

SUPREME COURT**Respondent's Notice**

Supreme Court record number	2017 120
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[Title and record number as per the High Court proceedings]

Napoleon Silaghi	V	Circuit Judge John O'Hagan & The Director of Public Prosecutions Record No. 2015 No.354 JR
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Date of filing	August 2017
Name of respondent	The Director of Public Prosecutions for the purposes of meeting this application
Respondent's solicitors	The Chief Prosecution Solicitor
Name of appellant	Napoleon Silaghi
Appellant's solicitors	John M. Quinn & Company

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	The Director of Public Prosecutions
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The respondent was served with the application for leave to appeal and notice of appeal on date	28 th July 2017
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The respondent intends :

 to oppose the application for an extension of time to apply for leave to appeal

 not to oppose the application for an extension of time to apply for leave to appeal

 to oppose the application for leave to appeal

 not to oppose the application for leave to appeal

 to ask the Supreme Court to dismiss the appeal

 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

 Other (please specify)

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 Dara Byrne			
Name of firm	The Chief Prosecution Solicitor		
Email	dara.byrne@dppireland.ie		
Address	Infirmary Road	Telephone no.	018588500
		Document Exchange no.	
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 checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Niall Nolan		
Email	nnolan@lawlibrary.ie		
Address	Law Library Four Courts Inns Quay	Telephone no.	(01) 8175674
		Document Exchange no.	816658
Postcode	Dublin 7		

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

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)

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
N/a

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 Appellant was convicted in the District Court of a burglary offence (contrary to s.12 of the Criminal Justice (Theft and Fraud Offences) Act 2001 “the 2001 Act”) and a theft offence (contrary to s.4 of the 2001 Act). He received two concurrent sentences of 6 months. These sentences were affirmed on appeal to the Circuit Court by Judge O’Hagan (9th of June 2015) and it was this Circuit appeal that formed the subject matter firstly of the High Court Judgment (White J.). The Order of the 9th of June 2015 made by Judge O’Hagan affirming the 6 month sentence on the burglary offence and the warrant associated with it were quashed by agreement of the parties by Judge White by virtue of matters unrelated to the subject matter of this application for a further appeal. Judge White however refused any relief relating to Judge O’Hagan’s affirmation of the 6 month sentence on the theft offence. The Court of Appeal also refused relief and it is the refusal of relief that forms the subject of this application for a further appeal.

The core authorities applied by the Court of Appeal in refusing relief were *O’Brien v Judge Coughlan & Anor* (2014 IEHC 425, Kearns P.) (2015 IECA 245, Ryan P.) (“O’Brien”) and *Freeman v The Governor of Wheatfield Place of Detention (No.1)* [2016] IECA 177 (“Freeman”)

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

1. This application, which along with others were dealt with in the same Court of Appeal judgment (Maguire, Animashaun, Brennan & Marina), does not raise a point of general public importance such as would justify a further appeal to this Honourable Court. At paras. 44-67 of its judgment, the Court of Appeal dealt with the community service issues in the case and whether the fact that community service was not considered appropriate by a sentencing judge needed to appear on a committal warrant. Mr. Silaghi limited his appeal before the Court of Appeal to arguing the warrant point, namely that it was an error on the warrant that no reference was made on it to community service not being considered appropriate.
2. The decision of the Court of Appeal in relation to this warrant point was in accordance with existing authority and does not therefore raise any point of general public importance. The Appellant has not set out or set out adequately how any issue of general public importance is engaged.
3. It was clearly the view of the Courts below applying the authority of *O’Brien*, that not only was it the case that a Court need not, in deciding not to order community service, express that decision openly (as acknowledged by the appellant at part 4 of his

Notice: indeed the Supreme Court Determination: *O'Brien v Judge Coughlan & Anor* IESCDT 88 refused the unsuccessful Mr. O'Brien a further appeal on that point), but that it followed that such a decision need not appear on any consequent committal warrant.

4. The appellant cannot claim to have suffered any injustice as a result of any or all of the matters complained of and it is not therefore necessary in the interests of justice that there should be a further appeal to this Honourable Court.
5. Moreover it is the case that Mr. Silaghi who was admitted to bail pending the determination of his judicial review failed to answer that bail before the Court of Appeal on the 25th of May 2017. The Court of Appeal duly ordered that his appeal be dismissed "and that the Applicant serve the sentence of 6 months imprisonment imposed on him by the Respondent on the 9th of June 2015 on the offence set out in Charge Sheet 13994317 – a warrant to issue for the arrest of the Applicant".
6. In circumstances where Mr. Silaghi has failed to answer his bail and abide by the solemn undertakings he thereby gave to the Court of Appeal, the Supreme Court should *in limine* refuse to countenance permitting his application for further appeal and should dismiss this application.
7. The Constitutional threshold for permission to appeal further has not been met. The Appellant has had his High Court application and a full appeal therefrom determined. The new appellate arrangements do not contemplate cases such as the instant one from proceeding further.

*delete where inapplicable

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. The Court of Appeal did not err 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
2. The Court of Appeal applied the settled law provided by inter alia *O'Brien* and also *Freeman* (referred to at para.63 of the Court of Appeal decision the subject of this application for a further appeal, "the Court of Appeal Judgment") in refusing relief. It was correct in doing so.
3. At para.50 of the Court of Appeal judgment the Court refers to and sets out numerous matters and requirements that have to be applied, considered and taken into account by a Judge before sentencing a person found guilty of an offence. This paragraph concludes with the observation of the Court that it would be absurd to suggest that a failure on the part of a sentencing judge to refer to each and every such requirement or principle undermines the sentence imposed. Similar thinking applies to the suggestion that reference need be made on Mr. Silaghi's committal warrant that a

community service option had been considered.

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

Niall Nolan BL

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:

Mr. Silaghi was admitted to bail pending the determination of his judicial review and failed to answer that bail before the Court of Appeal on the 25th of May 2017. The Court of Appeal duly ordered that his appeal be dismissed “and that the Applicant served the sentence of 6 months imprisonment imposed on him by the Respondent on the 9th of June 2015 on the offence set out in Charge Sheet 13994317 – a warrant to issue for the arrest of the Applicant”.

In circumstances where Mr. Silaghi has failed to answer his bail and abide by the solemn undertakings he thereby gave to the Court of Appeal, the Supreme Court should dismiss this application.

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:

This case was brought before the High Court as an Article 40 case and therefore the Respondent is anxious that the litigation in respect of same is concluded as soon as possible.

Signed: Helena Kiely
(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.