

## SUPREME COURT

## Respondent's Notice



Supreme Court record number	2018/50
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## [Title and record number as per the High Court proceedings]

Director of Public Prosecutions	V	[REDACTED]
		Court of Appeal No. 111/2010

Date of filing	15/5/18
Name of respondent	Director of Public Prosecutions
Respondent's solicitors	Chief Prosecution Solicitor
Name of appellant	[REDACTED]
Appellant's solicitors	Kevin Tunney

## 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	N/A
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The respondent was served with the application for leave to appeal and notice of appeal on date
1 <sup>st</sup> May 2018

## The respondent intends :

<input checked="" type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
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<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
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<input type="checkbox"/>	to oppose the application for leave to appeal
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<input type="checkbox"/>	not to oppose the application for leave to appeal
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<input checked="" type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
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<input type="checkbox"/>	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
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<input type="checkbox"/>	Other (please specify)
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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:	<input type="checkbox"/>
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Respondent's Representation

Solicitor			
<b>Name of firm</b>	Chief Prosecution Solicitor c/o Jane McKeivitt, Prosecutor		
<b>Email</b>	cca.mailbox@dppireland.ie and jane.mckeivitt@dppireland.ie		
<b>Address</b>	Infirmary Road	<b>Telephone no.</b>	858-8500 858-8535
		<b>Document Exchange no.</b>	34
<b>Postcode</b>	Dublin 7	<b>Ref.</b>	2001/4523
<b>How would you prefer us to communicate with you?</b>			
<input checked="" type="checkbox"/>	<b>Document Exchange</b>	<input checked="" type="checkbox"/>	<b>E-mail</b>
<input type="checkbox"/>	<b>Post</b>	<input type="checkbox"/>	<b>Other (please specify)</b>

Counsel			
<b>Name</b>	Sean Gillane SC		
<b>Email</b>	Sean.Gillane@lawlibrary.ie		
<b>Address</b>	Law Library Four Courts	<b>Telephone no.</b>	0872906306
		<b>Document Exchange no.</b>	810087
<b>Postcode</b>	Dublin 7		

Counsel			
<b>Name</b>	Daniel Boland		
<b>Email</b>	dboland@lawlibrary.ie		
<b>Address</b>	Monard House Milltown, Newbridge Co Kildare	<b>Telephone no.</b>	045 436 282
		<b>Document Exchange no.</b>	812026
<b>Postcode</b>			

**If the Respondent is not legally represented please complete the following**

<b>Current postal address N/A</b>
<b>Telephone no.</b>
<b>e-mail address</b>

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

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**

The decision of the Court of Criminal Appeal was made on the 25<sup>th</sup> of June 2015. Notwithstanding that the Order was perfected on the 11<sup>th</sup> of December 2017 no explanation at all is offered for the elapse of time between the decision of the Court and the taking up of the Order by the Appellant. Further, the explanation for the delay between the perfection of the



Order and the filing of the application at paragraphs five and six of the application is that a “procedural conundrum” has arisen. As expressed, this is legally incomprehensible and does not explain the failure to file the application in accordance with the spirit and letter of the rules. Further, the Applicant must know that domestic remedies must be exhausted before lodging an application with the European Court of Human Rights and cannot persuasively urge this as a basis or not appealing in time.

Nor was consent to an extension of time sought as required by the practice direction of the Honourable Court.

### 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:**

The time scale set out for the conviction of the Applicant and the subsequent refusal of his appeal against conviction is accurate other than consent to bail in 2010.

However, section 4 of the Notice of Appeal is a confused narrative in terms of understanding the actual Order made by the Court of Criminal Appeal that is under appeal. The Court of Criminal Appeal determined that the necessary threshold for a certification under section 29 of the Criminal Justice Act, 1924, was not met and dismissed that application in a reserved judgment dated 25<sup>th</sup> June 2015. This is the Order under appeal. The references to “related proceedings” are not understood in so far as it is suggested that those proceedings had any relevance to the matters to be determined by the Court of Criminal Appeal. At page thirteen and fourteen of its judgment the Court of Criminal Appeal did refer to other proceedings filed by the applicant and in particular referred to the inappropriateness of an attempt to file a parallel appeal before the Court of Appeal.

### 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

In the first instance the Appellant's appeal against conviction was initiated before the establishment day of the Court of Appeal and was lawfully heard and determined by the Court of Criminal Appeal. The instant application arises out of a further application by way of notice of motion initiated by the Appellant on 23rd June 2014 wherein he sought leave to appeal the decision of the Court of Criminal Appeal to this Honourable Court pursuant to section 29 of the Criminal Justice Act, 1924 as amended, on the basis of what was claimed to be a point of law of exceptional public importance. A further motion issued where further grounds of appeal were sought to be added to include an assertion of unconstitutionality in respect of the Criminal Justice Act 1924 and an assertion that the Appellant had been wrongfully deprived of an opportunity by the trial



Judge to apply to this Court by way of case stated. These and other arguments had never been previously argued by the Appellant. The Court of Criminal Appeal rightly criticized the attempt to argue new matters to include questions of unconstitutionality after the substantive appeal was heard. At a level of principle these matters were incapable of being properly ventilated before the Court of Criminal Appeal.

In a reserved judgment the Court of Criminal Appeal determined that no point of sufficient importance within the well-established interpretation of section 29 had even been articulated. It is submitted that the current application is entirely misconceived by an Applicant who is ignoring that he had an appeal heard in accordance with law, and a further application to have the matter put before this Honorable Court on the basis of the then applicable law refused.

Further, and in the alternative, the points raised in the substantive appeal of the Appellant and which were in fact connected to his trial and urged as part of the section 29 application were not matters of general public importance. The Appellant raised an issue about an admission he had made to family members in the family home which was very case specific and intimately connected to the background of the parties involved. The other issue related to the Judge's charge in connection with the decision in DPP v Cronin [2003] 3 IR 377. Not only is the law well settled in this area to the point that a 'Cronin direction' is now a well-known term of art, the Court of Criminal Appeal was satisfied that when complaint was made in relation to this the trial Judge did in fact re-charge the jury on this point.

Further the interests of justice do not require an appeal to this Court. The Appellant was convicted unanimously in 2010 in respect of offences which date back to 1981. He has exhausted a full appeal process. The interests of justice weigh heavily in favour of finality being brought to this matter.

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):**

1. In relation to paragraph 6.1 it is well established that constitutional proceedings should be initiated by plenary summons or judicial review and not raised for the first time on appeal;
2. In relation to paragraph 6.2 the Appellant suggests processes unknown to the law, to include the Court of Criminal Appeal seeking advisory opinions from this Honourable Court, and the points raised in paragraph 1 are repeated here;
3. In relation to paragraph 6.3 the matters outlined above are repeated;
4. In relation to paragraph 6.4 the matters outlined above are repeated;
5. In relation to paragraph 6.5 the matters outlined above are repeated;
6. In relation to paragraph 6.6 the matters outlined above are repeated;
7. In relation to paragraph 6.7 the matters outlined above are repeated;

- 8. In relation to paragraph 6.8 the matters outlined above are repeated;
- 9. In relation to paragraph 6.9 the matters outlined above are repeated;
- 10. In relation to paragraph 6.10 the matters outlined above are repeated;
- 11. In relation to paragraph 6.11 the respondent is a stranger to these complaints and the Court of Criminal Appeal hearing was conducted on the basis of a full set of trial transcripts;
- 12. In relation to paragraph 6.12 the respondent understands that the applicant has been legally aided;
- 13. In relation to paragraph 6.13, the matters outlined in number 12 above are repeated.
- 14. In relation to paragraph 6.14 and 6.15 to above is repeated.

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

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:**

N/A

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:

Signed:   
 Helena Kiely  
 Chief Prosecution Solicitor  
 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.**