

**THE HIGH COURT
JUDICIAL REVIEW**

[2019 No. 296 JR]

BETWEEN

**THE DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF THE REVENUE
COMMISSIONERS)**

APPLICANT

AND

MARY FITZGERALD

RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 18th day of September, 2020

Background

1. The respondent was issued with nineteen District Court summonses for offences of knowingly or wilfully producing incorrect documents in connection with Income Tax for various tax periods contrary to ss. 1078(2)(d) and (3) of the Taxes Consolidation Act 1997, as amended by s. 138(1)(d) of the Finance Act 2008.
2. The summonses were initially returnable before the Dublin District Court on 16 January 2019 and were adjourned to 20 March 2019. On that date, the Solicitor for the respondent informed the District Judge that a plea of guilty would be entered. The Solicitor, appearing on behalf of the applicant, indicated to the Court that the prosecution would accept a plea of guilty in respect of five of the summonses before the Court and that the remaining summonses could be struck out.
3. The facts of the case were outlined to the Court by the Solicitor for the applicant. The Court was informed of the relevant statutory provisions which set out the penalties on conviction. The Court was informed that, as per the relevant statutory provision, s. 1 of the Probation of Offenders Act 1907 did not apply.
4. The Solicitor instructed by the respondent made a plea in mitigation, relying on the following factors: -
 - (a) An early guilty plea;
 - (b) The fact that full recompense had been made to the Revenue Commissioners in the sum of €6,374.18;
 - (c) That the respondent at the time was under financial stress, which was a significant factor in the offending behaviour;
 - (d) That the respondent had a history of mental health illness, which included periods of severe depression, an attempted suicide and admission to hospital;
 - (e) That the respondent had developed and fought cancer;
 - (f) That the respondent was working in two jobs. Also, the respondent was now working in a care home, having originally wanted to be a nurse but was required to care for her mother who had Parkinson's disease;

- (g) That a conviction would in all likelihood lead to the respondent losing her job given the nature of the offences; and
 - (h) The Court was informed that the respondent had taken steps to ensure the offending behaviour would never happen again.
5. Having heard the plea in mitigation, the District Judge noted that if fines were imposed, it would be a "*significant sum of money*" for the respondent to have to discharge. The Judge indicated that a community service order should be imposed but, after reconsidering the matter, suggested that he would use "*restorative justice*". It was submitted to the Court that the principles pertaining to restorative justice could not be applied in respect of offences of this nature. Upon hearing this, the District Judge stated that the facts of the case had been proven and struck out all of the charges before the Court.

Judicial Review Proceedings

6. The applicant was granted leave to seek the following orders by way of judicial review: -
- (i) An order of *certiorari* quashing the Order of District Judge Halpin striking out the proceedings as against the respondent in the prosecution entitled "Director of Public Prosecutions (at the suit of the Revenue Commissioners) v. Mary Fitzgerald, on Case No.'s S:2019/9594 Charge No. 1, S:2019/9594 Charge No. 2, S:2019/9593 Charge No. 3, S:2019/9594 Charge No. 4 and S:2019/9594 Charge No. 17 at District Court 8 at the Four Courts on 20 March 2019";
 - (ii) A stay on the aforementioned Order pending the determination of the proceedings herein;
 - (iii) Further or other relief; and
 - (iv) Costs.

Relevant Statutory Provisions

7. Section 1078 of the Taxes Consolidation Act 1997 provides: -

"(2) A person shall... be guilty of an offence under this section if the person—

- (d) knowingly or wilfully issues or produces any incorrect invoice, receipt, instrument or other document in connection with any tax,"

and: -

"(3) A person convicted of an offence under this section shall be liable—

- (a) on summary conviction to a fine of [€5,000] which may be mitigated to not less than one fourth part of such fine or,..."

and: -

"(8) Section 1 of the Probation of Offenders Act, 1907, shall not apply in relation to offences under this section."

8. Section 26 of the Criminal Justice (Victims of Crime) Act 2017 provides: -

- “(1) In respect of any offence or alleged offence, a body or other person shall administer a restorative justice scheme (in this section referred to as a ‘scheme’) only if the requirements of this section are complied with.
- (2) The offender or alleged offender shall—
- (a) acknowledge the basic facts of the offence committed or offence alleged to have been committed, as the case may be, against the victim, and
 - (b) give his or her free and informed consent to participating in the scheme.
- (3) The victim shall—
- (a) receive full and unbiased information about—
 - (i) the scheme and the potential outcomes of participating in the scheme,
 - (ii) the procedures for supervising and implementing any agreement that may be reached between the parties in the context of the scheme, and
 - (iii) his or her right to withdraw at any time his or her consent to participating in the scheme,
- and
- (b) having received such information, give his or her free and informed consent to participating in the scheme.”

Legal Authorities

9. The Court was referred to a number of authorities. In particular, the applicant relied upon the decision of Hogan J. in *Joseph Kennedy v. District Judge Conal Gibbons & Director of Public Prosecutions* [2014] IEHC 67. In this case, the applicant pleaded guilty in the District Court to an offence of speeding contrary to s. 47 of the Road Traffic Act 1961 (as amended). The District Court was informed that the applicant was a pensioner who had no previous convictions and the District Judge was invited to strike out the proceedings and to accept a donation to the court poor-box in lieu of a formal conviction. The issue which the Court had to decide was stated by Hogan J. as follows: -

- “1. Where the imposition of penalty points in respect of a traffic offence is made mandatory by statute and where the accused does not dispute the offence, does a District Court judge have any jurisdiction to strike out the proceedings in return for the accused making a donation to the court poor-box? ...”

In the course of his judgment, Hogan J. referred to an earlier decision of Ó Caoimh J. in *Director of Public Prosecutions v. Maughan* [2003] IEHC 117. That case concerned a District Judge accepting a donation to the poor-box in lieu of convicting the accused of the offence of drunk driving. Ó Caoimh J. held that the District Judge had acted *ultra vires*: -

“...as he was obliged at the time to determine the case before him and to proceed in accordance with law to enter a conviction and to impose a penalty as required by

law. He was not entitled to strike out the charge, notwithstanding the circumstances outlined to him by the notice party's solicitor at the time. ..."

In following the decision in *DPP v. Maughan*, Hogan J. stated: -

"To my mind, the present case is indistinguishable in principle from *Maughan*. Just as in that case, the Oireachtas has here prescribed a mandatory penalty and sanction upon conviction, namely, the endorsement of four penalty points upon the offender's licence. As we have already noted, s. 55 of the Road Traffic Act 2010 also provides for the disapplication of the Probation of Offenders Act 1907 to speeding offences and other traffic offences."

Consideration of Issue

10. The jurisdiction of the District Court to impose a penalty is set out clearly in s. 1078 of the Taxes Consolidation Act 1997, as set out above. The Oireachtas has clearly imposed a statutory scheme of mandatory penalties. It was not open to the District Judge, in the face of a plea of guilty, to strike out the charges.
11. Each of the points made by the respondent in mitigation were persuasive and, taken together, made a compelling case for leniency. Understandably, the District Judge took the course he did and struck out the charges. However, he did not have jurisdiction to do this. Nor, as is clear from the relevant statutory provisions, did the District Judge have jurisdiction to deal with the matter under the provisions of the Criminal Justice (Victims of Crime) Act 2017.

Conclusion

12. By reason of the foregoing, the applicant is entitled to the relief sought set out at para. 6 (i) above. I will hear the parties on any further and consequential orders. As this judgment is being delivered electronically, the parties have fourteen days within which to furnish written submissions.