THE HIGH COURT

[2019 No. 739 JR]

BETWEEN

DIARMUID CREEDON

APPLICANT

– AND –

A JUDGE OF THE DISTRICT COURT, A JUDGE OF THE CIRCUIT COURT, AND THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered on 12th July 2021.

SUMMARY

These are unsuccessful judicial review proceedings in which, *inter alia*, it is claimed that a District Judge acted in excess of jurisdiction in transferring a prosecution from one District Court district to another (District 18 to District 19); that the said District Judge acted in excess of jurisdiction in the exercise of his judicial powers in dealing with the matter on various dates in District 19 further to the case of *Creavan v. Criminal Assets Bureau* [2004] 4 I.R. 434; that the said District Judge acted in breach of s.79 of the Courts of Justice Act 1924, as amended, in transferring the proceedings to District 19; and that the said District Judge acted in breach of the District Court Rules, Order 13(1), in hearing the proceedings in a court area other than where the alleged offence is stated to have been committed or where the accused was arrested or resided. This summary forms part of the court's judgment.

I

Background

1. Since 1924, the operation of the District Court in Ireland has been done by reference to districts (not areas). Every district is given a number. Macroom/Bantry is in District 18. Cork City is in District 19. In 1926, under the Court and Court Officers Act of that year, the Minister for Justice was empowered to create District Court areas within a district. Thereafter, every district, except Dublin, had several areas. In 1935, in *State (Reilly) v. Circuit Court Judge of Midland Circuit and District Justice for Portlaoise* [1936] I.R. 372, Hanna J., in the High Court, decided that in criminal matters criminal jurisdiction could only be exercised in particular areas (so a person had to be prosecuted in the area where they lived, were arrested, or the offence took place). In 2001, in *O'Brien v. Judge O'Halloran* [2001] 1 I.R. 556, at p.561, Geoghegan J., in the Supreme Court, stated that: "*Hanna J…was wrong…*[T]*he exercise of* [District Court] *jurisdiction has always been based on districts…not on areas. In so far as areas have been prescribed…it is for the purpose of the convenient regulation of the courts' business.*" It follows from the foregoing that the concept of District Court areas is irrelevant to what this Court has to decide. This is a case about districts.

2. Here, Mr Creedon was charged by summons with an offence under s.4(4)(a)(5) of the Road Traffic Act 2010. The offence was alleged to have been committed on 17th July 2016 at a place in District 18. The summons was returnable to Macroom District Court, also in District 18, on 15th February 2017 for mention only. On and from 15th July 2017, the following events transpired:

15.02.2017.	Matter mentioned in a District 18 court. Adjourned to a District 19 court with agreement of all. (It is a decidedly odd feature of this application that what is now being complained against was, historically, agreed to). Thereafter matter is adjourned to 07.07.2017, 08.09.2017, 06.11.2017, and 20.11.2017.
08.09.2017.	Written submissions and oral submissions made on behalf of first named respondent and parties in a District 19 court on 08.09.2017.

01.01.2018. Proceedings adjourned to a District 18 court.

25.01.2018. Mr Creedon is convicted in a District 18 court.

3. District Judge Kelleher, the first-named respondent, is permanently assigned to District 19. Pursuant to the Sixth Schedule to the Courts (Supplemental Provisions) Act 1961 (as amended by s.37 of the Courts and Court Offices Act 1995 and s.14 of the Civil Law (Miscellaneous Provisions) Act 2008) he had temporarily been assigned to District 18. It follows that he was entitled to hear the case in District 18 courtrooms on 21st June 2017 and 25th January 2018.

4. The within proceedings were commenced on 21st October 2019. Among the reliefs sought, and the sole matter now before the court to decide, is whether or not to grant an order of *certiorari* quashing the District Judge's decision of 25th January 2018 when Mr Creedon was convicted of an offence contrary to s.4(4)(a)(5) of the Road Traffic Act 2010.

5. There is no doubt but that the District Judge had jurisdiction on 25th January 2018 to convict and to pass sentence. The fact that he had this jurisdiction is not in issue. What Mr Creedon raises in this application is that the events of September 2017 require that the order of 25th January 2018 to be quashed. In essence, Mr Creedon's complaint is that because certain aspects of his case were heard outside District 18, his conviction on 25th January 2018 was made without jurisdiction and is void. But as will be seen, even if, for the sake of argument, one takes Mr Creedon's case at its absolute height and treats all that occurred in District 19, as what counsel for the respondents referred to as "*nullities*" (if such they were), the undoubted (and unquestioned) jurisdiction that the judge enjoyed on 25th January 2018 is not affected thereby.

6. There is, unfortunately for Mr Creedon, a legal and logical 'disconnect' between the events of September 2017 and the order of January 2018 that has not been overcome by Mr Creedon, for the simple reason that it cannot in fact be overcome on the facts presenting. The order of 25th January 2018 on its face and in its substance is in order, District Judge Kelleher had jurisdiction when he made the order of 25th January 2018, and there is, with respect, nothing in Mr Creedon's submissions that undermines this fact.

7. Turning to the statement of grounds, under the heading "*Grounds upon which Relief is Sought*" one finds:

– "***1. The District Judge acted in excess of jurisdiction in transferring the prosecution of the Applicant in proceedings bearing Case No 2016/168526 entitled in the matter of Director of Public Prosecutions (Garda Eoin Patrick Mullins) v. Diarmuid Creedon from District No. 18 to District No. 19 on the 21st June 2017***".

Court Note: There is no relief sought in these proceedings against that transfer order, and a point, however sound, can only be 'brought home' in terms of obtaining relief if it is made by the right person in the right place at the right time. If Mr Creedon wished at the point in time when his case was transferred from District 18 to District 19 to seek relief against that transfer order he could have come to the High Court around that time and sought injunctive relief against the matter being heard in District 19. If Mr Creedon had, for the purposes of argument, then obtained that injunctive relief, the DPP would then simply have lawfully re-entered the matter in District 18 and matters would have taken their course thereafter. In other words, even if injunctive relief had been obtained in 2017, it would not have stopped the prosecution, though it would have meant that what did transpire in District 19 would not have transpired.

– "***2. The District Judge acted in excess of jurisdiction in the exercise of his judicial powers in relation to the proceedings Case No. 2016/168526 in the matter of Director of Public Prosecutions (Garda Eoin Patrick Mullins) v. Diarmuid Creedon on the 30th June 2017, 7th July 2017, 8th September 2017, 6th November 2017, and the 20th November 2017 in District No 19***"

Court Note: There is no relief sought in these proceedings against any of those orders.

– "***3. The District Judge acted in breach of section 79 of the Courts of Justice Act 1924 in transferring or adjourning the transaction of Case No. 2016/168526 in the matter of Director of Public Prosecutions (Garda Eoin Patrick Mullins) v. Diarmuid Creedon to District No,19 and thereafter proceeded to hear the said case and acted judicially in relation thereto***."

Court Note: This point is treated with at greater length below.

– "***4. The District Judge acted in breach of District Court Rules Order 13, Rule 1 in that he heard proceedings in a court area other than where the alleged offence was stated to have been committed or where the accused was arrested or resided.***"

Court Note: The District Court Rules simply reflect statute. So, Mr Creedon's case such as it is has nothing at all to do with the Rules; it involves a more fundamental legal point.

8. In passing, the court notes that another feature of this case is that there is *no* suggestion that there has been any breach of fair procedures. There is no suggestion that District Judge Kelleher conducted himself other than appropriately, entertaining all relevant submissions and reaching a decision in accordance with law. The only criticism is that some material was provided to him when he was sitting in District 19 – material which, the court notes, the learned District Judge at no point said that he was ignoring. There is just nothing in the authorities to suggest that the conviction of 25th January 2018 should fall in such circumstances. It would be different, perhaps, if, leaving aside the jurisdictional issue for a moment, a hypothetical District Judge adjourned a case in or outside of his district and the accused made submissions through his counsel which, on the next adjourned date, the said hypothetical District Judge said that he was going to disregard. That would undoubtedly raise a fair procedures point, but there is no fair procedures point here and there is a significant 'falling short' in terms of identifying any fundamental deficiency arising in/on the facts in play.

II

Some Statutory Provisions of Interest and Some Related Case-Law

i. Courts of Justice Act 1924

9. Section 79 of the Act of 1924 provides as follows:

> "*Provided that the jurisdictions by this Act vested in and transferred to the District Court shall be exercised by the Justices severally as follows:—*

...

In criminal cases, by a Justice for the time being assigned to the District wherein the crime has been committed or the accused has been arrested or resides;"

10. Although none of ss.67 to 92 of the Courts of Justice Act 1924 require the relevant judge referred to in s.79 to sit physically in any particular location, there is Supreme Court case-law to this effect. Thus, in *Creavan v. Criminal Assets Bureau* [2004] 4 I.R. 434, the third respondent, sitting in the Dublin Metropolitan District, issued warrants under s.55 of the Criminal Justice Act 1994 and s.14 of the Criminal Assets Bureau Act 1996. The warrants related to premises located in a number of District Court districts. The applicants sought to have the warrants quashed. In relation to those issued under s.14 the applicants argued that a District Judge could not be assigned to more than one district at any one time or that, if s/he could be so assigned, the judge could not issue a search warrant under s.14 in respect of a district in which s/he was not physically present at the time of such issue. On appeal, the Supreme Court indicated, *inter alia*, that the structure of the District Court is based on the concept of districts and that the jurisdiction to make orders is limited territorially (hence, search warrants had to be issued by a judge sitting within the district where the relevant premises were situated), Fennelly J. stating, *inter alia*, as follows:

"*75* *In my opinion, the entire structure of the District Court is premised on the concept of the district. The Acts provide for the division of the State into districts….Judges are assigned either permanently or temporarily to districts….Jurisdiction in civil and criminal matters and in respect of licensing is exercised by reference to the district….It appears from O.34 of the District Court Rules 1997 that special provision is made…for the issue of search warrants, always based on a link with a district….*

76 *The crux of the present case is that the third respondent was not sitting in three of the District Court districts in respect of which he issued warrants. I believe that offends against the basic principle that the District Court exercise*

jurisdiction by reference to districts. The extreme result of combining the power of the President of the District Court to assign a District Judge to several districts at the same time is that the entire jurisdiction of the District Court might be exercised from Dublin. In my view, that is an unacceptable result. I believe that the third respondent would have had to sit in each of the respective districts and the fact that he did not do so rendered the warrants (except for one relating to Dublin Metropolitan District) invalid."

11. Mr Creedon, with respect, has sought greatly to extend the effect of *Creavan* so that the decision works to his advantage in the context of the facts here presenting. However, in *Creavan*, the applicant, who was charged with a major tax fraud, was seeking to quash search warrants signed outside the district to which the judge had been assigned. Here, Mr Creedon is seeking to quash a conviction rendered by a district judge when sitting *within* the correct district. So, strictly speaking, the decision in *Creavan* is not relevant at all to the facts in play in this application. What Mr Creedon is seeking to do is to extend the scope of *Creavan* by claiming that because something happened while the judge was in District 19, that undermines the jurisdiction of the judge when he acted within jurisdiction in District 18 on 25th January 2018. Missing in the submissions made by Mr Creedon is why the something that happened in District 19 undermines the later jurisdiction of the District Judge in District 18.

ii. Courts (Supplemental Provisions) Act 1961

12. The Sixth Schedule to the Courts (Supplemental Provisions) Act 1961 (as amended by s.37 of the Courts and Court Offices Act 1995 and s.14 of the Civil Law (Miscellaneous Provisions) Act 2008) provides as follows:

"*3.— (1) A judge of the District Court who is permanently assigned to a particular district may, with his or her consent, from time to time be temporarily assigned by the President of the District Court to another district or districts, but such temporary assignment shall be without prejudice to the exercise and performance by him or her of*

the privileges, powers and duties for the time being conferred or imposed on him or her by law in relation to the district to which he or she is permanently assigned.

(2) A judge of the District Court who is not for the time being permanently assigned to a district may from time to time be assigned by the President of the District Court to another district or districts.

(2A) Without prejudice to subparagraph (2), the President of the District Court may, in relation to any district, temporarily assign for a period not exceeding 6 months one or more district judges (whether or not any such judge is permanently or temporarily assigned to another district or districts) to exercise, in relation to that district, the powers specified in subparagraph (2B).

(2B) A district judge who is temporarily assigned to any district under subparagraph (2A) may exercise any of the powers of a district judge to which section 32A applies for the time being conferred on him or her by law whether he or she is in or outside that district.

(3) A temporary judge of the District Court may from time to time be temporarily assigned by the President of the District Court to any district or districts."

13. As mentioned previously above, District Judge Kelleher is permanently assigned to District 19. Pursuant to the Sixth Schedule to the Courts (Supplemental Provisions) Act 1961 (as amended by s.37 of the Courts and Court Offices Act 1995 and s.14 of the Civil Law (Miscellaneous Provisions) Act 2008) he had temporarily been assigned to District 18. It follows that he was entitled to hear the case in District 18 on 21st June 2017 and 25th January 2018.

iii. District Court Rules 1997

14. Order 13(1) of the District Court Rules 1997 provides as follows:

"*Criminal proceedings shall be brought, heard and determined either— (a) in the court area wherein the offence charged or, if more than one offence is stated to have been committed within a Judge's district, any one of such offences is stated to have been committed; or (b) in the court area wherein the accused has been arrested, or (c) in the court area wherein the accused resides, or (d) in the court area specified by order made pursuant to the provisions of section 15 of the Courts Act, 1971.*"

15. As mentioned previously above but the point is perhaps worth reiterating, the District Court Rules simply reflect statute. So, Mr Creedon's case such as it is has nothing at all to do with the Rules; it involves a more fundamental legal point.

III

Some Further Case-Law of Interest

i. *Carter and Kenny*; *Whelton*

16. There are many cases which confirm that, save in certain instances, any apparent invalidity in the manner whereby an accused comes before the District Court are cured by the fact of the accused's appearance/presence before the District Court. Two cases are of especial interest in this regard: *DPP v. Carter and Kenny* [2015] 3 I.R. 58 (a case concerned with how suspended sentences were to be activated) and *Whelton v. O'Leary* [2011] 4 I.R. 544 (a case where a charging was tainted with some degree of illegality). In *Carter and Kenny*, O'Donnell J. observes, *inter alia*, as follows:

"*[58]* *The line of authority encapsulated in* [*DPP (Ivers) v. Murphy* [1999] 1 I.R. 98]*…is of some antiquity, and importance. It can be traced back, at least in modern times, to the judgment of Davitt P. in* The State (Attorney General) *v.* Judge Fawsitt *[1955] I.R. 39 where he said:*

> 'The usual methods of securing the attendance of an accused person before the District Court,

> so that it may investigate a charge of an indictable offence made against him, is by way arrest or by way of formal summons, but neither of these methods is essential. He could, of course, attend, voluntarily, if he so wished; so far as the exercise of the Court's substantive jurisdiction is concerned it is perfectly immaterial in what way his attendance is secured, so long as he is present before the District Justice in Court at the material time. Even if he is brought there by an illegal process, the Court's jurisdiction is none the less effective.' (p. 43)

[59] *Davitt P. referred to…Hawkins*' Treatise of the Pleas of the Crown [(Curwood (ed.)) (Great Britain; S. Sweet; 1824; 8th edition; Vol.2)] *at p. 420 that* 'the law will not so far regard a slip in the process, as to let the defendant out of court in order only to have him brought in again in better form'. *The principle can be found in* The Queen v. Hughes *(1879) 4 Q.B.D. 614, where Lopes J. said, at p. 622,* 'I think the warrant in this case was mere process for the purpose of bringing the party complained of before the justices and had nothing whatever to do with the jurisdiction of the justices'. *In* The Attorney General (McDonnell) v. Higgins *[1964] 1 I.R. 374* [the leading case in this jurisdiction in recent years]*, Kingsmill Moore J. said at p.391:*

> 'Neither summons nor warrant to arrest, consequent on the information, confer jurisdiction. They are merely processes to compel the attendance of the person accused of the offence...'

> It is equally clear that if a person is in Court, voluntarily or involuntarily, legally or illegally, an information or complaint may be made then and there '*ore tenus*' [orally] to the Justice, accusing such person of having committed a summary offence, and, if the information contains the necessary ingredients, the person may at once be charged with the offence....'. (p.391)

[60] *There are several other decisions to the same effect. See* e.g., R. (Daly) v. Justices of County Cork *[1898] 2 I.R. 694,* The State (Lynch) v. Ballagh *[1986] I.R. 203,* The Director of Public Prosecutions v. Delaney *[1997] 3 I.R. 453 and* The Director of Public Prosecutions (McTiernan) v. Bradley *[2000] 1 I.R. 420. The law is comprehensively and usefully reviewed in the concurring judgment in the recent case of* Whelton v. O'Leary *[2010] IESC 63, [2011] 4 I.R. 544. There McKechnie J. observed that the principle was limited and did not apply to cases:-*

> '...where the issue is whether the validity of the preceding process may impact upon jurisdiction. To this, of course, may be added circumstances where it is alleged that during the process evidence has been obtained by either illegal or unconstitutional means'. (para. 43)".

17. In *Whelton*, McKechnie J., with whom the other judges agreed in this regard identifies, at para.101, the following as examples of instances where preceding process may impact later jurisdiction:

> "*(a)* *where there has been a deliberate and conscious violation of one's constitutional rights….*

(b) *where the relevant conduct is of such a nature as to outrage, insult or defy the legal or constitutional authority or status of the court….*

(c) *where the validity of a preceding event, for example an arrest, is an essential ingredient to ground a charge upon which an accused person stands before the court*".

18. None of these types of event or anything like them presents as an issue in this case. Here, what happened in District 19 in no way affects the jurisdiction of the District Court Judge when acting in District 18 on 25th January 2018. Indeed, Mr Creedon has, unfortunately for him, failed to identify a single authority for the proposition that the District Judge's jurisdiction on the 25th *was* undermined. All that Mr Creedon states, in effect, is that the judge, prior to the 25th, breached s.79; however, that is not the language of something that undermines the jurisdiction of the judge on the 25th (and there is no want of fair procedures presenting or claimed).

ii. *O'Malley v. Kelly*

19. This was a case where Mr O'Malley was charged with a series of offences, most committed in Donegal and some in Dublin. The judge in Dublin purported to transfer all the cases in Donegal. Mr O'Malley was properly convicted of the offences that had occurred in Donegal. However, the essence of the High Court decision was that the District Judge in Donegal could not get jurisdiction to try Mr O'Malley on foot of the transfer order made in Dublin, *i.e.* the jurisdiction in Donegal to try Mr O'Malley there rested on the criteria identified in s.79 of the Act of 1924. Because none of the criteria were satisfied in respect of the Dublin offences whereby he could be tried for same in Donegal pursuant to s.79, the three Dublin convictions only were quashed: the judge in Donegal simply did not have jurisdiction. So this is not a case turning on the fact that at some point a portion of the proceedings was treated with in Dublin. It is a case that turns on none of the s.79 criteria pointing to the judge in Donegal having substantive jurisdiction to try the Dublin offences. This judgment of the High Court was upheld by the Court of Appeal.

20. In passing, an issue of acquiescence by an accused arose in *O'Malley*. There, the DPP argued unsuccessfully that, in respect of a District Court judge in Donegal, where the judge otherwise does *not* have jurisdiction to try an accused, that accused's acquiescence in the

process essentially means that the orders made by the Donegal judge are valid. Both the High Court and the Court of Appeal rejected this proposition. In the within case, by contrast, the respondents do *not* claim that acquiescence gave jurisdiction to District Judge Kelleher on 25th January 2018 – there is no doubt that the learned District Judge enjoyed jurisdiction on that date (and no argument is made to the contrary). What occurred in District 19 simply does not vitiate what was done by the learned District Judge in District 18 on 25th January 2018.

IV

Conclusion

21. At the conclusion of the written submissions for Mr Creedon, there are four conclusions stated, *viz*:

> "*1* *....that the District Judge acted in excess of jurisdiction in transferring the prosecution of the Applicant in the within proceedings from District Court No.18 to District No.19 on the 21st June 2017.*
>
> *2* *....that the District Judge acted in excess of jurisdiction in the exercise of his judicial powers in dealing with the matter on various dates in District No.19 further to the case of* Creavan.
>
> *3* *.....that the District Judge acted in breach of s.79 of the Courts of Justice Act 1924, as amended, in transferring the proceedings to District No.19.*
>
> *4* *....that the District Judge acted in breach of the District Court Rules Order 13(1) in hearing the proceedings in a court area other than where the alleged offence is stated to have been committed or where the Accused was arrested or resided.*"

22. None of the above conclusions, with respect, connects the 'disconnect' to which the court referred previously above, *i.e.* none of the above conclusions draws a connection between what Mr Creedon claims is a breach of s.79 of the Act of 1924 and then relates that into the actions

of the learned District Judge on 25th January 2018, which actions were done within jurisdiction and are not contended otherwise to have been done. No relief is sought in this application concerning any of the interim orders made between 21st June 2017 and 25th January 2018, the making of any and all of which did not affect the jurisdiction of District Judge Kelleher to hear and determine the matter in a District 18 court on 25th January 2018.

23. Having regard to all of the foregoing, the court respectfully declines to grant the relief sought.