**THE COURT OF APPEAL**

**CIVIL**

**Neutral Citation Number: [2019] IECA 322**

**[2018 No. 244]**

**The President**
**Irvine J.**
**Kennedy J.**

**BETWEEN**

**JAMIE MAHER**

**APPLICANT**

**AND**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**JUDGMENT of the President delivered on the 20th day of December 2019 by Birmingham P.**

1. On 31st July 2019, this Court dealt with an appeal from a decision of the High Court (Meenan J.) of 1st May 2018. In an ex tempore ruling, the Court dismissed the appeal.

2. At issue in the High Court and on appeal was a conviction and sentence imposed on the applicant on 27th January 2017 at Portlaoise District Court. The conviction was in respect of an offence contrary to s. 13 of the Criminal Justice (Public Order) Act 1994, which was said to have been committed on 24th November 2015. The sentence imposed was one of six months detention in St. Patrick's Institution and recognisance were fixed in the event of an appeal by the judge of the District Court.

3. In judicial review proceedings, the applicant challenged the District Court order. He did so, essentially, on one ground, namely, that the District Court judge had sentenced him for an offence to which he had not pleaded guilty, or of which he had not otherwise been convicted. In those circumstances, the judicial review application was really a question of fact. The issue of fact being: was the applicant correct in claiming and averring that he had not pleaded guilty?

4. The High Court had before it the DAR recording of the proceedings in the District Court in Portlaoise. From the transcript of the recording, it appeared to the High Court that there did not appear to be any room for doubt, but that the applicant did, in fact, plead guilty. He did so after the judge pointed out that the charge in question was a charge of trespassing at a particular address, which was given, on a particular occasion, 24th November 2015.

5. In the course of an affidavit sworn in the context of these proceedings, the applicant's solicitor, Mr. Aonghus McCarthy, swore an affidavit, referring to the fact that he had spoken to an unnamed representative from Portlaoise District Court. It was said they could not find a record of a guilty plea. He further averred that from reviewing his own files, it became clear that a plea had never been entered. However, the District Court order, obtained and exhibited by the respondent in the High Court proceedings, refers to 'Plea: Guilty' with both words underlined twice. In the course of his judgment, the High Court judge observed:

> "[n]o credible explanation has been advanced to explain the obvious discrepancy between the case that the applicant is making, grounded on the affidavit of Mr. McCarthy, and what is recorded in the transcript of the hearings."

6. The record of what occurred in the District Court establishes that in the course of the plea in mitigation there, reference was made to there having been a guilty plea. This has been explained on the basis that the judge had made a finding that there had been a guilty plea and that this was a mere acceptance of that fact. That is less than convincing.

7. In the course of written submissions before this Court, the point is made that it does not appear that any summary of the facts was heard by the judge in the District Court. That may or may not be the case, but that was not a ground on which leave was ever sought. No mention of any such issue is to be found in the grounding affidavit. It is also the situation that no application to amend or add grounds was made at any stage.

8. In the course of the written submissions, the legal principles and jurisprudence surrounding ambiguous pleas are addressed. However, while the cases referred to from Canada, the United States, the Eastern Caribbean states, South Africa, Zambia, and New Zealand all make for interesting reading, they are scarcely on point.

9. In a situation where the judge was of the view, correctly, it would seem, that a plea of guilty had been entered, if it was the case that there had been some error or confusion in entering the plea, and that there was a desire to vacate the plea, then one would have expected an application of that nature to have been made. Yet no such application was ever brought.

**Summary of the Oral Submissions from the DAR**

10. When the matter came before this Court, we became concerned that the point on which leave had been granted by the High Court i.e. that there had been no guilty plea, was not strictly accurate. This raised the prospect that the High Court might have been misled in some way. However, the position of the appellant is that the plea in mitigation was advanced conditionally, where reliance was placed on the purported plea of guilty in a situation where the very fact of it having been entered was disputed and this was contended, notwithstanding that the validity of the plea was not subject to any formal challenge before the District Court judge nor was any application made to the District Court in respect of it. In making that submission, reliance is placed on the words used by

the appellant's solicitor in the course of an exchange with the judge. That exchange was as follows:

> "Judge:Now, there's another charge.
>
> . . .
>
> Aongus McCarthy Solicitor:The Court indicated that Garda Murray's trespass charge and Garda O'Donovan's obstruction charges are listed today for hearing.
>
> Judge:No, there is a plea already on Garda Murray's charge and it was back for a probation report, isn't that. . . maybe I've got it wrong. I have a probation report. Mr. McCarthy: Apologies, Judge, you are correct. I'm incorrect in that matter.
>
> Judge:I have the report here."

Counsel has taken this exchange as meaning that the fact of a plea having been entered was disputed. However, what is indisputable is that the question of vacating the plea or withdrawing the plea in a situation where it would have been argued that the appellant did not mean to enter a plea, was confused or that there was some other deficiency was never canvassed.

11. Counsel for the appellant contends that the events or circumstances of 26th January 2017 were unclear. He suggests that, irrespective of the written record, the judge did not proceed to enter a guilty plea, as the transcript indicates that the matter was being put back to the following day for a plea to be entered or for a date for hearing to be fixed. While the applicant may have said "guilty" in response to the charge being read to him, it is contended that the District Court judge did not accept that as a plea of guilty, in a situation where he was unrepresented, and put the matter back so that his solicitor could be present. On that basis, he argued that, clearly, there could not have been a plea entered. Before this Court, counsel for the appellant observed that it was not the finest hour of any of those involved, as the judge was confused, the prosecuting Garda never put any facts before the District Court, and the defence was less than clear or unequivocal. Instead, the District Court judge operated on the basis of a probation report and a purported plea that must have predated 27th January 2017. Moreover, it is said that on the face of the summons issued in respect of the appellant, it is indicated by way of handwritten notes inscribed there that the matter was being put in for a plea or for the fixing of a date.

12. The Court is of the view that the applicant/appellant and his advisers could not stand over the very serious and unequivocal allegations that they had made i.e. that Mr. Maher had been sentenced for a crime to which he had not pleaded guilty. Further, we did not consider the suggestion that the grounds for judicial review could be looked at in isolation from the grounding affidavit to be tenable. There was nothing in the grounding affidavit to suggest that the plea was equivocal, the result of a misunderstanding, or an uninformed decision on the appellant's part.

13. If a challenge had been raised with District Court judge, if there had been an application to withdraw or vacate, and that challenge or application was unsuccessful, then there might have been scope for judicial review, but these are not issues that can be raised for the first time at this stage of the proceedings.

14. The long and short of this case is that the appellant sought an order of certiorari quashing the conviction and sentence of the applicant on 27th January 2017. The order of certiorari was sought on the basis that he was convicted of and sentenced in respect of a matter when he had not entered a plea. It is abundantly clear that he did in fact enter a plea. In those circumstances, the appeal must be dismissed.