



THE COURT OF APPEAL

Appeal Number: 2024/009

Neutral Citation Number [2024] IECA 304

Edwards J.

Kennedy J.

Burns J.

CIVIL

IN THE MATTER OF SECTION 16 OF THE COURTS OF JUSTICE ACT, 1947

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

(At the suit of Damian P. Rafter)

PROSECUTOR

- AND -

Stephen O'Brien.

APPELLANT

JUDGMENT of Ms. Justice Isobel Kennedy delivered on the 16th day of December 2024.

1. This is a consultative case stated by Her Honour Judge Sineád Ní Chúlacháin from the Circuit Criminal Court posing a number of questions for answer by this Court. The questions posed are:-

Having regard to Order 41A of the Circuit Court Rules (inserted by SI 379/2018) in a District Court appeal where the Circuit Court makes an order affirming or varying a District Court Order and imposes a fine, and the fined person fails to pay the fine by the due date,

- (a) Does the Circuit Court have jurisdiction to hear the enforcement application under the Fines (Recovery and Payment) Act 2014 or is it a matter for the District Court which originally made the order?*
- (b) Is the appropriate court official for the purposes of Section 7 (4) of the Fines (Recovery and Payment) Act 2014, the District Court clerk or the County Registrar (or combined court office manager) as defined in Section 2?*
- (c) In the event that the Circuit Court does have jurisdiction to make an enforcement order in such circumstances, does an appeal lie from an enforcement order made under Section 7 of the Fines (Recovery and Payment) Act 2014 and if so, to which court does it lie?*
- (d) In the event that the Circuit Court does have jurisdiction to make an enforcement order in such circumstances, are perfection and service of the Order on the appellant and non-payment of the fine essential proofs and who bears the onus of proof?*

2. For the reasons set out hereunder, we answer the questions as follows:-

(a) Yes, the Circuit Court has jurisdiction to hear the enforcement proceedings.

(b) The appropriate court official is the County Registrar or the combined court office manager.

(c) No appeal lies from an enforcement order made under s.7 of the 2014 Act on a District Court appeal.

(d) The perfection of an order and the service thereof are necessary proofs on enforcement proceedings and the onus lies with the Courts Service to provide such proof.

Background

3. On the 22nd of October 2018, the appellant, hereinafter, the defendant, was convicted of an offence under s.56(1) of the Road Traffic Act 1961 by the District Court and was ordered to pay a fine of €1,000 within 30 days and was disqualified from holding a driving licence for a period of 2 years.

4. On the 31st of October 2018, the defendant served a notice of appeal in respect of that order, and said appeal came before the Circuit Court on the 6th of December 2018, where the Circuit Court made an order varying the District Court order; removing the disqualification and imposing the same fine of €1,000 but to be paid within 90 days. This fine was not paid by the defendant within the period set out, or at all.

5. Enforcement proceedings were then issued from the Circuit Court. A notice to attend court was served on Mr. O'Brien pursuant to s.7 of the Fines (Payment and Recovery) Act 2014, (hereinafter "the 2014 Act"). The notice was issued by

the combined court office manager. It is conceded by counsel for Mr. O'Brien that the notice was issued by the correct authority.

6. The defendant raised a preliminary issue before the Circuit Court as to the jurisdiction of that court to deal with the enforcement proceedings where the fine was originally imposed by the District Court and where to proceed with the enforcement proceedings in the Circuit Court would preclude any appeal to that court.

7. The defendant submitted that as the order made by the Circuit Court modified an order of the District Court, the District Court was the appropriate court to enforce the fine.

8. The Circuit Court Judge determined that had the issue of jurisdiction not arisen, she would not have been in a position to make an enforcement order as there was no evidence before the court to determine whether payment had been made. She also determined that the previous order of the Circuit Court did in fact modify the order of the District Court. She then stated case for this Court.

Court Rules and Statutes

9. Order 41A of the Circuit Court Rules (as inserted by SI 379/2018) (hereinafter "Order 41A") provides:-

(1) The County Registrar or (as the case may be) the combined court office manager may at any time after the due date for payment of any fine:

(a) imposed by the Court on appeal from the District Court, or

(b) imposed by the Court otherwise than on appeal, issue a notice by ordinary prepaid post for the purposes of section 7(4) of the Fines (Payment and Recovery) Act 2014 requiring a fined person who has

not paid the fine (or, as the case may be, a relevant instalment) by the due date for payment in accordance with that Act to appear before the Court at a date and time specified in the notice.

10. S.2 of the 2014 Act defines "appropriate court official" for the purposes of s.7(4) as:-

- (a) in relation to a fine imposed by the District Court, means the district court clerk for the district court area in which the fine was imposed,*
- (b) in relation to a fine imposed by the Circuit Court, means the county registrar for the county in which the fine was imposed or, if a combined court office has been established under the Courts and Court Officers Act 2009 in respect of that county, the manager of that combined court office,*
- (c) in relation to a fine imposed by the High Court, means the principal officer serving in the Central Office attached to the High Court who manages such Central Office, and*
- (d) in relation to a fine imposed by the Central Criminal Court, means the registrar of the Central Criminal Court;*

11. S.7(1) of the 2014 Act provides:-

Subject to subsections (3) and (5), where a fined person fails to pay the fine by the due date for payment, the court shall, at the sitting of the court on the date specified in the notice concerned under subsection (4) served on the person (unless the person has paid the fine on or before that date)-

- (a) subject to subsection (2), make a recovery order,*
- (b) make an attachment order, or*
- (c) make a community service order if section 4 of the Act of 1983 has been complied with.*

12. S.7(4) of the 2014 Act provides:-

The appropriate court official concerned shall, by notice in writing served on the fined person, require the person to appear before the court on the date and at the time specified in the notice, and to provide to the court a statement in writing of his or her financial circumstances.

13. S.72 of the County Officers and Courts (Ireland) Act 1877 ("the 1877 Act") provides:-

In every appeal from an order of justices in any case of summary jurisdiction under the provisions of the twenty-fourth section of the Petty Sessions (Ireland) Act, 1851, the recognizance into which the appellant is thereby required to enter shall be conditioned to prosecute such appeal, and to abide and perform the judgment and order of the Court of Appeal thereon, and to pay such costs as may be awarded by the said court, and in the case of an order to imprison, not to abscond pending the execution of the original order, or of the judgment or order of the Court of Appeal, and save as aforesaid shall be in the form prescribed by the said Act. In addition to the powers, jurisdiction, and authority conferred by the Petty Sessions (Ireland) Act, 1851, with respect to appeals, the court before which any such appeal shall be pending shall have power to adjourn the hearing of such appeal, or to remit the matter to the justices of the petty sessions where the original order was made, with such declarations or directions as to the Court of Appeal shall seem proper, and such justices shall have power to determine the matter when so remitted, having regard to such declarations or directions. Whenever any such appeal shall not have been prosecuted, or the original order shall

have been confirmed or varied upon appeal, or either party shall upon such appeal have been ordered to pay costs, the Court of Appeal shall have and may exercise the same powers jurisdiction and authority to issue all necessary and proper warrants for the execution of the original order, or of such varied order, and to enforce the payment of the said costs, as the court which made the original order had or might have exercised when making such order.

14. S.18 of the Courts of Justice Act, 1928 (hereinafter "the 1928 Act"), provides the following:-

(1) An appeal shall lie in criminal cases from a Justice of the District Court against any order (not being merely an order returning for trial or binding to the peace or good behaviour or to both the peace and good behaviour) for the payment of a penal or other sum or for the doing of anything at any expense or for the estreating of any recognizance or for the undergoing of any term of imprisonment by the person against whom the order shall have been made.

(2) Where immediately before the commencement of Part III of the Principal Act an appeal lay in a criminal case at the instance of a complainant or prosecutor against an order of a District Justice appointed under the District Justices (Temporary Provisions) Act, 1923 (No. 6 of 1923) an appeal of the like kind shall lie in such criminal case at the instance of a complainant or prosecutor from an order of a Justice of the District Court.

(3) Every appeal under this section from an order of a Justice of the District Court shall lie to the Judge of the Circuit Court within whose circuit the District or any part of the District of such Justice lies, and the decision of such Judge on such appeal shall be final and conclusive and not appealable.

Submissions of the Defendant

15. Reliance is placed upon the decision of Eagar J. in *DPP v Fogarty* [2019] IEHC 308 where s.7 of the 2014 Act was considered by way of a case stated. The court, in that case, held that proceedings to enforce fines are of a judicial, not administrative, nature. The defendant submits that the judicial act exercised pursuant to s.7 is a separate consequential procedure from the proceedings that resulted in the original fine. The defendant also places reliance upon the case of *Owens and Dooley v DPP* [2019] 1 IR 478, IESC 36, for this proposition.

16. The defendant places reliance upon Article 34.3.4^o of the Constitution, a passage from *Kelly: The Irish Constitution*, and the decision of Hogan J. in the High Court in *McCabe v Ireland* [2014] IEHC 435, in arguing that the constitution mandates a right of appeal in criminal matters which are not subsidiary or preliminary matters. The defendant submits that in this instance, the enforcement proceedings are discrete consequential proceedings which are judicial in nature, and that an appeal lies from them.

17. The defendant submits that placing a defendant in a position without a right of appeal in a court of local and limited jurisdiction requires an objectively justified reason, which is absent in this case, thereby engaging the equality provision under Article 40.1 of the Constitution.

18. The defendant places reliance upon s.2 of the 2014 Act and Order 41A of the Circuit court rules in submitting that when the Circuit Court imposes a fine, the County Registrar or combined court office manager is the moving party in any enforcement proceedings pursuant to the Act, however, a consequence of dealing with such an application in the Circuit Court means that no appeal lies from such a decision.

19. The defendant, citing s.18 of the 1928 Act, says that no appeal lies from a decision of a Circuit Court judge on appeal from the District Court, but that s.18 applies when the District Court makes an order pursuant to s.7 giving a right of appeal from that order.

20. The defendant, citing s.72 of 1877 Act, submits that a judge on appeal may adjourn the hearing or remit the matter back to the District judge with such declarations or directions as he or she may think proper, and the District judge shall have the power to determine the matter so remitted.

21. The defendant submits that the rules of the Circuit Court envisage that the District Court retains the original documentation, and also that the ultimate order of the Circuit Court is notified to the District Court.

22. Moreover, that there is no specific provision in s.7 of the 2014 Act regarding the powers of the Circuit Court to deal with fines imposed by the Circuit Court when exercising its appellate jurisdiction, and that therefore, the Circuit Court dealing with the matter pursuant to s.7 of the Act would have the consequence of depriving the defendant of a constitutional right of appeal.

23. The defendant argues that given the presumption of constitutionality and the double construction rule, as well as the legislative provisions allowing the Circuit Court remit a matter to the District Court, it must be presumed that the jurisdiction of the Circuit Court in such situation is limited to remitting the matter to the District Court with a direction that it be dealt with in accordance with s.7 of the 2014 Act.

24. The defendant submits that the questions posed by the case stated be answered as follows:-

(a) *It is a matter for the District Court which originally made the order*

- (b) *The appropriate court official is the County Registrar or combined court office manager as defined in section 2*
- (c) *Not applicable*
- (d) *Not applicable*

Submissions of the Prosecutor

25. It is submitted by the prosecutor that the constitutional right of appeal is a right of appeal "as determined by law". The prosecutor submits that the proceedings the subject of this case stated were enforcement proceedings and therefore different to criminal proceedings where a right of appeal lies from the District to the Circuit Court. The prosecutor rejects the contention of the defendant that enforcement applications pursuant to the 2014 Act are "akin" to decisions on sentence, as enforcement proceedings may only result in imprisonment as a very last resort.

26. The prosecutor submits that there is no lawful basis for the contention of the defendant that the Circuit Court should remit enforcement applications relating to District Court Appeal matters to the District Court. The prosecutor argues that this proposition is inconsistent with the express language of the 2014 Act and Order 41A, and that the vague language of the 1877 Act does not support the defendant's interpretation of the provision cited, which does not mention enforcement proceedings, and nor could it be interpreted as providing a jurisdiction to operate as claimed. The prosecutor submits that the defendant does not cite rules which provide a mechanism for a transfer of the kind argued for by the defendant, particularly when considered in light of the express terms of the 2014 Act and Order 41A.

27. The prosecutor takes issue with the view of the Circuit Court Judge, as set out in the case stated, that she:

(F)ormed the view that the Order of Her Honour Judge Fergus herein was an Order which varied the District Court Order and it therefore remained a District Court Order and the appropriate court to enforce a District Court Order is the District Court.

28. The prosecutor respectfully submits that the basis upon which the Circuit Court Judge formed this view is not set out in the case stated, and is not correct in law. The prosecutor submits that the order in question is actually a Circuit Court order, *inter alia* because the order bears the title, "South Eastern Circuit... County of Kilkenny".

29. The prosecutor submits that any provision which attempts to reserve functions such as the relevant function in this instance, to a court of first instance, must be both detailed and complex, and that the absence of such express legislative provisions in this context is largely dispositive of any argument to the effect that enforcement in the present circumstances is a matter for the District Court. The prosecutor also highlights the fact that there is no provision in the relevant statutory framework or court rules which could be said to be analogous with s.99(22) of the Criminal Justice Act 2006 (As amended) which permits revocation applications in respect of a suspended sentence to be made to the court of first instance.

30. The prosecutor submits that the word "appeal" does not appear at any point in the 2014 Act, and as a result no right to appeal from the Circuit Court to any court is provided for. The prosecutor rejects the defendant's interpretation of s.18 of the 1928 Act insofar as it provides for a right of appeal from the District Court. The prosecutor argues that the phrase "payment of a penal or other sum" properly

interpreted may simply refer to the imposition of a fine, as opposed to a resultant enforcement order. The prosecutor also submits that the instant case relates to enforcement of a Circuit Court order, and not a District Court order. The prosecutor places reliance upon the recent High Court decision in *DPP v SM* [2024] IEHC 566 for the proposition that this court should not provide advisory opinions on hypothetical questions not arising on the facts.

31. The prosecutor also submits that the Oireachtas has implicitly considered s.18 of the 1928 Act not to afford a right of appeal in the context of the revocation of a suspended sentence, in light of the fact it subsequently legislated for this through s.99(12) of the Criminal Justice Act 2006.

32. The prosecutor argues that the defendant's reliance on the presumption of constitutionality and the double construction rule are misplaced in light of the fact this is a consultative case stated, and not a plenary action nor judicial review challenge as regards to the constitutionality of the legislation. The prosecutor places reliance on the case of *DPP v Galvin* [2020] IECA 319 for this proposition. The prosecutor also submits, in relation to the defendant's equality argument, that there is no comparator to the case before the court, which would be required to make that argument.

33. Finally, the prosecutor submits that the onus of proof in the enforcement process is on the Courts Service, placing reliance on *Fogarty*.

34. The prosecutor submits that the questions posed by the case stated be answered as follows:-

- a) Yes, the Circuit Court does have jurisdiction to hear the enforcement application.
- b) The "appropriate court official" should be construed as referring to a County Registrar or combined office manager.

- c) No, no right to appeal from the Circuit Court to any Court lies.
- d) The non-payment of the fine, and perfection and proof of service of an enforcement order, are necessary proofs, and the onus is on the Court Service.

Discussion

35. The defendant argues that Article 34.3.4^o provides for a right of appeal from courts of local and limited jurisdiction concerning decisions on punishment or sentence and this, it is said, includes enforcement applications pursuant to s.7 of the 2014 Act. The defendant contends that such decisions are akin to decisions on sentence, as there is a necessity for an adjudication regarding the sanctions available, one of the possible sanctions being incarceration. It is argued that the exclusion of a right of appeal in the present case is without objective justification.

36. Reliance is placed on Hogan J.'s dicta in *McCabe* where he said at para. 34 :-
The right of appeal is subject to "law", but it is now clear -in a way which was not perhaps quite the case in 1972 at the time when Hunt was decided - that where this phrase appears in the Constitution, it does not simply refer to positive law only in the sense of a statute enacted by the Oireachtas. It is rather the case that any such "law" as it is envisaged by Article 34.3.4 must comply with the principles subsequently articulated by Henchy J. in King v. Attorney general [1981] I.R.233,257, so that the law "must [not] ignore the fundamental norms of the legal order postulated by the Constitution." This principle was recently reaffirmed by O'Donnell J. in Murphy in the context of Article 38.3.1 and the establishment "by law" of the Special Criminal Court. The application of the King principle meant that the question in that case thereafter became whether the provisions of the

Offences Against the State Act 1939 providing for the establishment of that Court were "compatible with the dictates of fairness postulated by the Constitution."

Hogan J. went on to say at para. 37:-

In view of the centrality of sentencing to the criminal justice system and given that the protection of liberty, the trial of offences in due course of law and the existence of a right of appeal are themselves all fundamental norms expressly safeguarded by the Constitution, it is difficult to see how a law which did not provide for a right of appeal against sentence imposed by a court of local and limited jurisdiction could be said to be a law which respected those fundamental norms, so that it was a "law" in the sense identified by Henchy J. in King and by O'Donnell J. in Murphy (2014). It is, perhaps, unnecessary to decide whether Article 34.3.4 requires the existence of a right of appeal against sentence on the part of an accused in every single case. It is, however, to say that the denial of a right of appeal against a sentence imposed by a court of local and limited jurisdiction is something which, at the very least, requires to be objectively justified.

37. The defendant argues that, should the enforcement proceedings continue in the Circuit Court, no right of appeal lies thereafter, thus there is a failure to treat the defendant equally in law. It is argued that there is a power and a mechanism whereby the matter can, and should, be remitted by the Circuit Court to the District Court thereby giving a right of appeal from any decision made.

38. While Article 34.3.4^o of the Constitution provides for a right of appeal from courts of first instance, such a right is "as determined by law". The emphasis placed on the dicta in *McCabe* is misplaced in that the nature of the proceedings

before the Circuit court were not in the manner of a sentence hearing, but a potential assessment of the defendant's financial statement in order to assess the appropriate course following a default in payment of the fine. Enforcement proceedings are, in my view, very different to a sentence hearing and do not bear such a comparison. In any event, there may be other options available to safeguard a defendant's position, such as the Article 40 procedure or Judicial Review.

39. The within proceedings are those of a consultative case stated, not a plenary hearing, whereas in *McCabe* the High Court was at large regarding findings of fact and law, this Court is confined to the terms of the case stated.

The 2014 Act

40. Part 2 of the 2014 Act addresses the capacity to pay a fine, the payment of the fine by instalments and the failure to pay the fine. The Act has certain safeguards; s.5(1) states the purpose of the section is to ensure, so far as is practicable, that where a fine is imposed on a person, the effect of the fine imposed on that person or his or her dependents is not "significantly abated or made more severe by reason of his or her financial circumstances." Whatever fine is imposed must be proportionate to the offender's culpability and personal circumstances.

41. The court, in determining the amount of the fine in respect of an offence, must take into account that person's financial circumstances. These are among the matters a court must consider when deciding on the appropriate penalty. It is only where there has been a failure to pay the fine by the due date that the notice is served pursuant to s.7(4) of the 2014 Act by the appropriate court official requiring the person to appear in court and to provide the court with a written statement of financial circumstances. In the present case, the defendant accepts

that the correct authority served the notice, being the combined court office manager.

42. I observe at this stage that the proceedings being properly issued by the combined office manager leads to the inevitable conclusion that the proceedings are properly before the Circuit Court. That was the court which heard the appeal from the District Court and made an order which replaced the District Court order. There is, therefore, no order of the District Court to enforce. The defendant contends that the matter should simply be remitted to the District Court.

43. Reverting to the provisions of the 2014 Act, the court, having considered the statement of financial circumstances, is mandated to give consideration to the following under s.7(5) in determining the appropriate order to make following default:-

(5) (a)....

(i) *first, give consideration to making an attachment order in respect of the fined person, and*

(ii) *second, if it is satisfied that it would not be appropriate for it to make an attachment order in respect of the fined person, give consideration to making, subject to subsection (2), a recovery order or community service order in respect of the fined person.*

(b) *Where the court is satisfied that it would not be appropriate for it to make an attachment order, recovery order or community service order in respect of the fined person, it may commit the person to prison in accordance with section 2 or 2A of the Act of 1986.*

44. It is only if the options of attachment, recovery and community service are deemed inappropriate, or have not succeeded, that the court may then consider the ultimate sanction of imprisonment.

Akin to Sentence?

45. The court which has carriage of the enforcement proceedings is, as stated in *Fogarty*, "administering justice". It is not an administrative act, the court has several options open to it and in determining which of those options is the correct one, it is making a judicial determination.

46. I do not agree with the defendant's contention that enforcement proceedings are similar to the imposition of sentence. As can be seen, enforcement proceedings are only determined following a determination on the issue of penalty. The Act specifically addresses the capacity of a person to pay a fine. The proceedings under s.7 only come into play if there has been a failure to pay a fine, and they proceed as a consequence of that failure. The determination is then made on foot of a consideration of the defaulter's financial circumstances. That determination must, by statute, involve a consideration of the various sanctions open to the court. The option of imprisonment is only as a very last resort where the court finds an attachment order, recovery order, or community service order, to be inappropriate.

47. While a fine is certainly a punishment, that penalty was previously determined at the stage of imposition of the penalty by the District Court. The matter was then appealed, at which stage, following a de novo hearing, the order of the District Court was varied, *replacing* the order of the District Court and leaving the fine in situ. The imposition of the fine constituted the sentence hearing, the non-payment of that fine had the result of the issue of the notice under s.7(4)

of the 2014 Act and the enforcement proceedings. The proceedings before the Circuit Court followed its order on appeal and were not in the form of a hearing on penalty but were enforcement proceedings commenced by the Courts Service following the defendant's default in payment of the fine imposed. There is no prosecutorial authority involved at the stage of enforcement, the court which imposed the fine is enforcing its own order, which of course, must be affected fairly.

Remittal

48. The rules of the Circuit Court make it clear that the Circuit Court issues the notice following non-payment of the fine requiring the person to appear before the Circuit Court. While no issue is taken with the service of the notice by the combined court office manager, the argument is that the matter should have been remitted to the District Court with such declarations or directions as may be considered proper and thereafter the District Court has power to determine the matter.

49. Reliance is placed on s.72 of the 1877 Act. However, the prosecutor asserts that this provision does not come in aid of the defendant as it relates only to appeals which are pending, whereas the appeal relating to sentence has already been determined by the Circuit Court. The relevant extract provides:-

*(W)ith respect to appeals, the court before which any such appeal **shall be pending** shall have power to adjourn the hearing of such appeal, or to remit the matter to the justices of the petty sessions where the original order was made, with such declarations or directions as to the Court of Appeal shall seem proper, and such justices shall have power to determine the matter*

when so remitted, having regard to such declarations or directions.

(emphasis added)

50. I do not find force with the proposition that s.72 provides the authority that the matter be remitted to the District Court. The difficulty from the defendant's perspective is that the appeal is no longer extant. It has been finalised, sentence has been imposed and the order of the District Court, replaced. It is no longer pending before the Circuit Court.

51. In my opinion, Order 41A of the Circuit Court Rules permits for the enforcement proceedings to be determined by the Circuit Court where that court has embarked upon an appeal. The relevant extract of the order provides:-

(1) The County Registrar or (as the case may be) the combined court office manager may at any time after the due date for payment of any fine:

(a) imposed by the Court on appeal from the District Court, or

*(b) imposed by the Court otherwise than on appeal, issue a notice by ordinary prepaid post for the purposes of section 7(4) of the Fines (Payment and Recovery) Act 2014 requiring a fined person who has not paid the fine (or, as the case may be, a relevant instalment) by the due date for payment in accordance with that Act **to appear before the Court** at a date and time specified in the notice.*

(emphasis added)

52. The rule clearly requires a person on whom a notice is served to appear before the Circuit Court on the specified time and date, and in accordance with the 2014 Act, to provide the court with a statement of his/her financial circumstances. S.7(4) of the 2014 Act clearly states that the statement is to be provided to the court which begs the question as to why the statement is to be

provided. S. 7(5) of the Act answers that question in that the court (clearly the court from which the notice has issued and to whom the statement is provided), must then go on to consider that statement in deciding on the appropriate option under s.7(5) (a)(i) and (ii) and s.7(5)(b).

53. There is no suggestion in the 2014 Act or in the rules of an option on appeal to remit to the District Court for its consideration.

54. I am not persuaded that there exists either in the rules or otherwise a pathway or mechanism for the remittal of the enforcement proceedings as contended by the defendant. The 2014 Act is clear and unambiguous in its terms, the appropriate court official is defined in the interpretation section of the Act (s.2) as the County Registrar or the combined court office manager, but of more importance to this case stated is that where the Act refers to the appropriate court official it does so in the context of "a fine imposed by the Circuit Court". This was a fine imposed by the Circuit Court on foot of an appeal, which means a de novo hearing and not a review of the proceedings in the District Court. Thus, the order regarding the sentence emanated from the Circuit Court following the rehearing and the imposition of a sentence with regard to the principle of totality. That was the sentence, the enforcement proceedings are of a different order and do not constitute a sentence but were initiated as a consequence of default.

Section 18 of the Court of Justice Act 1928.

55. This provision as quoted above provides for an appeal from the District Court against any order, "for the payment of a penal or other sum or for the doing of anything at any expense or for the estreating of any recognisance or for the undergoing of any term of imprisonment ...".

56. It is entirely clear that no appeal lies from the decision of the Circuit Court on foot of a District Court appeal. While s.18 refers to an order for the payment of a penal or some other sum, the section does not specifically refer to enforcement proceedings following the failure to pay a fine imposed. It seems to me that the correct interpretation of those words relate to the imposition of a fine rather than enforcement proceedings as in the present case. It is the position that the defendant availed of his right to appeal the sentence which was *inter alia* that of a fine. I believe that s.18 refers to a right of appeal in that context.

57. Moreover, the 2014 Act, as observed in *Owens and Dooley*, is legislation which created a new process for the enforcement of fines and the specific authority to issue the s.7(4) Notice is expressly stated within the Act. In the present case, that accepted authority is the County Registrar or the combined court office manager. The 2014 Act places the enforcement proceedings with the Circuit Court to seek to enforce its own order following the decision on appeal.

58. I find there is merit in the submission made by the prosecutor in that the within case stated is not concerned with the enforcement of a fine imposed by the District Court but with the enforcement procedures following the order of the Circuit Court. The order which issued is an order of the Circuit Court following a rehearing. Therefore, the factual position arising from the case stated is that the proceedings are before the Circuit Court, the outcome of the enforcement proceedings are unknown, and so while the question of an appeal from an enforcement order of the Circuit Court is premature, the situation remains that the decision of a Circuit Court judge on an appeal from the District Court is final, conclusive and unappealable.

Decision

59. This is a consultative case stated and so this Court is confined to answering the questions posed by the Circuit Court Judge. Therefore, I confine myself to answering the questions, in light of the foregoing analysis, as follows:-

- (a) Yes, the Circuit Court has jurisdiction to hear the enforcement proceedings.
- (b) The appropriate court official is the County Registrar or the combined court office manager.
- (c) No appeal lies from an enforcement order made under Section 7 of the 2014 Act on a District Court appeal.
- (d) The perfection of an order and the service thereof are necessary proofs on enforcement proceedings and the onus lies with the Courts Service to provide such proof.