

THE HIGH COURT

[2019 No. 20 IA]

BETWEEN

JOSEPH LAVERY

APPLICANT

AND

JUDGE DENIS MCLOUGHLIN AND HIS HONOUR JUDGE JOHN AYLMEER

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 15th day of March, 2019

1. The applicant was made the subject of an *Isaac Wunder* order on 4th July, 2016 in proceedings entitled *Lavery v. D.P.P.* [2016 No. 228 J.R.]. He now seeks liberty under that order to issue the present proposed proceedings.
2. It is alleged that on 29th April, 2017 the applicant committed offences of assault causing harm, assault of a peace officer, threatening, abusive or insulting behaviour, two offences of obstruction of traffic and unauthorised interference with the mechanism of a vehicle. He is the subject of a prosecution on indictment in that regard.
3. The applicant made unsuccessful applications to terminate the prosecution both to Cavan District Court on 20th September, 2018 and, following his return for trial, to Cavan Circuit Court on 12th March, 2019. His trial is due to start on 19th March, 2019, one working day from now. The applicant now applies for an order pursuant to the *Isaac Wunder* order that he may have permission to file an application for leave to seek judicial review in order to seek the substantive remedy of prohibition of the trial.
4. There are four basic reasons why that application can't succeed.
 - (i). The applicant applied on 14th March, 2019 to Noonan J. for such an order and was told to put the State on notice. In those circumstances, having obtained such guidance or direction from the court, however one wishes to characterise it, it is not an appropriate procedure to make the same application again to a different judge *ex parte*.
 - (ii). The applicant has not demonstrated arguable grounds. The only matter apparent in the proposed statement of grounds is an allegation that the DPP is in contempt of court due to alleged non-compliance with an order in an entirely unrelated case in which the applicant is not a party. Even for the sake of argument, assuming everything in favour of the applicant, that the DPP did not comply with the order in question, that does not give rise to even stateable, still less arguable grounds for the contention that the applicant's trial should be prohibited. While not pleaded as a ground for relief, the applicant refers in the papers to the fact that he has a number of appeals before the Court of Appeal (2018/27, 39, 103, 104, 239, 240 and 453), but that in itself is not a ground to prohibit the trial.
 - (iii). Furthermore, the fact that in these proceedings the applicant has re-agitated the misconceived idea that the DPP is in contempt of court and thus can't prosecute him, which featured repetitively in his previous proceedings, as appears from the papers before the Court of Appeal, reinforces the need for the *Isaac Wunder* order and is a further reason not to lift that order. An applicant seeking to lift an *Isaac Wunder* order generally needs to show that they appreciate and will comply with the contours of what is permissible rather than continue with the conduct that gave rise to the order in the first place, for example by re-agitating matters already previously unsuccessfully raised.
 - (iv). Even assuming for the sake of argument that the applicant did have arguable grounds, the eleventh-hour nature of the application made on the last working day before the trial militates against allowing it to proceed. Weight must be given to the right to an effective prosecution.

Order

5. The application for leave under the *Isaac Wunder* order to file an application for leave to seek judicial review is refused.