ireland) Act 1851, where the warrant had not been executed within its six month life span because the subject of that warrant could not be located. The Applicant argued that a District Court judge has no jurisdiction to reissue a warrant in any other situation. It was contended that as there was no issue with locating the Applicant at any stage, the District Court judge in this case had no jurisdiction to reissue the warrant as he purported to do on 5th July 2017, even though the judicial review proceedings formed the basis for non-execution

of the warrant. This meant that the Applicant was detained on foot of a warrant which had been re-issued without jurisdiction and that his detention was unlawful.

4. The Court of Appeal held that this argument was one which was appropriate to make in an Article 40 inquiry. However, the Court held that the effect of the stay orders of the High Court and Court of Appeal in the judicial review proceedings was *"to stop the clock"* on the warrant, which restarted with the expiry of the stay on 31st July 2017. The Court of Appeal held that in those circumstances, the District Court judge *"was not only entitled to reissue the committal warrant, but had an obligation to do so"*. In effect, the Court of Appeal held that the District Court had jurisdiction to reissue the warrant in this case. In reaching this conclusion that the District Court judge had jurisdiction to reissue the warrant, the Court of Appeal drew on authorities including *R.(Shields) v. Justices of Tyrone* [1914] 2 I.R. 89, *Healy v. Governor of Cork Prison* [1998] 2 I.R. 98, and *Buckley v. Judge Hamill* [2016] IESC 42.

5. It is respectfully submitted that the Court of Appeal erred in law in concluding that the District Court judge had jurisdiction to reissue the committal warrant in the circumstances of this case, for the following reasons.

6. First, the decision of the Court of Appeal is incompatible with the Supreme Court's ruling in *Buckley v. Judge Hamill* [2016] IESC 42, which is to the clear effect that a committal warrant can only be reissued where *"it has not been executed because the person cannot be found"* and that a renewal of the warrant would be invalid where that criterion was not satisfied. The Court of Appeal's decision that a warrant could be reissued in the circumstances of this case runs contrary to that decision. Further, it is incompatible with the Supreme Court's decision in *Brennan v. Windle* [2003] 3 I.R. 494.

7. Secondly, the authorities relied on by the Court of Appeal do not support the conclusion which it arrived at. In the course of her judgment in *Buckley*, O'Malley J. expressly distinguished the decisions in *R.(Shields)* and *Healy* and held that they were inapplicable in the context of committal warrants. The comments of O'Malley J. which were emphasised by the Court of Appeal do not support the contention that a District Court judge has jurisdiction to reissue a warrant in circumstances other than those set down by O. 26 of the District Court Rules and s. 33 of the Petty Sessions (Ireland) Act 1851.

8. Thirdly, the effect of the Court of Appeal's decision is to provide the District Court with an inherent jurisdiction to reissue committal warrants in certain circumstances. This was erroneous as the District Court is a creation of statute with local and limited jurisdiction, with powers confined to what is set down in legislation. It does not have an inherent power to reissue a committal warrant going beyond what is permitted by statute.

9. Fourthly, the Court of Appeal did not attribute sufficient significance to the fact that in this case, the application to reissue made to the District Court was made expressly under O. 26 of the District Court Rules. That being so, the District Court judge was confined to acting within the scope of O. 26 in dealing with the application and had no jurisdiction to reissue the warrant on any other grounds, even if an inherent jurisdiction did exist.

10. Fifthly, it is respectfully submitted that the Court of Appeal's logic did not justify the conclusion to which it arrived. The Court held that once the Court of Appeal stay expired on 31st July 2017, *"the warrant was then revived"* and it was this fact which meant that *"the District Court was entitled to reissue the warrant"*. However, this overlooks the fact that the District Court judge purported to reissue the warrant on 5th July 2017, before the stay expired. If jurisdiction to reissue the warrant arose on 31st July 2017 when the stay expired, it follows the District Court judge had no jurisdiction on the date of the purported reissue.

11. Sixthly, the Court of Appeal was wrong in all of the circumstances to hold that an inherent jurisdiction to reissue could exist in circumstances such as those arising in the circumstances of the present case.

Ground 2: the Court of Appeal erred in law in holding that the committal warrant detaining the Applicant showed jurisdiction on its face.

1. The Applicant contended that the reissued committal warrant which formed the basis for his detention failed to show jurisdiction on its face. In making this argument, he contended that the power to reissue a warrant is a judicial function which is only exercised lawfully by a District Court judge if he or she conducts a proper judicial inquiry by evaluating the reasons for the application to reissue and determining whether they justify the granting of same. Relying on the decision of MacMenamin J. in *Daly v. Judge Coughlan* [2006] IEHC 126, it was submitted that a reissued warrant is only valid where it shows on its face that an inquiry of this sort actually took place.

2. The Applicant argued that the stamped endorsement on the warrant in this case did not go far enough in establishing that the necessary judicial inquiry took place. Further, while there was an affidavit setting out what happened during the application to reissue, it did not go far enough to establish that the District Court judge conducted a judicial inquiry.

3. The Court of Appeal rejected this argument as "*misconceived*", stating that "*the procedures followed in the District Court, if procedures were necessary, were appropriate in all the circumstances.*" The Court appeared to take this view on the basis that "*the obligation on the District Court to reissue the warrant*" after the Court of Appeal stay expired disposed of any obligation to carry out a judicial inquiry into the basis for reissuing the warrant, and further that it was "*abundantly clear that the Judge in the District Court was informed of the reality of the situation*".

4. It is respectfully submitted that the Court of Appeal erred in law in rejecting the Applicant's argument and reaching the conclusions which it did.

5. First, there is an obligation on a District Court judge to carry out a judicial inquiry prior to the granting of an application to reissue which applies regardless of the basis for that application. That obligation must be fulfilled for the warrant to be lawfully reissued. To the extent that the Court of Appeal held that there were circumstances in which that obligation would not apply, it erred in law.

6. Secondly, contrary to the conclusion reached by the Court of Appeal, the materials which were before the Court did not establish that this inquiry actually took place.

7. Thirdly, in all of the circumstances, the committal warrant failed to show jurisdiction on its face as it did not clearly establish that the necessary judicial inquiry into the application to reissue took place in the circumstances of this case.

Ground 3: the Court of Appeal erred in law in holding that the Applicant's detention was lawful and in dismissing his appeal.

1. The Court of Appeal held that, in all of the circumstances, the Applicant's detention was lawful and that the High Court was fully entitled to dismiss the application under Article 40 for his release. It is respectfully submitted that this was erroneous.

2. First, the six month life span of the warrant holding the Applicant had expired. The warrant had not been validly reissued as the District Court judge lacked jurisdiction to order same. In those circumstances, the Applicant was detained on foot of a stale warrant.

3. Secondly, even if stay in the judicial review proceedings stopped time running on this warrant, the purported order to reissue fundamentally transformed the warrant and meant that the validity of the warrant as a basis of detention became dependent on the validity of that order. In circumstances where the District Court judge acted *ultra vires* in making an order to reissue, this fatally compromised the warrant as a lawful basis for detention.

4. Thirdly, even if there was jurisdiction to reissue the warrant, the warrant fails to show jurisdiction on its face as it does not establish on its face that the proper judicial inquiry was carried out into the basis for the application to reissue, and none of the materials before the court remedy that defect.

3. Order(s) sought

Please set out in numbered paragraphs the order(s) sought if the Appeal were to be successful.

1. An order directing the release of the Applicant from detention.

2. A declaration that the committal warrant dated 10th December 2014 and reissued on 5th July 2017 did not and could not form a lawful basis for the Applicant's detention.

3. A recommendation pursuant to the Legal Aid (Custody Issues) Scheme.

4. Such further or other order as this Honourable Court may deem fit.