[2021] IEHC 60

THE HIGH COURT
JUDICIAL REVIEW

[2018 No. 1082 JR]

BETWEEN

MARIOARA ROSTAS

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Richard Humphreys delivered on Tuesday the 9th day of February, 2021

1. According to her counsel in the District Court, the applicant was born around 1998 in Romania. She arrived in Ireland in 2011 at the age of thirteen, having received little education. She had a child in or around 2015, who as of the date of the conviction with which we are now concerned, was living in Romania with the applicant's mother-in-law. The applicant had 24 convictions in Ireland prior to the relevant one. Eighteen of those convictions were for begging and one of the other convictions was for theft.

2. At 8:15 p.m. on Friday 30th March, 2018, Garda Joe O'Connor was on foot patrol on South Great Georges Street in Dublin 2. He gave evidence that he observed the applicant begging from passers-by, positioned sitting on the ground at the busy junction between South Great Georges Street and Dame Street. Garda O'Connor's view, understandably, was that that is a busy crossing and a very obstructive position in which to beg. He gave evidence that he observed pedestrians "having to step off the footpath onto the public street … to walk around in order to continue about their business."

3. Very reasonably, and to comply with the arguably cumbersome terms of the legislation which make the non-existence of a permit something that has to be positively proved rather than its existence being a defence to be demonstrated by the defendant, he asked the applicant if she had a permit. When she replied in the negative, he informed her that "while I had no problem with her begging, where she positioned herself was causing an obstruction on the footpath. The footpath at that point is no more than four or five foot wide." He asked her to leave that junction and she said that she would. According to his evidence, he then returned fifteen minutes later and, finding her to be still there, arrested her.

4. While the applicant sought an interpreter for the criminal proceedings and indeed has had her affidavit in the present proceedings translated, Garda O'Connor gave evidence that she appeared to understand him when they conversed in English.

5. The applicant was charged with an offence contrary to s. 2(b) of the Criminal Justice (Public Order) Act 2011. That section provides that: "A person who, while begging in any public place— (a) harasses, intimidates, assaults or threatens any other person or persons, or (b) obstructs the passage of persons or vehicles, is guilty of an offence and is liable, on summary conviction, to a class E fine or imprisonment for a term not exceeding one month or both".

6. Begging is defined in s. 1(2) of the Act in the following terms: "For the purposes of this Act, a person begs if— (a) other than in accordance with a licence, permit or authorisation (howsoever described) granted by or under an enactment, he or she requests or solicits money or goods from another person or other persons, or (b) while in a private place without the consent of the owner or occupier of the private place, he or she requests or solicits money or goods from another person or other persons." Thus, the lack of a licence is inherent in the offence of begging and is part of the required proofs for the prosecution: see *D.P.P. (Lowney) v. Rostas* [2012] IEHC 19, [2012] 1 I.R. 393.

7. The charge sheet, however, did not use the statutory language of s. 2(b), but instead stated: "On the 30/3/2018 at South Great Georges Street Dublin 2, a public place in the said District Court Area of Dublin Metropolitan District, did While begging, obstruct the free passage of persons on a footpath causing annoyance and that you did not have a licence or permet (*sic*) when demanded from you after caution by Garda Joe O'Connor Contrary to Section 2 (b) Criminal Justice (Public Order) Act 2011".

8. I am informed that the charge sheet is generated on the PULSE system which involves a mix of standard templates together with fields where additional information can be added. In this case some surplus information appears to have crept in to those discretionary fields.

Hearing of 30th November, 2018

9. On 30th November, 2018 the matter came before Judge Gráinne Malone in the District Court. Mr. Adam Dodd B.L. appeared for the applicant and submitted that the charge sheet was bad in law because it charged the applicant with conduct which did not constitute an offence. In particular, he focused on the words "causing annoyance" which did not appear in the legislation in this context and submitted that the charge sheet blended s. 2(a) and (b) of the 2011 Act which were distinct offences.

10. The solicitor acting for the prosecution said, "[w]e say that the wording is superfluous, Judge, and it doesn't affect the charge itself" (p. 1 of the transcript). The prosecution submitted that the words were superfluous, descriptive and did not alter the offence in any way and stated that they were not asking the court to amend the charge sheet, but said that the addition of the words, while merely descriptive, meant that the prosecution also had to prove that element. That latter submission was clearly incorrect in the sense that the accidental addition of unnecessary wording to a charge sheet doesn't change the substantive law or the definition of the offence.

11. The learned District Court judge ruled that she was going to amend the charge sheet by deleting everything after the word "footpath", so that the reference to both causing annoyance and not having a licence were deleted. She held that the applicant was not prejudiced in any way, but nonetheless afforded time for the applicant to consider the matter. After a short adjournment, counsel indicated he was prepared to proceed on behalf of the applicant. Garda O'Connor then gave evidence on behalf of the prosecution as outlined above and was cross-examined. Submissions were made following which the applicant was convicted. Sentencing was adjourned to 7th December, 2018.

Hearing of 7th December, 2018

12. Following further submissions, the applicant was sentenced to 14 days' imprisonment, fully suspended for a period of 12 months.

13. On 20th February, 2018 the applicant had been given a prior suspended sentence for a different offence of 1 month suspended for 10 months, which would have become capable of being activated on her being convicted and sentenced in November/December 2018. It wasn't in fact activated, presumably because the period of 10 months was almost up.

Procedural history

14. The statement of grounds was filed and leave was granted on 20th December, 2018, the primary relief sought being *certiorari* of the amendment, the conviction and the sentence. Counsel for the applicant now accepts that it is not technically correct to seek *certiorari* of the conviction and sentence as separate reliefs. It should be a single relief of *certiorari* of the order of the District Court, and accordingly counsel says that he is moving on relief 1 and that the court can disregard reliefs 2 and 3.

15. The applicant's grounding affidavit sworn on 17th December, 2018 was sworn in English having been given a Romanian translation. While no point was taken on it, that is not the correct procedure if it is alleged that a deponent doesn't understand English. An affidavit should be sworn in a language the deponent understands, with the English version exhibited by a translator.

16. On 20th December, 2018 Noonan J. when granting leave also gave liberty to amend the statement of grounds although that wasn't actually taken up for quite some time.

17. On 5th March, 2019 Noonan J. gave an order giving the D.P.P. liberty to take up the DAR.

18. An amended statement of grounds was eventually filed on 20th September, 2019 and a statement of opposition on 3rd October, 2019.

19. The matter was listed for hearing on 24th September, 2020. On that occasion it was identified that the order of the District Court had not been exhibited contrary to O. 84, r. 27(2) RSC: see *Cash v. Halpin* [2014] IEHC 484, [2014] 1 I.R. 328 and *Brassil v. DPP* [2020] IEHC 328 (Unreported, High Court, Gearty J., 3rd July, 2020).

20. Having heard the matter, as a concession to the applicant I adjourned finalisation of the proceedings for the production of such an affidavit. The matter was ultimately listed again on 18th December, 2020 when the necessary affidavit was produced along with confirmation that the applicant was providing continuing instructions.

21. In relation to the issues arising I have received helpful submissions from Mr. Colman Fitzgerald S.C. (with Mr. Adam Dodd B.L.) for the applicant and from Mr. Oisín Clarke B.L. and Mr. Saran Ceillier, Solicitor, who also addressed the court, for the respondent.

Amendment to the charge sheet

22. Ground 1 contends that "The District Judge acted without jurisdiction, or in excess of jurisdiction, in amending of her own volition the particulars of the offence in the charge

sheet herein, having enquired of the legal representative of the Respondent whether the Respondent was making an application to the Court to amend the said particulars and after being expressly informed that the Respondent was not so applying."

23. Ground 2 contends that "The District Judge acted without jurisdiction, or in excess of jurisdiction, in amending the particulars of the offence in the charge sheet herein, by the removal of a factual element of the said particulars, which fact the Respondent's legal representative had previously acknowledged to be an essential factual element in the absence of proof of which the Applicant could not be convicted of the offence with which she was charged."

24. Professor Walsh in his textbook *Criminal Procedure*, 2nd ed. (Dublin, Round Hall, 2016), at para. 14-68, says that "[t]he scope for securing a dismissal on the basis of errors or omissions in the summons is limited" and the same must apply to charge sheets. The reason for that is the provisions of OO. 12 and 38 of the District Court Rules which allow for correction of errors.

25. O. 38, r. 1(2) DCR gives jurisdiction to the court in the case of any error in a document by which proceedings are originated to "amend any such summons, warrant or other document, or proceed in the matter as though no such defect, omission or variance had existed", subject to the question of whether any error "misled or prejudiced the accused or which might affect the merits of the case" (O. 38, r. 1(3)). To that extent there are two basic options if surplusage appears in a charge: (i) amend the charge sheet or summons, either on the prosecution's application or on the court's own motion, with or without subsequent adjournment; or (ii) proceed as if no defect existed.

26. The alternative of allowing the prosecution to proceed on the basis that they have to prove the aspect referred to in the surplus wording (which is what the D.P.P. initially suggested here) might seem a practical response, but it is legally inappropriate because, as noted above, the accidental insertion of surplus words doesn't change the substantive law or the definition of an offence.

27. The law is summarised in a very pithy sentence from MacMenamin J. in *D.P.P. (King) v. Tallon* [2006] IEHC 232, [2007] 2 I.R. 230 at 244-245, where referring to *MacAvin v. D.P.P.* [2003] IEHC 148 (Unreported, High Court, Ó Caoimh J., 14th February, 2003), he said, "[t]he power of amendment applies to charge or complaint cognisable to the law albeit defectively framed, but not to a nullity, or in circumstances of prejudice as arose in *MacAvin v. D.P.P."*

28. The two key questions that arise, therefore, in this kind of situation are (a) whether the charge is a nullity and thus incapable of amendment, and (b) if not and if it is capable of an amendment, whether there is prejudice. The learned judge in the present case said, "it appears that on first reading that it might be an amalgam of subsection [*i.e.*, para.] A and B. When in actual fact I don't believe that it is. Because it does contain the wording required for subsection B". She went on, "It seems to me that it's clear what the offence

is. It's in the recital … there is nothing that would cause confusion and therefore prejudice to Ms Rostas."

29. Having twice asked the prosecution if they wanted to seek to amend and the prosecution for whatever reason (and despite the conventional wisdom that the court's point is normally worth serious consideration) declining to do so, the learned judge held that she had jurisdiction to amend of her own motion, referring to *Attorney General (McDonnell) v. Higgins* [1964] I.R. 374. The Supreme Court in that case held that the District Court had a discretion to amend of its own motion, "such discretion to be exercised so as to ensure that the real issues between the complainant and the defendant might be determined in accordance with law". Legal consistency is certainly advanced by such an approach; and the law on amendment in civil contexts, particularly as developed more recently, applies a comparable approach whereby one of the key issues is to allow the real questions in controversy to be decided.

Is the charge a nullity?

30. The applicant here argues that the charge in the charge sheet was a nullity because it was not known to the law or because it incorporates two separate offences. The learned judge's view was essentially that the offence charged was under s. 2(b) of the 2011 Act. That seems to me to be a correct interpretation. It was thus a charge or complaint cognisable to the law, albeit defectively framed. She considered the argument that two separate offences were amalgamated, but decided for clearly articulated reasons that the charge was not such an amalgam. That decision was also perfectly reasonable.

31. The nullity argument is very artificial insofar as it equates annoyance with harassment. That is not particularly plausible especially in the light of the comparable definition in s. 10 of the Non-Fatal Offences against the Person Act 1997. But even if one could make such an equation, the reference to annoyance would still be surplusage. Admittedly, the point was made at p. 11 of the transcript that the lack of a reference to a licence in s. 2(a) was relevant to how the charge should be regarded. But that is of limited relevance because the lack of a licence is implicit under either paragraph of the section given the definition of begging. Reading the learned judge's comment from a starting point that doesn't involve assuming a problem with it, and in the context of the totality of the circumstances, as opposed to sceptically, literally and removed from context, all she seems to be saying is that there is no express reference to the lack of a licence in s. 2(a), which of course is just a statement of fact (albeit not one on which anything much turns because, while not explicit, that is implicit in both s. 2(a) and (b)).

Whether there is prejudice

32. Unfair prejudice is something that may need to be considered in a number of procedural contexts, not simply an amendment. It also arises in respect of dismissal of proceedings or adjournment. In *The State (Duggan) v. Evans* [1978] 112 I.L.T.R. 61, Finlay P. noted that in deciding on procedural questions of the type at issue here, specifically whether to dismiss a charge or adjourn it where a defect in substance or form or an omission comes to light, the court "should have regard to the extent or nature of the misleading prejudice or possible effect on the merits of the case set against the requirements of justice

between the prosecution and the defendant." But *unfair* prejudice is to be distinguished from merely being disadvantaged by a particular ruling or decision. The applicant contends that a striking out of the reference to causing annoyance has the effect that the prosecution didn't have to prove that. That is misconceived because the prosecution never had to prove that.

33. The appropriate alternative to striking out those words was to disregard them under O. 38 DCR. The inclusion of the words did not have the effect that an irrelevant point about annoyance suddenly had to be proved. In any event, that sort of argument is not the kind of prejudice that precludes an amendment because that argument could be made in response to the striking out of any surplusage. Fundamentally the problem for the applicant is that not just any old prejudice will do. It has to be prejudice rendering the amendment unjust: see *D.P.P. v. Corbett (No. 2)* [1992] I.L.R.M. 674 at 678, *per* Lynch J, who made the point that "[t]he day is long past when justice could be defeated by mere technicalities which did not materially prejudice the other party." In this specific context Finlay P. in *The State (Duggan) v. Evans* held that if the defect did not mislead or prejudice or affect the merits of the case, the judge "must either amend the document or proceed as if no defect, variance or omission had existed", viewing the requirement to rectify as imperative rather than discretionary in such circumstances.

Conclusion on the issue of amendment

34. In analysing the question of the amendment it seems to me that the learned District Court judge clearly got to the heart of the matter and identified the two essential points - that is whether the charge was known to the law as opposed to being a nullity, and whether there was prejudice. Her decision was perfectly lawful and indeed, if I may respectfully say so, very sensible. What happened here is very different from the complete reconfiguration of the charge which troubled Ó Caoimh J. in *MacAvin v. DPP.* The applicant also seemed to object that the court was selecting which of two charges before it should proceed, but that isn't what happened. The express offence charged was under s. 2(b), that is what the evidence related to, and the extra words were purely superfluous.

35. There is no legal principle that the power of amendment can only be exercised within the limited period for the initiation of the offence, and indeed the power of amendment would be unworkable unless it could be used outside that period. The point made on behalf of the applicant under this heading mirrors the corresponding chronic misunderstanding that seems to affect respondents in judicial reviews, which is the confusion between the limitation period for initiating proceedings and the possibility of amending pleadings at a later stage. The power of amendment is inherent in a case from the outset and is not in itself subject to the concept of the limitation period for granting leave unless some completely new decision is sought to be challenged in a new relief to be added by amendment. Once a decision is challenged within time, the wording of the challenge may be refined after that period once the conditions for amendment are satisfied - explanation, arguability and lack of irremediable prejudice.

36. The *MacAvin* case certainly does not affect that principle as it applies to amendment of charges. It only held that a fundamental recasting of the offence charged into a different offence outside the limitation period could be prejudicial and was in that case. It has no relevance to an amendment of much lesser consequence such as the present one. In any event, an error in a charge sheet or summons can be cured by a correct wording of a conviction: see *D.P.P. (King) v. Tallon.* For all of these reasons the learned judge did not act without or in excess of jurisdiction as alleged or at all. Nor did she relieve the prosecution from a burden in law to do anything they would otherwise have had to do.

Objective bias

37. Ground 3 contends that "The learned District Judge demonstrated a lack of impartiality and a descending into the arena in amending of her own volition the particulars of the offence in the charge sheet herein, by the deletion of the element of causing annoyance, despite having being expressly informed that the Respondent was not seeking such an amendment and despite the fact that the amendment she was making relieved the Prosecution of the need to prove that the Applicant had been causing annoyance at the time of the alleged offence, something which the legal representative of the Respondent had previously acknowledged that the Respondent was bound to do."

38. The fundamental problem with this submission is that the amendment didn't make the job of the prosecution any easier because the alternative to amendment was not the imposition of an extra burden on the prosecution, but simply disregarding the surplusage as permitted by O. 38. The prosecution is not required to prove something merely because it is erroneously included as surplusage.

39. A second fundamental problem is that even if the amendment had made the prosecution's job easier, that doesn't in itself constitute objective bias. The learned District Court judge clearly articulated the basis of the decision. The charge contained the wording required by s. 2(b), that provision was recited, and it was held to be clear what the offence was. The reference to annoyance and to a licence was superfluous and there was nothing that would cause confusion and therefore prejudice. She had jurisdiction to amend and was not creating a new offence (a point accepted by counsel for the applicant at p. 12), and the jurisdiction to amend was exercisable outside the limitation period (p. 13). All of that was perfectly reasonable and correct. Any fair-minded observer would think that the learned District Court judge dealt with the matter with complete fairness and impartiality, not to mention ability and correctness.

40. The fact that one party or the other might benefit from something the court decides to do, even something it decides to do of its own motion, does not amount to objective bias if the court entertains any submissions made and articulates a logical reason in the interests of justice for taking that course, even if that reason later turns out to be wrong. There is a major distinction between bias, even objective bias, and simply getting it wrong, although here neither applies.

41. More fundamentally, there are a number of things a court can do of its own motion, from adjourning the proceedings to referring a case to Luxembourg and everything in between.

The Irish legal system, like all common law systems, is structurally adversarial, but that is in the sense of being primarily adversarial rather than dogmatically so. Judges don't have to sit immobile, silent and impassive. They can ask questions, raise or tease out issues, manage the hearing to ensure fairness of procedure as they see it, and so on. Obviously, that needs to be understood as something being done in the interests of justice and not in a partisan spirit. A few examples. In *T.D. v. Minister for Justice, Equality and Law Reform* [2014] IESC 29, [2014] 4 I.R. 277, the Supreme Court noted without apparent disapproval (see judgment of Fennelly J. at para. 2), that Hogan J. in the High Court had of his own motion taken a point as to the *validity* of legislation in terms of EU law, legislation that hadn't been challenged by the applicant. In *J.K. (Uganda) v. Minister for Justice and Equality* [2011] IEHC 473 (Unreported, High Court, 13th December, 2011), Hogan J. took an important point of his own motion, not raised by any of the parties, after having reserved judgment and reconvened the hearing to invite submissions on it. Rakoff J. of the US District Court for the Southern District of New York speaking extracurially said that "[y]es, occasionally, the skilled, imaginative lawyer may raise issues that the judge may not even consider on her own, but this is not nearly as common as a judge raising such issues independently (as a result of having seen the issues raised in similar cases) and then asking the lawyers to address the issues" (www.slate.com, July 2017, "Posner and Rakoff debate whether courtroom lawyers ever make a difference").

42. Mr. Fitzgerald says that the examples from the Superior Courts are not pertinent because that jurisdiction is wider than that of the District Court. But that isn't the point. The point is that the system is not rigidly adversarial. He also submits that most of the steps that judges take of their own motion don't in and of themselves favour one of the parties, but are procedural in nature. That is a more solid point and, in fairness, amending the pleadings or calling a witness of the court's own motion is a more significant step so needs to be taken with some greater reserve. But in determining whether that is appropriate, one would, among other things, have to consider what the situation would have been without the judicial intervention.

43. The applicant's submission that the learned judge displayed an interest in the outcome or "entirely" disregarded submissions which would give an appearance of objective bias is a misunderstanding of the process. The learned District Court judge did not disregard the submissions either entirely or at all. Having heard and considered all of those submissions she decided to exercise the jurisdiction she had of her own motion. That was perfectly reasonable and entirely open to her and, as noted above, did not in fact prejudice the applicant in any way. In fact it was the obvious thing to do (given that the D.P.P. for whatever reason didn't do the even more obvious thing and either ask for an amendment or formally ask for the surplusage to be disregarded).

Complaint regarding sentence

44. Grounds 4 alleges that "The District Judge acted without jurisdiction, or in excess of jurisdiction and/or in breach of fair procedures in taking into consideration, in sentencing the Applicant, the existence of an individual or group of individuals that were influencing or controlling the Applicant where no evidence of such an individual or group of

individuals had been adduced before the court, and where the District Judge had failed to put the Applicant's legal representatives on notice of the fact that she was intending to make this finding of fact and intending to take it into account in imposing a sentence on the Applicant.".

45. Ground 5 alleges that "The District Judge acted without jurisdiction, or in excess of jurisdiction and/or in breach of fair procedures in taking into consideration, when sentencing the Applicant, the existence or supposed existence of an individual or group of individuals that were influencing or controlling the Applicant and in seeking to send this unidentified third party or third parties a warning by imposing a custodial sentence upon the Applicant herein."

46. The maximum sentence for the offence was one month's imprisonment. The actual sentence imposed was of 14 days' imprisonment, suspended on her own bond of €100 for 12 months on condition she did not engage in begging anywhere in the jurisdiction.

47. The plea in mitigation by the applicant's counsel included the following: "she had certain concerns about - I didn't want to raise it, possible alternative forms of employment which were not ideal. I didn't want to raise that Judge, but she has no desire to go in any particular direction … as I said Judge, it is an offence that occurred as a result of circumstances." To hint (in the unique semiotics of the plea in mitigation that don't always translate precisely into syllogistic logic), that the accused had concerns about possible alternative forms of employment which she didn't desire to engage in is, on the facts here, and fully bearing in mind that counsel didn't spell this out explicitly, nonetheless strongly suggestive of her as a young woman separated from her child in another country and without means being available to her, being potentially under pressure from third parties to engage in sex work. In the course of the hearing of the present judicial review, senior counsel for the applicant did seem to accept that such a type of activity was what "alternative forms of employment" meant, so that is at least some clarification.

48. Armed with such a submission, what the learned judge said in her sentencing remarks was as follows: "I'm not a hundred percent sure that she's not under the influence of other people … [a]nd that she's being used by other people … [what] I propose to do is this; because this is a message that can go out to her and whoever else is [e]ffectively with her". Alluding to Charles Dickens' *Oliver Twist* (London, Richard Bentley, 1838), Mr. Fitzgerald suggests that even if there was evidence of "a Fagin-type situation", it was not open to the court to punish somebody to send a message to third parties. He also says that to do so would be irrational because third parties with a malign influence over the applicant wouldn't be deterred by any punishment. Mr. Fitzgerald majors on the word "because", as if the learned District Judge was articulating some sort of logical syllogism. But in context, the word "because" is best viewed as a kind of link-word between two related points. A similar example might be the Irish phrase "mar sin", which has a primary meaning suggesting causation, but a secondary meaning suggesting merely temporal sequence. The most logical interpretation of the learned judge's comment was

that she was seeking to impose the correct sentence, but at the same time to say that if and insofar as there were any other interested parties, the sentence could serve as a message that could go out to anybody else who might be so interested. The possible presence of possible third parties was a perfectly reasonable thing to reference given the plea in mitigation actually made.

49. In addition, looking at the entirety of the circumstances and the actual sentence imposed, it's not possible to discern any actual deterrent element to the sentence. Imposing a fully suspended sentence for half of the maximum period of 1 month after 24 previous convictions cannot meaningfully be said to be a particularly punitive sentence. Indeed, the prosecution's submissions in the present judicial review suggest, I think correctly, at para. 51 that, "[i]n light of the history of the Applicant's offending behaviour, ... the sentence imposed by the [learned District Court judge] was extremely lenient".

50. That patient approach is reinforced by the learned judge having taken a number of steps to safeguard the applicant including affording an offer for time to take instructions after the amendment, and later putting off the sentencing to allow time for the matter to be considered further. Having then imposed a very light sentence, which for good measure could have, but in fact didn't trigger the activation of the applicant's previous suspended sentence, one might wonder if one was the learned judge whether this judicial review might not be a bit of an overreaction. The real problem here for the applicant is that she is putting the worst possible construction on the comments of the learned judge. But on the contrary there must be a presumption of validity, and a decision must be read in a way that makes sense and is lawful rather than the opposite (see *per* Finlay P. in *In re Comhaltas Ceoltóirí Éireann* (Unreported, High Court, 5th December, 1977) and *per* Keane J. in *Campus Oil v. Minister for Industry and Energy (No. 2)* [1983] I.R. 88 at 102).

51. There is a second problem even if one assumes *arguendo* (contrary to my interpretation), that there was a deterrent element in this sentence. If general deterrence is legitimate as a sentencing factor (*D.P.P. v. Begley* [2013] IECCA 32, [2013] 2 I.R. 188), then general deterrence focused on the possibility of the defendant being directed into particular areas of unlawful behaviour must also be legitimate. It is not totally correct to submit that punishing the small fry has no effect on the larger fry. Even punishing the small fry does retard the criminal business model to some extent. That's even leaving aside the practical difficulty of finding any larger fry, because it doesn't generally pay for defendants to admit to being such when seeking mitigation. But for the reasons I have outlined above, that issue doesn't strictly arise.

Order

52. Accordingly, the proceedings are dismissed.