THE HIGH COURT

STATE SIDE 1983 No. 640 S.S.

BETWEEN/

THE STATE (AT THE PROSECUTION OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

PROSECUTOR

AND

DISTRICT JUSTICE ROBERT O'hUADHAIGH

RESPONDENT

Judgment delivered the 30th day of January 1984, by O'Hanlon J.

In these certiorari proceedings the Director of Public Prosecutions seeks to quash two Orders of District Justice O'hUadhaigh convicting the Respondent of offences of which he was charged before the District Court on the 7th July. In addition to a number of other charges which were dealt with on the same day, the accused was charged with indictable offences of unlawful and malicious wounding, contrary to the provisions of Sec. 18 and Sec. 20 of the Offences Against the Person Act, 1861.

In relation to these two charges, a plea of guilty was entered on behalf of the accused, and in these

circumstances the District Justice had jurisdiction to deal with the charges summarily, if - but only if - the Director of Public Prosecutions consented to that course. (Criminal Justice Act, 1951, sec. 2, sub-sec. (2), and First Schedule, as amended by sec. 19 of the Criminal Procedure Act, 1967, and Schedule thereto; Prosecution of Offences Act, 1974).

A conflict of fact emerged on the affidavits filed in the certiorari proceedings as to whether the Assistant State Solicitor representing the Director of Public Prosecutions on the said occasion had conveyed to the District Justice that the Director was not consenting to these two offences being dealt with summarily. Notice to cross-examine Robert Sheehan, the Assistant State Solicitor, on the contents of his affidavit was served, and having considered the contents of the affidavits and the oral testimony of the said Robert Sheehan, I am satisfied that it was his intention at all material times to so inform the District Justice and that nothing he said in court on the occasion in question could or should have been construed as an indication that the

Director was consenting to summary trial of those two charges.

Having regard to the fact that the Acts only confer jurisdiction on the District Court to deal summarily with such offences where a plea of guilty has been entered, if the consent of the Director is forthcoming, there was, in my opinion, an onus on the District Justice to satisfy himself that the necessary consent had been obtained, before he proceeded to impose sentence. As the Director did not consent and as his representative did not state that he was consenting, the learned District Justice inadvertently acted without jurisdiction in proceeding to deal summarily with these two offences and in proceeding to impose on the accused the maximum sentence permitted under the provisions of the Act of 1951, as amended by the Act of 1967, namely, a sentence of twelve months' imprisonment on each of the two charges.

He simultaneously imposed the like sentence on other charges which he was entitled to deal with summarily, and no

appeal was taken to the Circuit Court against any of the said decisions.

In the case of an Order made without jurisdiction, it should, prima facie be quashed on certiorari, but in the present case it is further urged on behalf of the Respondent that the High Court, in exercise of its discretion, should refuse the relief sought because of the delay which took place in seeking to set aside the Orders of the District Court. In consequence of the delay in making the present application, the Respondent has already served several months of the twelve-month sentence imposed on him, and it is argued that it would be grossly unfair to create a situation where the criminal proceedings against him could be set in motion de novo with the prospect of a trial before the Circuit Court which would not be circumscribed as to the sentence it could impose in the manner which applied when such charges are dealt with summarily by the District Court.

Permission was granted to the Prosecutor to file a

supplemental affidavit in the present proceedings for the purpose of explaining the delay which undoubtedly took place in bringing the matter before the High Court to quash the Orders which were alleged to have been made without jurisdiction by the District Court. The grounds for the delay are outlined in the affidavit of Anthony Fagan, a Law Clerk employed in the Office of the Chief State Solicitor.

Having considered this additional material, I have come to the conclusion that I should not allow the plea of delay to defeat the claim that convictions entered and sentences imposed by the District Court, manifestly without jurisdiction to do so, should be set aside. In reaching this conclusion I have had regard to the explanation for the delay which has been given in the affidavit of Anthony Fagan; to the circumstance that the Respondent was lawfully sentenced to similar terms of imprisonment concurrently with the sentence sought to be set aside; and, in particular, to the circumstance that in the event of the Director of Public Prosecutions electing to put the Respondent forward again on the same two charges which are referred to in the

Conditional Order of Certiorari, any Court which may find itself charged with the task of determining the sentence (if any) which should be imposed on the Respondent in respect of these two charges will certainly have brought to its attention the circumstance that the Respondent was previously sentenced in respect of same and has served part of the sentence already. This last matter was adverted to by the Supreme Court in the case of Tynan -v- Keane (1968) IR 314 where, admittedly, the delay in applying to quash the conviction had been much shorter than in the present case.

I therefore propose to make absolute the Conditional Order of Certiorari already made in this case, notwithstanding the cause shown on behalf of the Respondent, and the two Orders of the District Court therein referred to will be quashed.

R.J. O'Hanlon.

30th January, 1984.

Counsel for the Prosecutor:- Aindrias O'Cuiv (instructed by The Chief State Solicitor)

Counsel for the Respondent:- Peter Charleton, B.L., (instructed by Michael D. White & Co., Solicitors).

Cases and Materials cited:-

Tynan -v- Keane, (1968) IR 314

Queen -v- Sheward 5 QBD (1879/80)

Reg. -v- Heaod (Ex P. Leeds District Council) 1976 QB 541

State (Cussen) -v- Brennan (1981) IR 196/7

D.P.P. -v- O'hUadhaigh (Gannon J. - July 1984)