2017: 1

Appendix FF

Order 58, rule 15

No. 1

SUPREME COURT

Application for Leave and Notice of Appeal

For Office use

Supreme Court record number of this appeal		2017: 118
Subject matter for indexing		

Leave is sought to appeal from			
X	The Court of Appeal		The High Court

[Title and record number as per the High Court proceedings]

Lucian Marina		V	Judge John O'Hagan and the Director of Public Prosecutions
High Court Record	2015/355JR	Court of Appeal Record	2017/81
Date of filing			
Name(s) of Applicant(s)/Appellant(s)	Lucian Marina		
Solicitors for Applicant(s)/Appellant(s)	John M. Quinn & Co., Unit 232, The Capel Building, Mary's Abbey, Dublin 7.		
Name of Respondent(s)	Judge John O'Hagan and the Director of Public Prosecutions		
Respondent's solicitors	~~The Chief State Solicitor.~~ The Chief Prosecution Solicitor		

SMQ Solicitors

Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?			
	Yes		No X

Are you applying for an extension of time to apply for leave to appeal?		Yes		No
If Yes, please explain why				

1. Decision that it is sought to appeal

Name(s) of Judge(s)	Birmingham, Mahon, Edwards JJ. (Court of Appeal)
Date of order/ Judgment	Judgment of 4th May, 2017; Order dated 25th May 2017 (perfected 24th July 2017).

2. Applicant/Appellant Details

Where there are two or more applicants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the applicants/appellants

Appellant's full name	Lucian Marina

Original status

	Plaintiff
X	Applicant
	Prosecutor
	Petitioner

	Defendant
	Respondent
	Notice Party

Solicitor	Mr. John M. Quinn		
Name of firm	John M. Quinn & Co.		
Email	john.quinn@jmqsolicitors.ie		
Address	Unit 232, The Capel Building Mary's Abbey	Telephone no.	01-8727360
Postcode	Dublin 7	Ref.	

How would you prefer us to communicate with you?

	Document Exchange	X	E-mail
	Post		Other (please specify)

Counsel			
Name	Mr. Colman FitzGerald, S.C.		
Email	cfitzgerald@lawlibrary.ie		
Address	Law Library Four Courts Inns Quay	Telephone no. Document Exchange no.	01-8174378 816811
Postcode	Dublin 7		

Counsel			
Name	Mr. Karl Monahan, B.L.		
Email	karl.monahan@gmail.com		
Address	Law Library, Four Courts, Dublin	Telephone no. Document Exchange no.	0876771554 810263 Four Courts
Postcode	Dublin 7		

If the Applicant / Appellant is not legally represented please complete the following

Current postal address	
e-mail address	

Telephone no.	

How would you prefer us to communicate with you?			
	Post		Other (please specify)

3. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

Respondent's full name	Judge John O'Hagan and the Director of Public Prosecutions

Original status

	Plaintiff
	Applicant
	Prosecutor
	Petitioner

	Defendant
X	Respondent
	Notice Party

Solicitor			
Name of firm	The Chief Prosecution Solicitor		
Email			
Address	Infirmary Road	Telephone no.	01-8588500
		Document Exchange no.	38
Postcode	Dublin 7		

How would you prefer us to communicate with you?

	Document Exchange
	Post

	E-mail
	Other (please specify)

Counsel: Mr. Niall Nolan, B.L.			
Address	Law Library Four Courts Inns Quay	Telephone no.	01-8175674
		Document Exchange no.	816658
Postcode	Dublin 7		

Counsel			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

How would you prefer us to communicate with you?

	Document Exchange		E-mail
	Post		Other (please specify)

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

Concise statement of the facts found in the High Court

The applicant pleaded guilty in the District Court to 2 counts of theft and was sentenced to 2 terms of imprisonment of six months each, to be served concurrently. He appealed to the Circuit Court against sentence which Court, on the 9th June, 2015, affirmed the sentence of the District Court. The Committal Warrants issued by the Circuit Court stated, inter alia;

"AND WHEREAS on the hearing of an appeal by the said accused against the said order the Circuit Court judge for the County of Cavan on the 9th of June 2015 ordered as follow:-

Affirm conviction and order of the District Court and ordered that the accused be imprisoned for a period of six months."

The applicant was granted leave to apply for Judicial Review to quash the said sentences. The basis for the said application was the contention that the failure of the Committal Warrants to recite that a Community Service Order had been considered as an alternative to the sentence of imprisonment imposed was an error on the face of the record which vitiated the lawfulness of the Committal Warrants.

The High Court found that there was no obligation on the sentencing Judge to state that he had considered community service as an alternative to the imposition of a custodial sentence. The sentencing Judge had clearly taken a very serious view of the offences.

Having cited the decision of this Honourable Court in *G.E. (Ejerenwa) v Governor of Cloverhill Prison* [2011] IESC 41 to the effect that a committal warrant should clearly show jurisdiction on its face, the learned High Court Judge held:

"31. The committal warrant is clear on its face. It discloses the criminal offence and the penalty. There is no requirement to add into it that the Circuit Court Judge had considered the relevant provisions of the Criminal Justice (Community Service) Act 1983 as amended and decided not to impose community service."

Concise statement of the judgement of the Court of Appeal

The Court of Appeal disallowed the appeal in a judgment which also dealt with four other cases (*Maguire, Animashaum*, *Brennan* and *Marina*) which raised similar issues.

In relation to the issue of whether the committal warrant required to contain a recital that community service had been considered as an alternative to community service, the Court of Appeal did not expressly rule on this, but by implication ruled that it was not necessary. In this regard, the Court reiterated previous jurisprudence (which the applicant did not dispute) to the effect that a Judge was not required to state openly that he had considered community service as an alternative to a short prison sentence. The Court also made reference to the case of *Freeman v The Governor of Wheatfield Place of Detention* [2016] IECA 177 in which the Court of Appeal had held that the failure of a warrant to recite the directions of the Director of Public Prosecutions was at most of such a technical nature as could not invalidate what was otherwise a valid warrant. Whilst the Court did not expressly

apply this finding to the instant case, it may have intended to convey similar reasoning to the question at issue.

5. Reasons why the Supreme Court should grant leave to appeal

The decision of the Court of Appeal in respect of the below mentioned issue involves a matter of general public importance. Furthermore it is necessary in the interests of Justice that the decision of the Court of Appeal in respect of the below mentioned issue be appealed to the Supreme Court.

A committal warrant must show jurisdiction on its face. Consideration of a Community Service Order as an alternative to the imposition of a custodial sentence of 12 months or less is a mandatory statutory prequisite to a court's jurisdiction to impose any such sentence (Section 3 of the Criminal Justice (Community Service) Act, 1983, as substituted by Section 3 of the Criminal Justice (Community Service) Act, 2011) and must be recited on a committal warrant.

Ejerenwa (orse. G.E.) v Governor of Cloverhill Prison [2011] IESC 41 held, in respect of a Detention Order issued under the Immigration Acts that a document grounding a person's detention should contain clear information on its face as to the basis of its jurisdiction. Whilst that case related to an administrative warrant the principle is of general application (McKechnie J. in *O'Farrell v Governor of Portlaoise Prison* [2016] IESC 37).

In the instant case, neither the applicant, the prison Governor nor the Court is in a position to know from the face of the committal warrant herein whether the District Court Judge or the Circuit Court Judge gave consideration to the imposition of a Community Service Order and accordingly to know whether the said Judge acted within or outside jurisdiction.

To the extent that the Court of Appeal found that such consideration did not require to be given by the Circuit Court Judge as such Judge was entitled simply to affirm the Order of the District Court, that does not cure the defect in the warrant because the warrant does not show on its face whether the District Court Judge gave such consideration.

6. Ground(s) of appeal which will be relied on if leave to appeal is granted

The Court of Appeal erred in law in ruling that a committal warrant in respect of a custodial sentence of 12 months or less which fails to recite that consideration was given by the sentencing Judge to the imposition of a Community Service Order as an alternative to such sentence is a valid basis for depriving the person sentenced of their liberty.

Name of solicitor or (if counsel retained) counsel or applicant/appellant in person:
Karl Monahan, B.L. **Colman FitzGerald, S.C.**

7. Other relevant information

Neutral citation of the judgment appealed against *e.g.* Court of Appeal [2015] IECA 1 or High Court [2009] IEHC 608

Unknown.

References to Law Report in which any relevant judgment is reported
1. *Ejerenwa v Governor of Cloverhill Prison [2011] IESC 41* 2. *O'Brien v Coughlan [2015] IECA 245* 3. *Ilie v Governor of Castlerea Prison* [2016] IEHC 373 4. *O'Brien v. Coughlan & Anor.* [2016] IESCDET 88 5. *O'Farrell v. Governor of Portlaoise Prison* [2016] IESC 37 6. *Freeman v Governor of Wheatfield Place of Detention* [2016] IECA 177

8. Order(s) sought

Set out the precise form of order(s) that will be sought from the Supreme Court if leave is granted and the appeal is successful:

An Order (1) setting aside the Order of the Court of Appeal; (2) directing the quashing of the impugned committal warrants.

What order are you seeking if successful?

Order being appealed: **set aside** [Yes] **vary/substitute** [ ]

Original order: **set aside** [Yes] **restore** [ ] **vary/substitute** [ ]

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution
N/A

If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention
N/A

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions? ☐ **Yes** ☒ **No** **No**

If Yes, please give details below:

make a reference to the Court of Justice of the European Union? ☐ **Yes** ☒ **No** **No**

If Yes, please give details below:

Will you request a priority hearing? ☐ **Yes** ☒ **No** **No**

If Yes, please give reasons below:

Signed: John M. Quinn & Co. Solicitors

(Solicitor for) the applicant/appellant
John M. Quinn
John M. Quinn & Co. Solicitors,
Unit 232, The Capel Building,
Mary's Abbey,
Dublin 7.

Please submit your completed form to:
The Office of the Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin

together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.

This notice is to be served within seven days after it has been lodged on all parties directly affected by the application for leave to appeal or appeal.