

State (KEATING)

164

1983/482 S.S.

THE HIGH COURT

STATE SIDE

BETWEEN:

THE STATE AT THE PROSECUTION OF
DEREK KEATING

Prosecutor

and

DISTRICT JUSTICE ROBERT O HUADHAIGH

Respondent

Judgment delivered on the 11th day of May, 1984 by Finlay P.

This is an application to make absolute notwithstanding Cause Shown a Conditional Order of Certiorari granted to the Prosecutor by the High Court on the 11th of January, 1984 in respect of the conviction and sentencing by the learned Respondent of the Prosecutor on the 11th of July, 1983 at the Dublin Metropolitan District Court in respect:-

1. of an offence of having on the 12th of March, 1983 in a public place a motor vehicle which was uninsured, contrary to Section 56 of The Road Traffic Act, 1961 to 1968; and
2. of a further offence of having on the 1st day of October, 1981 in a public place, used a vehicle which was uninsured, contrary to Section 56 of The Road Traffic Act, 1961 to 1968.

In respect of each of the said offences for which the Prosecutor was convicted he was sentenced to:-

"be imprisoned for six months to commence on the legal expiration of the sentence imposed in the Circuit Court on the 30th day of June, 1983".

On the 30th of June, 1983 the Prosecutor was on Bill No. 256/82 of the County of the City of Dublin indicted for two counts of assault

occasioning actual bodily harm and of robbery and having pleaded guilty was sentenced to be kept in penal servitude for three years on the count of assault occasioning actual bodily harm and to be imprisoned for three years on the count of robbery:-

"such sentences to be concurrent and date from the 30th of June, 1983 and be concurrent with sentences imposed on Bill No. 257/82, 489/82, 501/82 of even date."

It was contended on behalf of the Prosecutor in the first instance that by reason of the fact that the addition of a six month sentence of imprisonment consecutive to the sentences imposed on the 30th of June, 1983 on the Prosecutor would have the effect of a situation whereby he would be imprisoned for a total period in excess of twelve months, that the sentences imposed by the learned Respondent in these cases was in contravention of the provisions of Section 5 of the Criminal Justice Act, 1951.

I have recently dealt with the interpretation of this Section in the case of The State (Anthony Payne) .v. D. J. Clifford in a judgment which is still unreported. Having regard to the view I formed in that case of the true interpretation of the Section I am satisfied that the sentence of imprisonment imposed by the learned Respondent in this case not being a sentence to commence at the legal expiration of another sentence of imprisonment imposed by the District Court (or by the Circuit Court on Appeal from the District Court) cannot be challenged as to its validity on the grounds that it contravenes Section 5 of the Act of 1951.

It was further contended, however, on behalf of the Prosecutor that the sentence imposed by the learned Respondent was void for uncertainty. In particular it was here contended that it could be construed as being consecutive to the sentence of penal servitude imposed by the Circuit Court on the Prosecutor on the 30th of June, 1983 and that if it were it would be without jurisdiction.

As a matter of general principle, I am satisfied, that where a sentence is imposed to run consecutively upon the legal termination of a sentence previously imposed that it is necessary that the previous sentence should be specifically referred to so as to avoid any conceivable doubt about the date for the proper commencement of the term then being imposed. In the instant case it would appear from the documents before me to which I have referred that on the 30th of June, 1983 not only were two separate sentences on two different counts, one of three years penal servitude and the other of three years imprisonment, imposed by the learned Circuit Court Judge, but that also on that date on the face of the document which I have considered on three other Bills of Indictment, other sentences were imposed also.

Whilst with the lapse of time it may be somewhat hypothetical to state that one or other of the convictions in respect of which these sentences were imposed could be varied or set aside on appeal or on judicial review, that possibility does exist. In those circumstances, it seems to me a fatal flaw in the sentence imposed by the District Court that it did not refer to a specific sentence on a specific count, distinguishing, for example, in relation to the two charges of assault and robbery between the sentence of penal servitude and the sentence of imprisonment.

For these reasons I am satisfied that the Order is bad and that the Conditional Order of Certiorari must be made absolute notwithstanding the Cause Shown.

It is unnecessary for me to decide having regard to this decision whether it is still possible to impose a sentence of imprisonment consecutive upon a sentence of penal servitude, and I would prefer to leave that matter without decision until it arises as the necessary point in a case and is fully argued.

J. A. Lindsay