



**SUPREME COURT**

Record No:

54/2019



**Respondent's Notice**

**Part I**

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

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

**THE HIGH COURT**  
**2017 No. 882 SS**

**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. **Name of Respondent:**

**THE GOVERNOR OF MOUNTJOY PRISON**

3. Application to extend time:

Yes

No

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

N/A

4. Do you oppose the applicant's application to extend time:

Yes

No

*If an application by the applicant to extend time is being opposed please set out concisely the grounds on which it is being opposed.*

N/A

5. Do you oppose the applicant's application for leave to appeal:

Yes

No

6. Matter of general public importance:

*Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance.*

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

1. The jurisdiction of a District Judge to reissue committal warrants has been definitively clarified by this Honourable Court, *inter alia*, in *Buckley –v– Hamill [2016] IESC 42*, and, it is not of general public importance that the matter be re-visited, particularly in the circumstances of the instant case where, at the Applicant's request, the execution of the committal warrant was "stayed" by the High Court and by the Court of Appeal in the context of previous judicial review proceedings, and hence was not executed earlier.

2. The Court of Appeal properly construed and applied all the applicable precedent and authorities that were opened to it, and, it duly found as an uncontroverted fact, that the Applicant was aware of the existence of the committal warrant and that, because of the stays, it could not have been executed any earlier. The Court of Appeal's determination was made in light of the 'stays' but that Court also had express regard to the precedent and authority of this Honourable Court, including that of the *Buckley* case. The Court of Appeal's determination was particularly predicated on the unchallenged finding as outlined at para. 23, therein, that because of the stays, the committal warrant could not have been lawfully executed any earlier.
3. The Court of Appeal did not hold that the Applicant's submission on the law was misconceived, rather, that Court correctly held that his complaint that the warrant lacked jurisdiction on its face, was misconceived. Both the High Court and the Court of Appeal found that the committal warrant showed jurisdiction on its face. That determination pertained to the particular and peculiar facts of the instant case and it is not of general public importance that it be further considered by this Honourable Court.
4. In all of the circumstances, the judgment of the Court of Appeal represented the application of established principles to the particular facts of the instant case, and, in all of the circumstances, it is not of general public importance that there should be a further appeal to this Honourable Court.

Word count - 343

#### **7. Interests of Justice:**

*Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.*

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

1. The lawfulness of the Applicant's detention has been properly determined by the High Court and by the Court of Appeal. Simply because the proceedings "raise an issue of fundamental constitutional rights" (as do all Article 40 appeals) it does not automatically follow that it is in the interests of justice that his complaint should be further examined by this Honourable Court. This Honourable Court has previously declined to grant leave to appeal in cases where constitutional issues were raised, including applications for leave to appeal the outcome of Article 40.4. inquiries.

2. It is not in the interests of justice that this Honourable Court should grant this application and entertain an appeal because the Court of Appeal considered some jurisdictional arguments for the first time. The High Court and the Court of Appeal considered his application for release and both Courts upheld the lawfulness of his detention. That was the sole issue that fell for consideration and was duly determined.
3. The Applicant has had one appeal against the order of the High Court, and has not met the constitutional criteria applicable to a further appeal to this Court and, on the facts of this case there was no unfairness in either the manner in which those decisions were made or in the actual decisions.
4. Given the procedural history of the Applicant's case, including his previous judicial review application and his unsuccessful appeal thereof, in the course of and following which the relevant "stays" were granted at his request, it is not in the interests of justice that a further appeal be entertained by this Honourable Court.

Word count - 268

**8. Exceptional Circumstances Article 34.5.4.:**

*Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that there are exceptional circumstances justifying such an appeal.*

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

N/A

Word count -

**9. Respondent's grounds for opposing an appeal if leave to appeal is granted:**

*Please set out in the Appendix attached hereto the Respondent's grounds of opposition to the Grounds of Appeal set out in the Appellant's Notice of Appeal.*

Please see appendix

**10. Cross Application for Leave:**

*If it is intended to make a cross application for leave to appeal please set out here precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance or the interests of justice justifying a cross appeal to the Supreme Court.*

*If it is sought to make a cross application for leave to appeal direct from a decision of the High Court, please also 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 500 words and the word count should appear at the end of the text.*

<b>N/A</b>
Word count -

**11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal**

*Please set out in the Appendix attached hereto any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court and / or the grounds of cross appeal that would be relied upon if leave to appeal were to be granted.*

Please see appendix

**12. Priority Hearing:**

Yes  No

*If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.*

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

<p>The Applicant is presently on bail in the context of a further set of judicial review proceedings that he initiated after the High Court had dismissed his Article 40 application, the finding that was subsequently upheld by the Court of Appeal, and is now the subject matter of the within application. That judicial review application has been adjourned from time to time in the High Court pending the making of the within application. In the circumstances, an early consideration and determination by this Honourable Court would help in ensuring finality.</p> <p>Word count: 90</p>
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**13. 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.*

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

N/A

Word count:

**Part II**

*The information contained in this part will not be published.*

**14. Respondent's Representatives:**

*If not provided in the application for leave to appeal please identify the solicitor and counsel for the respondent, with contact details for the solicitor dealing with the matter including an email address for the solicitor and lead counsel or in the case of a respondent in person please provide contact details including telephone and email.*

As outlined in the application for leave.

**15. Legal Aid:**

*In the case of an application by the DPP from an order in a criminal trial please confirm that a Legal Aid (Supreme Court) certificate has been granted by the Court below and please provide a copy of same.*

N/A

Signed:



**(Solicitor for) the Respondent**

**Date: this 17<sup>th</sup> day of April 2019**

**To be served on: Michael Kelleher Solicitors,  
149 James Street,  
Dublin 8.**

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**(Solicitor for) the Applicant / Other Respondent(s)**

**Please file your completed Notice in:  
The Office of the Registrar of the Supreme Court  
The Four Courts  
Inns Quay  
Dublin 7.**

**Appendix**  
**Grounds of Opposition (and Cross Appeal)**

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

**THE HIGH COURT**  
**2017 No. 882 SS**

**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. **Respondent's grounds for opposing an appeal if leave to appeal is granted:**

*Please list concisely in numbered paragraphs, the Respondent's ground(s) of opposition to the grounds of appeal set out in the Appellant's Notice of Appeal.*

**1. The Court of Appeal did not err in law in holding that the District Court had jurisdiction to reissue the committal warrant at issue in these proceedings.**

- (i) This case was decided in the context of the particular and distinct facts of the Applicant's case and contrary to his assertions [Ground 1.6], the judgement of the Court of Appeal is consistent with and indeed was decided by reference to the decision of this Honourable Court in *Buckley -v- Hamill* [2016] IESC 42. The decision of the Court of Appeal is also supported by and is consistent with the other authorities relied upon and cited therein.
- (ii) The Court of Appeal correctly recognised that there was no want of urgency on the part of the Gardaí, and, that the committal warrant could not have been executed any earlier than it was because of the 'stays' on execution that the Applicant had secured. If the Applicant's contention is correct, it follows that the grant of an interlocutory 'stay' would have an equivalent legal effect to a final order of *certiorari* or prohibition, as, in such circumstances, the reissue of a warrant, if such was necessary, would not be permitted. The reissue of the warrant, upon the expiry of the "stays", such as occurred here, comes within the exceptional circumstances envisaged by this Honourable Court at para. 86 of its



judgement in *Brennan* to which the Court of Appeal made express reference at para. 22 of its judgement delivered by the President.

- (iii) The Court of Appeal had full regard to and it correctly rejected the Applicant's contention that the Garda application for the reissue of the committal warrant herein was made pursuant to O.26 of the District Court Rules. It had not been so made and no certificate was either signed or tendered to the effect that the Applicant could not be located. At paragraph 18 of the President's judgement, the Court of Appeal noted that whilst the Garda had understandably followed the O. 26 template, it was "abundantly clear" that that the District Judge was informed of the reality of the situation, that it was not a case of someone whose whereabouts could not be ascertained, but concerned someone who had commenced judicial review proceedings, had obtained orders from the High Court and then the Court of Appeal staying the operation of the committal warrant and those stays had expired. In *Brennan*, this Court did not suggest that in such situations warrants cannot be reissued.
- (iv) The Court of Appeal had granted a stay on the execution of the committal warrant until 31<sup>st</sup> July 2017. Once that "stay" had expired, the warrant, if in force, could be lawfully executed, and it was so executed. The Court of Appeal observed that there may have been no need to reissue the warrant because of the superior court "stays" but, in any event, the reissue of the warrant during the currency of the final stay so that it could be executed promptly after the expiry of the stay, did not breach the terms of the stay or in any way undermine the validity of the warrant or the Applicant's subsequent arrest or detention, and he has not previously so contended.
- (v) The Court of Appeal was correct in law and in fact.

**2. The Court of Appeal did not err in law in holding that the committal warrant detaining the Applicant showed jurisdiction on its face.**

- (i) The committal warrant showed jurisdiction on its face either in its own right or, if necessary, by the joinder of documents.
- (ii) The High Court had held that the warrant did not contain an error on its face of such a fundamental nature that could warrant the court in reaching the conclusion that the Applicant's detention is unlawful. The Court of Appeal correctly upheld the High Court determination and holding that the committal warrant showed jurisdiction on its face, it properly rejected the Applicant's submissions to the contrary. The Court of Appeal noted that the procedures followed in the District Court, if procedures were necessary, were appropriate in all the circumstances.

- (iii) There was ample documentation and evidence before both courts to support the foregoing determination. The Garda who applied for the reissue of the committal warrant fully apprised the District Judge of the history of the case, as the Court of Appeal so found.
- (iv) In addition to the committal warrant itself, the outline of factual and chronological history provided by the Garda, including the superior court orders granting the 'stays' as well as the letters from the Applicant's solicitor advising the Gardaí not to execute the warrant during the currency of the 'stay' are on the Applicant's file.
- (v) The Court of Appeal did not err in reaching the conclusions that it did, as the Applicant so contends. It acted appropriately in all of the circumstance. Further and without prejudice, the Court did not hold that there are circumstances in which a judicial inquiry is unnecessary prior to the reissue of a warrant. The Court of Appeal properly held on the facts of this case that there was adequate information before the District Court to justify the reissue of the warrant and there was ample information before the Court of Appeal to support its findings.

**3. The Court of Appeal did not err in law in holding that the Applicant's detention was lawful. That Court correctly determined the case and held that he was lawfully detained.**

- (i) The Court of Appeal properly upheld the finding of the High Court that the Applicant was lawfully detained.
- (ii) Either the committal warrant did not expire because of the stays on execution as granted to the Applicant by the High Court and the Court of Appeal and/or the warrant was validly reissued and lawfully executed upon the expiry of the "stays".
- (iii) If the 'stays' stopped time running, the reissue of the warrant may not have been necessary, otherwise it was properly reissued, and/or the District Court did not make any order that fatally compromised the warrant.
- (iv) Further, or on any event, there was jurisdiction to reissue the warrant in the circumstances that pertained, and, the warrant showed jurisdiction on its face, either on its own or in conjunction with the other available documents.

**3. Additional grounds on which the decision should be affirmed:**

Please set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court.

- (i) Subsequent to the High Court's rejection of his *habeas corpus* application, as since upheld by the Court of the Appeal and now the subject matter of the within application for leave to appeal, the Applicant initiated further judicial review proceedings in the High Court seeking to quash the committal warrant. These proceedings remain pending in the High Court in circumstances where the Applicant wanted to first proceed with his *habeas corpus* appeal to the Court of Appeal. It is not in the interests of justice that he seek leave to appeal to this Honourable Court while he has related proceedings still pending in the High Court as that, in effect would constitute a "leap-frog" over the High Court.
- (ii) In any event, the Applicant has already had the benefit of High Court and Court of Appeal determinations in his challenge by way of judicial review to his initial two-month sentence. [2016] IEHC 258 and [2017] IECA 192. It is in the course of those proceedings that he secured the stays on the execution of the committal warrant. He has now also had the benefit of High Court and Court of Appeal determinations in respect of his Article 40 application, wherein he sought, as he now seeks herein, to contend that the "stays" he secured in the previous proceedings now constitute a bar to the execution of the warrant. In effect, he contends that he should derive the relief that he had sought in the previous proceedings, eventhough they were determined against him. Such an outcome is neither of general public importance nor in the interests of justice. Rather, it would be contrary to those interests.

Word Count: 276

#### 4. Cross Appeal

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

N/A

#### 5. Order(s) sought

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

N/A