



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		120: <del>118</del> 17 2017: 120
Subject matter for indexing		

Leave is sought to appeal from	<input checked="" type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court
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[Title and record number as per the High Court proceedings]

Napoleon Silaghi	V	Judge John O'Hagan and the Director of Public Prosecutions
High Court Record 2015/354JR		Court of Appeal Record 2017/80
Date of filing		
Name(s) of Applicant(s)/Appellant(s)	Napoleon Silaghi	
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	<del>The Chief State Solicitor.</del> <i>The Chief Prosecution Solicitor</i>	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> X

*SM & S. L. Quinn*

Are you applying for an extension of time to apply for leave to appeal?	Yes	<input checked="" type="checkbox"/> X	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 4 <sup>th</sup> May, 2017; Order perfected 27 <sup>th</sup> 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	Napoleon Silaghi
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Original status

<input type="checkbox"/>	Plaintiff
<input checked="" type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party

<b>Solicitor</b>	Mr. John M. Quinn <span style="float: right;"><i>Scary</i></span>		
Name of firm	John M. Quinn & Co.		
Email	john.quinn@jmqsolitors.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?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

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

<b>Counsel</b>			
Name	Mr. Karl Monahan, B.L.		
Email	karl.monahan@gmail.com		
Address	Law Library, Four Courts, Dublin	Telephone no.	0876771554
		Document Exchange no.	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.	
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How would you prefer us to communicate with you?			
<input type="checkbox"/>		<input type="checkbox"/>	
<input type="checkbox"/>	Post	<input type="checkbox"/>	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
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Original status

<input type="checkbox"/>	Plaintiff
<input type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input checked="" type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party
<input type="checkbox"/>	

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

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)

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?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	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 9<sup>th</sup> June, 2015, affirmed the sentence of the District Court. The Committal Warrant 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 9<sup>th</sup> 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 Warrant 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 Warrant.

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

It is beyond dispute that a committal warrant must show jurisdiction on its face. The question is whether consideration of a Community Service Order as an alternative to the imposition of a custodial sentence of 12 months or less is a matter which goes to jurisdiction and which must therefore be recited on a committal warrant. It is no part of the applicant's case that a sentencing Judge must state verbally in Court that such consideration is being given.

Section 3 of the Criminal Justice (Community Service) Act, 1983, as substituted by Section 3 of the Criminal Justice (Community Service) Act, 2011 provides:

“(1) (a) Where a court, by or before which an offender stands convicted, is of opinion that the appropriate sentence in respect of the offence of which the offender is convicted would, but for this Act, be one of imprisonment for a period of 12 months or less, the court shall, as an alternative to that sentence, consider whether to make an order (in this Act referred to as a ‘community service order’) in respect of the offender and the court may, if satisfied, in relation to the offender, that the provisions of section 4 have been complied with, make a community service order in accordance with this section...”

It is submitted that the wording of the section makes clear that the sentencing Court “shall” consider making a Community Service Order as an alternative to a sentence of 12 months or less, which imports that the Court does not have jurisdiction to impose such a sentence in the absence of such consideration being given.

As held by this Honourable Court in *Ejerenwa (or se. G.E.) v Governor of Cloverhill Prison* [2011] IESC 41 in respect of a Detention Order issued under the Immigration Acts:

“A document, such as in issue here, should contain clear information on its face as to the basis of its jurisdiction. This information is required so that it be available to, for example, (a) the person in custody, such as the appellant; (b) the Governor of the Prison, or any other, who is holding a person in custody; and (c) the Court which is requested to inquire into the custody pursuant to Article 40 of the Constitution.”

Whilst that case related to an administrative warrant, this Honourable Court held in *O'Farrell v Governor of Portlaoise Prison* [2016] IESC 37 (McKechnie J.) that the principle was of general application. That case concerned a High Court warrant.

In the instant case, neither the applicant, nor the prison Governor nor the Court are 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.

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 that 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 there was no requirement for a committal warrant in respect of a custodial sentence of 12 months or less to recite that consideration was given by the sentencing Judge to the imposition of a Community Service Order as an alternative to such sentence.

**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  vary/substitute

Original order: set aside  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

If Yes, please give details below:

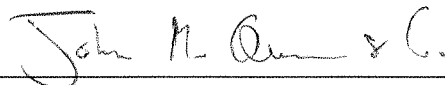
make a reference to the Court of Justice of the European Union?  Yes  No

If Yes, please give details below:

Will you request a priority hearing?  Yes  No

If Yes, please give reasons below:

Signed:



(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.