THE COURT OF APPEAL

Record No. 2022/18

Edwards J.
McCarthy J.
Ní Raifeartaigh J.

Neutral Citation Number [2023] IECA 159

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

APPELLANT

- AND -

TOMASZ CZELUSNIAK

RESPONDENT

-AND-

THE ATTORNEY GENERAL

AMICUS CURIAE

JUDGMENT of Ms. Justice Ní Raifeartaigh delivered on the 20th day of June 2023

Nature of the case

1. This is a consultative case stated from the Circuit Court on the question of whether an accused person who has pleaded guilty in the District Court to an indictable offence pursuant to s.13(2) of the Criminal Procedure Act 1967 ("the 1967 Act") may change his

plea to one of 'not guilty' on appeal to the Circuit Court when he has been dealt with and sentenced under sub-paragraph (a) of s.13(2).

Background

2. The following facts were set out in the case stated. On the 6th April 2018, Garda were on mobile patrol when they received a call about a road traffic incident at Portland Street North. They arrived at the scene where the Dublin Fire Brigade were attending to the injured party. He told Gardai he was travelling on his motorcycle and was knocked off when he came past a Panda Waste vehicle. Gardai discovered that the vehicle was emptying the residential bins belonging to an apartment complex and that the driver had tied a length of rope from his vehicle to the first bin to drag them up from the apartment complex to bring them to street level. The injured party did not see the rope as there were no signs or warnings in place and struck the rope just below his neck. He sustained fractures to his spine and a full recovery was expected to take 12-18 months.

3. The respondent was charged an offence of dangerous driving causing serious harm contrary to s.53(1) of the Road Traffic Act 1961 as substituted by s.4 of the Road Traffic (No.2) Act 2011. Where the offence of dangerous driving is involves the causing of serious harm, it is an indictable offence pursuant to s.53(1)(2)(a) of the Act, and it can only be dealt with summarily in accordance with s.13 of the 1967 Act. The DPP consented to it being dealt with pursuant to s.13(2) in the event of a plea of guilty.

4. On the 31st July 2019, the respondent entered a plea of guilty to the charge in full knowledge of the DPP's directions. There was argument as to whether, having pleaded guilty to s.53, the court could reduce the offence to one under s.52 of the Act. The District

Judge ruled that it could not. He was convicted, fined €300 and disqualified from driving for the mandatory two-year disqualification period. He lodged a notice of appeal and informed the prosecutor that it was his intention to change his plea to one of not guilty on appeal. The prosecutor was of the view that he could not do so.

5. The Circuit judge heard argument on the point and then stated the following case for the opinion of this Court.

> *"In circumstances where a direction has been given that a matter is to be dealt with summarily on a guilty plea only, pursuant to section 13(2) of the Criminal Procedure Act 1967, and the [respondent] has entered a plea of guilty in the District Court in accordance with that provision, do I have jurisdiction, sitting as an appellate Court from the District Court, to allow [the respondent] to change his plea to one of not guilty and proceed to hear the matter de novo?"*

Legal Framework

S.18(1) of the Courts of Justice Act 1928 and the Lambe case

6. S.18(1) of the Courts of Justice Act 1928 provides for appeals in criminal cases from the District Court to the Circuit Court in the following terms:-

> "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".

7. The scope of the appeal contained in s.18 of the 1928 Act was addressed in *Attorney General (Lambe) v. Fitzgerald* [1973] IR 195, a case heavily relied upon by the respondent in the present case. The defendant pleaded guilty in the District Court to a charge of larceny and was sentenced to a term of imprisonment. He appealed to the Circuit Court against his conviction and sentence and wished to withdraw his plea of guilty on the ground that it was made by him as a result of improper inducements by the Gardai. He accepted that his plea of guilty did not come about as a result of mistake or misunderstanding as to the nature of a plea of guilty. At the hearing of the appeal, the prosecution submitted that the Circuit Court had no jurisdiction to allow the defendant to withdraw his plea. On a case stated by the Circuit Court judge, it was held by the Supreme Court that an appeal to the Circuit Court in a criminal case, where the conviction and the sentence are in issue, should be conducted as a rehearing of the proceedings in the District Court and that, accordingly, the Circuit Court was bound to allow an appellant against conviction to plead "not guilty" at the hearing of the appeal.

8. Henchy J gave a short judgment during which he said:

> “It is well settled that when a defendant appeals to the Circuit Court against a decision of the District Court in a criminal case, he is entitled to a hearing of the case *de novo*: see *The State (Attorney General) v. Connolly* and *The State (McLoughlin) v. Shannon* [1948] I.R. 439. In the latter case Davitt J. said at p. 449 of the report:— "It seems to me that when a defendant, aggrieved by the decision of a District Justice in a criminal case, takes an appeal therefrom to the Circuit Court he seeks, and obtains, a hearing of the case *de novo*. He, in effect, asks the Circuit Judge to hear the whole matter again and to substitute for the order made by the District Justice (of which he disapproves) the order of the Circuit Court (of which

he hopes he can approve). He impliedly admits the jurisdiction of the Circuit Court to substitute its own order for that of the District Court. It would, I think, be a grave matter for appellants if it were held that the Circuit Court had no power to substitute its own order for that appealed from."

Section 50 of the Courts (Supplemental Provisions) Act, 1961, gave legislative recognition to that statement of the law when it allowed the re-hearing to be abridged when the appeal relates only to the sentence: see para. 53 of the explanatory memorandum published with the Act of 1961. Apart from the situation covered by that section, every defendant in a criminal case in the District Court who appeals is entitled to a full re-hearing, and the Circuit Court has jurisdiction to substitute its own order for the whole or any part of the order appealed against.

The defendant appealed against the whole of the order of the District Court and so it is irrelevant, so far as the question of the jurisdiction of the Circuit Court is concerned, that he pleaded guilty in the District Court. That he did so may, of course, affect his credit on the re-hearing, and therefore go to the issue of his guilt, but it in no way ousts his right to a new hearing on the matters appealed against, namely, both conviction and sentence.

If the law were not so, a Circuit Court judge would be powerless to correct a situation where the defendant had unjustifiably pleaded guilty in the District Court — for example, in mistake, or to an offence unknown to the law. Since there is neither statutory nor judicial authority to support such an interpretation of the law, counsel for the Attorney General now concedes that the objection taken in the Circuit Court to that court's jurisdiction to hear the appeal against conviction cannot be supported.

> Therefore, I would answer the questions put in the Case by saying that it is mandatory for the Circuit Court judge to allow the defendant to plead "not guilty" and to hear the case anew on the issues of both guilt and sentence."

9. It is important to note the defendant's plea of guilty in the *Lambe* case did not involve any application of s.13(2) of the Criminal Procedure Act 1967.

Section 13(2) of the Criminal Procedure Act 1967

10. S.13 of the Criminal Procedure Act 1967 is titled "Procedures where accused pleads guilty in District court to indictable offence". It applies to all indictable offences with some exceptions (e.g. offences under the Treason Act, 1939, murder, attempt to murder, conspiracy to murder, piracy, certain offences under the International Criminal Court Act 2006, an offence under the Criminal Justice (United Nations Convention against Torture) Act, and certain other serious offences).

11. S13(2) in its amended form provides as follows:

> If at any time the District Court ascertains that a person charged with an offence to which this section applies wishes to plead guilty and the court is satisfied that he understands the nature of the offence and the facts alleged, the Court—
>
> (a) may, with the consent of the prosecutor, deal with the offence summarily, in which case the accused shall be liable to the penalties provided for in subsection (3), or
>
> (b) if the accused signs a plea of guilty, may, subject to subsection (2A), send him forward for sentence with that plea to that court to which, but for that plea, he would have been sent forward for trial.

(2A) The accused shall not be sent forward for sentence under this section without the consent of the prosecutor.

(3) (a) On conviction by the District Court for an offence dealt with summarily under subsection (2) (a), the accused shall be liable to a class A fine within the meaning of Part 2 of the Fines Act 2010 or, at the discretion of the Court, to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

12. It may be noted that s.13(4) specifically addresses a scenario where a person has been sent forward on a signed plea for sentence and wishes to change his plea. It provides as follows:

(4) (a) Where a person is sent forward for sentence under this section he may withdraw his written plea and plead not guilty to the charge.

(b) In that event—

(i) the court shall enter a plea of not guilty, which shall have the same effect in all respects as if the accused had been sent forward for trial to that court on that charge in accordance with Part IA,

(ii) the prosecutor shall cause to be served on the accused any documents that under section 4B or 4C are required to be served and have not already been served, and

(iii) the period referred to in section 4B(1) shall run from the date on which the not guilty plea is entered.

13. It may also be noted that reference is made in s13 to the procedure for summary trial of indictable offences in s.2 of the Criminal Justice Act 1951. S.13(5) provides that "*This section shall not affect the jurisdiction of the Court under section 2 of the Criminal Justice Act, 1951*."

14. The operation of section 13(2) was considered in *T.H. v. Director of Public Prosecutions* [2004] IEHC 76, albeit that a different provision was in issue, namely s.12 of the Criminal Law (Rape) Act, 1981. This contains a similar procedural mechanism to that in s.13(2). The accused, who had been charged with sexual assault, brought judicial review proceedings on a number of grounds. One of his complaints was that the DPP was guilty of oppression in insisting that the applicant be "put on his election" by the District Court in a sexual assault case, with the consequence that the trial would be disposed of by way of summary jurisdiction in the District Court pursuant to s. 12(1) of the Criminal Law (Rape) Act, 1981, or, if he refused to plead guilty, then, with the consequences that he would be sent forward for trial on indictment before a judge and jury. There had been some confusion in the early stages of the criminal proceeding as between which of the two different procedures in s.12(1) and 12(2) of the 1981 Act, respectively, was being invoked, but the High Court ruled that it became clear after a certain date that it was s.12(2) that was in issue. The High Court rejected the allegation of oppression and ruled that there was nothing objectionable in a District Judge inquiring as to the course an accused person intended to take.

15. McKechnie J discussed s.12 of the 1981 Act and contrasted the two sub-sections, drawing a comparison between s.12(2) of the 1981 Act and s.13(2) of the 1967 Act. In the course of doing so and in describing s.13(2), he said (at para 31 of his judgment):

> " Under this provision there are again a number of matters which must exist before the District Court has jurisdiction to consider disposing of a case in a summary manner. Firstly, the accused must wish to plead guilty to the offence with which he

stands charged before that Court. Secondly, he must understand the nature of the offence and the facts alleged and, thirdly, the DPP must consent to the case being disposed of summarily. If these conditions are met then the Court may deal with the matter summarily, though there is no mandatory obligation to so do. It may be, depending on the judge's view of the facts, that the accused is sent forward with his plea of guilty to the next appropriate sentencing court. Disregarding for a moment how one should ascertain the wishes and understanding of the accused person, it is in my view abundantly clear from s. 13(2) that *an essential precondition to the District Court having jurisdiction to dispose of the offence summarily, is that, in respect thereof, the defendant pleads guilty. In the absence of that plea and even though the other requirements are satisfied, this subsection simply cannot be used … there is no scope to add to or excise from these said requirements*."
(emphasis added)

16. The High Court thereby emphasised that the consent of an accused person was an essential precondition to the jurisdiction of the District Court. McKechnie J went on to reject the submission that a District Judge could not inquire of an accused, of his own volition, as to what his intentions might be under section 13(2). There was nothing objectionable in permitting the Director of Public Prosecutions to indicate her view as to whether she would consent or not to disposal on a guilty plea in the District Court. He described the provision as "*a valuable one entirely consistent with constitutional justice and was very frequently used to the distinct advantage of an accused person*."

17. For completeness it may be noted that on appeal, the Supreme Court (judgment delivered by Fennelly J.) upheld the High Court's view on this point, saying that "*the application was unmeritorious for all the reasons so comprehensively set out in the*

judgment of the learned trial judge" and that there could be "*no objection whatever to the District Court ascertaining whether an accused person wishes to plead guilty, though a judge must be very careful not to appear to put any pressure on him or her to do so*" ([2006] IESC 48). However, that specific point is not relevant in the present case: it is the description by the High Court of the procedure with which we are concerned.

18. The mechanism provided for in s.13(2) of the 1967 Act was also discussed in *O'Connor v. District Judge Michael Walsh and others* [2015] IEHC 556. The context was that applicant was seeking an order of certiorari quashing a District Judge's order that the District Court did not have jurisdiction to hear a preliminary argument in relation to delay in the proceedings, in circumstances where the DPP had not consented to summary trial nor had the applicant indicated that he was willing to plead guilty. McDermott J. said:

> "12. The Director of Public Prosecutions did not consent to the applicant being tried summarily but consented to the exercise of the more limited form of jurisdiction exercisable in respect of the applicant if he were to plead guilty to the offence in the District Court. In that event the applicant would be subject to the penalties referred to in subsection (3). The consent is not operative unless the accused indicates that he is willing to plead guilty.
>
> 13. There is no jurisdiction vested in the District Court to deal with the offence summarily unless these conditions precedent are met. Otherwise, the matter must proceed to the Circuit Criminal Court pursuant to section 4 A of the Criminal Justice Act 1999. It provides that when an accused is before the District Court charged with an indictable offence, "the Court shall send the accused forward for trial to the Court before which he is to stand trial (the trial Court) ...." unless the case is being tried

summarily or is dealt with under section 13 of the 1967 Act or the accused is unfit to plead. The accused may not be sent forward for trial without the consent of the Director.

14. The jurisdiction of the District Court to deal with indictable offences is defined by these statutory provisions".

19. McDermott J went on to quote certain passages from *TH v. DPP* and then continued (at para 18):

" In this case the applicant has not indicated a willingness to plead guilty which is a condition precedent to the exercise of the jurisdiction. There cannot be a summary disposal of the case unless that indication is given. The Director of Public Prosecutions has given her consent to summary disposal. The District Court cannot exercise the jurisdiction unless satisfied that these two preliminary conditions have been met at which stage the Court "may" deal with the case summarily, though it is not obliged to do so. As matters stand this case cannot be disposed of in the District Court under section 13(2). The only trial that may take place in accordance with law is a trial on indictment in the Circuit Court."

20. He added (para 20):

"As explained by Hogan J. and McKechnie J. in *BG(1)*and *TH* respectively, the District Court does not have jurisdiction to deal with an indictable offence under section 13(2) unless the statutory criteria are fulfilled. This may only occur if the accused wishes to plead guilty and the Director of Public Prosecutions consents to

summary disposal on that basis. There will never be a substantive trial in the District Court in respect of the charge. In pleading guilty the accused accepts the charge as laid against him beyond a reasonable doubt. He is submitting on an informed basis to the exercise of the District Court's sentencing jurisdiction. There can be no reality to a claim of prejudice in the conduct of a fair trial in those circumstances caused by reason of delay. The discrimination is entirely in his favour in that he is not to be subjected to the full rigours of the penalty that might otherwise apply following trial on indictment."

21. Thus, the crucial link between the District Court's jurisdiction and (inter alia) the consent of an accused was emphasised.

S.5(1) of the Interpretation Act 2005

22. S.5(1) of the Interpretation Act 2005 provides, insofar as it is relevant:

"In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)—

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of—

(i) in the case of an Act to which paragraph (a) of the definition of "Act" in section 2 (1) relates, the Oireachtas, or

(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned, the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole.

the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole.

23. This provision, and its interaction with common law principles of statutory interpretation, was recently discussed in detail in *Heather Hill Management Company v. An Bord Pleanála* [2022] IESC 43. I will return to it at a later point in this judgment.

The Submissions and the authorities relied upon

24. I will deal with the submissions in a different sequence from that in which they were heard on appeal in order to facilitate the exposition of the arguments.

The submissions of the respondent

25. The respondent submits that the answer to the question posed in the case stated is "yes" and that he is entitled to change his plea to one of 'not guilty' on appeal to the Circuit Court even though he was dealt with under s.13(2)(a) of the 1967 Act.

26. He submits that the plain meaning of s.18(1) of the 1928 Act is that it provides for a full right of appeal which is disallowed only certain specific circumstances, of which this is clearly not one. He submits that the decision of the Supreme Court in the *Lambe* case is an unambiguous interpretation of the sub-section which makes it clear that there is a full right of appeal. He refers to Henchy J's characterisation of the nature of an appeal to the Circuit Court in *Lambe* (in turn taken from *State (McLoughlin) v. Shannon* [1948] IR 439, at 449) as a *de novo* hearing, and submits that, contrary the submission of the prosecutor, the intention of the Oireachtas would not be circumvented if his client were allowed to change his plea to one of 'not guilty'.

27. He also submits that that there is nothing in the 1967 Act which provides to the contrary. He submits that the provisions of s.13(2) of the 1967 Act are neither obscure nor ambiguous and that those provisions are clearly limited to events in the District Court and do not apply to Circuit Court appeals.

28. Further, he submits that the two pieces of legislation (the 1928 Act and 1967 Act respectively) are separate and not to be read *in pari materia.*

29. He says that the DPP seeks to invert the correct analysis by suggesting that the appeal must be conducted within the jurisdictional limits of the court appealed from unless there is a statutory provision to the contrary, and submits that the correct position is that the plain words of s. 18(1) of the 1928 Act could only be cut down by express legislative provision precluding an appeal in a case of a conviction arrived at pursuant to the procedure in s.13(2) of the 1967 Act.

30. The respondent also points out that s.13 of the 1967 was heavily amended in 1999 without any restriction upon the right of appeal to the Circuit Court, and submits that the only inference that could be drawn was that the Oireachtas was satisfied to leave a full appeal in place, in other words one which encompassed an appeal in which an accused person could change his plea to one of 'not guilty' even where the plea was entered pursuant to s.13(2).

31. In terms of the principles of statutory interpretation, the respondent contends that the provisions relate to the imposition of a penal or other sanction and therefore a purposive approach to interpretation is not allowed. He contends that, unlike the *Rattigan* case and *People (DPP) v. A.C.,* [*2021*] IESC 74, [2021] 2 ILRM 305, cited by the DPP, the statutory provision in the present case is not *"merely a procedural provision concerning the method for adducing evidence".*

32. He also submits that to give the words their plain and ordinary meaning would not lead to an absurdity.

33. He refers to *State (DPP) v. Roe* [1985] IR 307 for the proposition that the powers of the Circuit Court hearing an appeal may differ from those of the District Court at first instance. That was a case involving an order as to costs. A defendant was convicted in District Court on a charge of dangerous driving and sentenced. Rule 67 of the District Court Rules provided for costs orders but precluded an order for costs being made against the Attorney General or a garda acting in the course of his or her duty. The Circuit Court Judge allowed the appeal and awarded costs of the appeal against the prosecution. The Director of Public Prosecutions obtained a conditional order of certiorari against the respondent to quash the order of the Circuit Court judge on the grounds that he had no jurisdiction to award costs on appeal against the prosecution by virtue of Rule 67. The High Court discharged the conditional order on the basis that there was a general jurisdiction in the Circuit Court to award the costs of any proceedings in that court and that Order 58, Rule 1, of the Circuit Court Rules, 1950 left to the discretion of the Judge the granting or withholding of the costs of any party to any proceedings in proceedings of both a civil and criminal nature, thus covering the question of costs in an appeal from the District Court in a criminal matter.

34. The respondent submits that if there is a *lacuna* in the statutory regime (although he does not contend that there is), it is a matter for the Oireachtas to resolve, citing paras 13-14 of Hogan J's judgment in *O'Keeffe v. Mangan* [2015] IECA 31. That was a case in which an issue arose as to whether the judge had incorrectly called further evidence from a State witness when the State's case had closed. The appeal was dismissed, with judgments delivered by Ryan P. and Hogan J. The passage upon which the accused relies is the following (paras 12-13):-

> "If it were thought that the scope of these protections is thought to be burdensome or unnecessary, than arguments directed along these lines should be addressed to the Oireachtas and not to the courts. As happened in 2010, the Oireachtas can elect, should it think fit, to vary or otherwise alter the scope of these statutory protections, subject only, of course, to adherence to basic constitutional standards of trial in due course of law and basic fairness of procedures, the protection of which is the solemn duty of the judicial branch to uphold.
>
> This is not a question of the courts being difficult or seeking to place unnecessary obstacles in the way of the effective prosecution of road traffic offences. It is rather a case of the judicial branch giving effect to the policy choices expressly enshrined in legislation - including the safeguards provided for arrested persons - by that branch of government which is directly answerable to the people in a democracy, namely, the Oireachtas. As I have indicated earlier, if it is thought that compliance with these safeguards has proved to be excessively burdensome or that such compliance would frustrate the effective enforcement of the road traffic legislation or that such safeguards are no longer necessary in practice, this would, in principle, at least, represent a policy choice to be determined by the Oireachtas in accordance with Article 15.2.1 of the Constitution and not by an unelected judiciary".

The DPP's submissions

35. The DPP submits that the answer to the question posed is "no" and that the respondent is not entitled to change his plea to one of 'not guilty' on appeal from the District Court to the Circuit Court in circumstances where he pleaded guilty and was dealt with pursuant to the s.13(2)(a) procedure. She submits that while an appeal to the Circuit Court is by way of rehearing or, as it termed, a *de novo* appeal, it is a rehearing only of what was before the District Court and cannot be converted into a different entity.

36. She refers to *T.H. v. DPP* and *O'Connor v. Walsh* and submits that these judgments explain that the jurisdiction of the District Court to deal with indictable offences on a plea of guilty is a special jurisdiction which is conditional on the factors described in that case.

37. She refers to *State (White) v. Martin*, *unreported 21 October 1976*, where the Supreme Court held that where a statute confers an appellate jurisdiction, that appellate jurisdiction is to be exercised *"within the jurisdictional limits of the court appealed from unless there is a statutory provision to the contrary."* The difficulty which presented itself in *State (White) v. Martin* was as follows. The applicant (prosecutor in the application for certiorari) was convicted and sentenced in the District Court in respect of fourteen offences. He was also separately convicted on a charge of assault. He appealed both sentences, which resulted in the following situation: (1) there were 12 concurrent sentences of 12 months imprisonment; and (2) on the assault charge, there was a sentence of 12 months detention in St. Patrick's Institution *to be served consecutively to the sentence of imprisonment.*

38. He obtained certiorari in the High Court on the ground that the imposition of a sentence of twelve months detention in St. Patrick's Institution, to run from the termination of current sentences of Imprisonment amounting cumulatively to twelve months duration, was in breach of the sentencing limitation on the District Court set by s. 5 of the Criminal Justice Act, 1951. An appeal to the Supreme Court was dismissed.

39. In his judgment, Henchy J. indicated that the case was being regarded as a test case as to whether a Judge of the Circuit Court, when hearing an appeal from the District Court

in a criminal case, is bound by the same sentencing limitations as are imposed on the District Court by s.5 of the Criminal Justice Act, 1951. He said that it was common ground that the effect of this section was that while a District Justice may order a sentence of imprisonment to be served consecutively with a previously imposed term of imprisonment, that power is subject to the limitation that the aggregate of consecutive terms of imprisonment thus imposed by the District Court shall not exceed twelve months; and that what was in contention was whether that limitation applies also when a Circuit Court Judge is hearing an appeal from the District Court. There was the added issue of one of the sentence consisting of detention rather than imprisonment.

40. In the course of his judgment. Henchy J, dealing with the first of these two points, commented:

> "If the order quashed had imposed a sentence of imprisonment (rather than detention in St. Patrick's Institution) which was to run from the termination of the then current cumulative tern of twelve months imprisonment, I have no doubt that it would have breached the limitation set by s.5 of the Criminal Justice Act, 1951. It would have been no answer to say that the order was made by the Circuit Court and not by the District Court. S.5 applies equally to both Courts. *Where a statute confers an appellate jurisdiction on a court, that appellate jurisdiction is to be exercised within the jurisdictional limits of the court appealed from, at least unless there is a statutory provision to the contrary. Whether the case be civil or criminal, the Circuit Court exercises its appellate jurisdiction within the same limits as circumscribe the jurisdiction of the District Court. It gives the case a fresh hearing at the instance of the appellant, but the order it makes on that hearing must be one that could have been validly made in the District Court.* Therefore, the Circuit

> Court when hearing an appeal from the District Court in a criminal case may not impose, by way of confirmation, variation or otherwise, a sentence which exceeds that allowed by s. 5 of the Criminal Justice Act, 1951. (emphasis added)

41. The DPP submits that it flows from this principle that, just as the District Court would not have had jurisdiction to allow the present case to proceed to a contested hearing, neither does the Circuit Court on appeal.

42. Addressing the respondent's analysis of the *Lambe* case, the DPP submits that the principle identified therein goes no further than saying that there should be *de novo* hearing of what was before the District Court, and does not address the specific point raised in the present case. She submits that the decision in *Lambe* would not require overruling if the Court were to answer the case stated in the negative.

43. She submits that insofar as the Supreme Court referred to a concern that, were there no such appeal, a court might find itself powerless to correct a situation where a defendant had pleaded guilty by mistake, or to an offence unknown to the law, she observes that in the present case the respondent entered a guilty plea on the advice of his legal team in circumstances where he was fully cognisant of the ramifications of doing so and the issue simply does not arise.

The Attorney General's submissions

44. The Attorney General was joined to the proceedings as *amicus curiae*. He also submits that the case stated should be answered in the negative. His position is the same as the DPP, namely that the jurisdiction of an appellate court is limited to the jurisdiction of the court appealed from; that where s.13(2)(a) of the Criminal Procedure Act 1967 (the "1967 Act") applies, there will never be a substantive hearing regarding the offence at issue

in the District Court and, accordingly, the District Court does not and cannot have jurisdiction to allow any such hearing proceed in the District Court; and in circumstances where the District Court could not have had jurisdiction to allow a hearing take place, the Circuit Court cannot acquire this jurisdiction on appeal.

45. Referring to *Howard v. Commissioner of Public Works* [1994] 1 IR 101, *People (DPP) v. A.C*. [2021] 2 ILRM 305 and (at the oral hearing of the appeal) *Heather Hill,* he submits that the starting point is the plain or literal meaning of the provisions in question. He submits that in the present case, the plain meaning is as set out above.

46. In the alternative, he submits that s.13(2) ought to be subject to a purposive interpretation, or, more precisely, be given a construction that reflects the plain intention of the Oireachtas, which should be ascertained from the 1967 Act as a whole.

47. He submits that s.13(2) falls within the parameters of s.5(1) of the Interpretation Act 2005 notwithstanding that it is a provision which applies in the context of the prosecution of an offence. He submits that this does not of itself bring the provision into the category of one which "*relates to the imposition of a penal or other sanction*" within the meaning of s.5(1) of the 20115. Rather, a distinction can be drawn between such provisions and those which are procedural in nature. In this regard, he cites *People (DPP) v. Rattigan* [2013] 2 IR 221 (which concerned a statutory provision dealing with the admissibility of a witness statement) and *People (DPP) v AC* [2021] 2 ILRM 305 (which concerned a statutory provision dealing with the admissibility of a medical certificate). He submits that Section 13(2)(a) of the 1967 Act is a procedural provision the purpose of which is to enable the disposal of certain indictable offences in the District Court where the statutory

prerequisites identified therein are satisfied. Section 13(2)(a) can be contrasted with, he says, s.13(3)(a), which specifies the maximum penalties that an accused may be subject to, should the offence be dealt with summarily under s.13(2)(a).

48. The Attorney submits, again in the alternative, that if the Court considers that the provision falls outside of s.5(1) of the 2005 Act, a jurisdiction separate to that provided for in s.5(1) exists in any event which requires a purposive construction of s.13(2) in a manner which does not lead to an absurd result which is pointless and which negates the intention of the Oireachtas.

49. The Attorney submits that the interpretation advocated for by the respondent would lead to a scenario where the outcome would be one which is entirely contrary to a core element of s.13(2), namely the consent of the prosecutor. The respondent, having entered a plea of guilty in the District Court and thereby elicited the consent of the prosecutor for the matter to be dealt with summarily, if nevertheless be entitled to change his plea would be enjoying the benefit of having what might otherwise have been trial on indictment being heard subject to the limits of summary jurisdiction (on appeal).

50. The Attorney also draws attention to s.13(4) as part of his submission in favour of an interpretation, pointing to the absence of any parallel provision in respect of s.13(2)(a).

51. The Attorney also submits that if the Court considers the statutory provision to be subject to the principle that penal statutes should be strictly construed, the principle is not an inflexible one and the literal rule should not be applied if this would lead to an absurd

result which is contrary to the purpose of the legislation. In this regard, he cites *inter alia DPP v. Moorehouse* [2006] 1 IR 421 and *DPP v. McDonagh* [2009] 1 IR 767.

The Court's analysis and decision

Heather Hill and statutory interpretation

52. As this case concerns a matter of statutory interpretation, I will start by noting the comments of Murray J. in the Supreme Court decision in *Heather Hill Management Company v. An Bord Pleanála* [2022] IESC 43 on the correct approach to statutory interpretation, both at common law and under the Interpretation Act 2005, as this is an authoritative and recent statement of the framework within which to conduct the exercise in the present case. The judgment delivered by Murray J. represented the unanimous decision of the Supreme Court in that case (O'Donnell C.J, O'Malley J., Woulfe J., Hogan J. and Murray J).

53. At para 105 of his judgment, Murray J. described the more modern authorities on statutory construction as moving away from an approach which he described as "*a narrow and literal construction that eschewed, in the case of seemingly precise and unambiguous language, any broader consideration of legislative context*"". Having referred to *Board of Management of St. Molaga's School v. Minister for Education* [2010] IESC 57, [2011] 1 IR 362 as an example of this "*narrow and literal*" approach, he went to refer to more recent decisions which, he said, emphasised that that "background" and "context" should play a proper role in the analysis: *People (DPP v. Brown* [2019] 2 IR 1]; *Minister for Justice v. Vilkas* [2018] IESC 69, [2020] 1 IR 676; *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50, [2020] 3 IR 480; *Bookfinders Ltd. v. The Revenue Commissioners* [2020] IESC 60; and *The People (DPP) v. AC* [2021] IESC 74, [2021] 2 ILRM 305.

54. He said that the judgment of McKechnie J. in *Brown* provided a good summary of this approach, and summarised the essential points made in *Brown* as follows:

(i) The first and most important port of call is the wording of the statute itself, with those words being given their ordinary and natural meaning.

(ii) However, those words must be viewed in context; what this means will depend on the statute and the circumstances, but may include 'the immediate context of the sentence within which the words are used; the other subsections of the provision in question; other sections within the relevant Part of the Act; the Act as a whole; any legislative antecedents to the statute/the legislative history of the Act, including Law Reform Commission or other reports; and perhaps the mischief which the Act sought to remedy'.

(iii) In construing those words in that context, the court will be guided by the various canons, maxims, principles and rules of interpretation all of which will assist in elucidating the meaning to be attributed to the language.

(iv) If that exercise in interpreting the words (and this includes interpreting them in the light of that context) yields ambiguity, then the court will seek to discern the intended object of the Act and the reasons the statute was enacted.

55. As Murray J. pointed out, ambiguity can arise not merely "*because on its face the text is clearly susceptible to more than one meaning*" but also from the context: " *it may also be contextual, so that seemingly clear words can, when placed in situation, bear a construction not always evident from the language alone*".

56. Murray J. said that McKechnie J. had envisaged a two-stage inquiry i.e. one which consider, first, the "words in context" , and only secondly, purpose, "if there remained ambiguity". However, Murray J said, the better approach was to regard both context and purpose" *as part of a single continuum rather than as separated fields to be filled in*". In that regard, he considered to be correct the Attorney General's submissions in the *Heather Hill* case that "*the literal and purposive approaches to statutory interpretation are not hermetically sealed*".

57. Murray J. said that the modern authorities showed that "*in no case can the process of ascertaining the 'legislative intent' or the 'will of the Oireachtas' be reduced to the reflexive rehearsal of the literal meaning of words, or the determination of the plain meaning of an individual section viewed in isolation from either the text of a statute as a whole or the context in which, and purpose for which, it was enacted*".

58. While thus emphasising the need for a contextual approach, he did, however, caution against it being used a licence for judges simply interpreting legislation to align with what appeared to them as a sensible outcome. In this regard, he referred to

> "*an obvious danger in broadening the approach to the interpretation of legislation in the way suggested by the more recent cases - that the line between the permissible admission of 'context' and identification of 'purpose', and the impermissible imposition on legislation of an outcome that appears reasonable or sensible to an individual judge or which aligns with his or her instinct as to what the legislators would have said had they considered the problem at hand, becomes blurred*".

59. He then made four points as follows (paras 113-116):

First, ‘legislative intent’ as used to describe the object of this interpretative exercise is a misnomer: a court cannot peer into minds of parliamentarians when they enacted legislation and as the decision of this court in *Crilly v. Farrington* [2001] 3 IR 251 emphatically declares, their subjective intent is not relevant to construction. Even if that subjective intent could be ascertained and admitted, the purpose of individual parliamentarians can never be reliably attributed to a collective assembly whose members may act with differing intentions and objects.

Second, and instead, what the court is concerned to do when interpreting a statute is to ascertain the legal effect attributed to the legislation by a set of rules and presumptions the common law (and latterly statute) has developed for that purpose (see *DPP v. Flanagan* [1979] IR 265, at p. 282 per Henchy J.). This is why the proper application of the rules of statutory interpretation may produce a result which, in hindsight, some parliamentarians might plausibly say they never intended to bring about. That is the price of an approach which prefers the application of transparent, coherent and objectively ascertainable principles to the interpretation of legislation, to a situation in which judges construe an Act of the Oireachtas by reference to their individual assessments of what they think parliament ought sensibly to have wished to achieve by the legislation (see the comments of Finlay C.J. in *McGrath v. McDermott* [1988] IR 258, at p. 276).

Third, and to that end, the words of a statute are given primacy within this framework as they are the best guide to the result the Oireachtas wanted to bring

about. The importance of this proposition and the reason for it, cannot be overstated. Those words are the sole identifiable and legally admissible outward expression of its members' objectives: the text of the legislation is the only source of information a court can be confident all members of parliament have access to and have in their minds when a statute is passed. In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve it.

Fourth, and at the same time, the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in *Brown*. However …the 'context' that is deployed to that end and 'purpose' so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."

60. Murray J then went on to discuss the interaction of these principles with s.5 of the 2005 Act. After a detailed review, which it is not necessary for present purposes to set out, he concluded that s.5(1) in essence sets out the same interpretative approach as had been separately arrived by the courts in the recent authorities he had discussed. Thus, there is alignment between the statutory and the non-statutory principles of interpretation. It may be noted that he made clear, in the course of that discussion, that the decisions in *Dunnes*

Stores, Bookfinders and *Brown* "strongly suggest" that contextual material can be consulted in construing 'penal' statutes (see para 126 of his judgment).

Application to the present case

61. In the present case, we are dealing with statutory provisions in two different pieces of legislation separated by almost 40 years in time (1928 and 1967). The earlier provision, s.18(1) of the 1928 Act, provides for a right of appeal from orders of the District Court. The later provision, s13(2) of the 1967 Act, sets out a special procedure for pleading guilty to an indictable offence in the District Court with a bifurcated outcome; either the person is sentenced in the District Court within the sentencing powers of that court (as happened in this case), or is sent forward on signed pleas to the Circuit Court for sentencing. The 1967 provision does not refer back to the 1928 one in any way or otherwise mention the question of appeal.

62. The respondent invites the Court to interpret the scope of appeal provided for in the 1928 statute as encompassing a right of appeal to the Circuit Court so as to include a change of plea on appeal from guilty to 'not guilty', even in a situation where the plea of guilty was entered, and the accused sentenced, in the District Court pursuant to s.13(2)(a) of the 1967 Act. He relies primarily upon the wording of s.18, its interpretation by the Supreme Court in *Lambe,* and the absence of any restriction on the scope of appeal in the 1967 Act itself (or any later legislation, including the 1999 Act). He submits that even if the Court is of the view that there *should not* be such an appeal, this should not inform the Court's interpretation of what, he says, are clear and unambiguous statutory provisions, because the judiciary should not try to step into the policy-making shoes of the Oireachtas. There is a resonance between the latter submission and the warning given by Murray J in *Heather Hill,* described above at paragraph 58.

63. As we have seen, the DPP and the Attorney General are in agreement as to what the end result of the interpretative exercise should be, namely that the Court should rule that an accused person who has pleaded guilty and been sentenced pursuant to s.13(2)(a) of the 1967 Act is not entitled to change his plea to one of not guilty on appeal. Various interpretative rules and principles were called upon as the means by which this result should be arrived at, particular in the submissions of the Attorney General, but the primary contentions were that either this was the plain meaning of the statutory provisions in question, or (in the alternative) that a contextual/purposive approach was required and would inevitably yield this result when applied to the statutory provisions in question.

Ascertaining the plain meaning in the present case

64. I will start by seeking to ascertain the ordinary or plain meaning of the words of the two provisions. As McKechnie J. said in *Brown,* "*the first and most important port of call is the words of the statute itself, those words being given their ordinary and natural meaning*."

65. One might pose the question whether the Court is being asked to interpret s.18(1) of the 1928 Act, or s.13(2) of the 1967 Act, or both. The respondent tended to emphasise the words of s.18(1) of the 1928 Act in his submissions while the other parties relied to a greater extent on the wording of s.13(2) of the 1967 Act. I would take the view that the Court should look at each of the provisions in the course of its search for the "plain meaning" of the words used.

66. While s.13(2) is a detailed provision, it says nothing about the question of appeal. It is confined to setting out the relevant procedure as it applies in the District Court. It is therefore silent on the issue at hand.

67. As regards s.18(1), the respondent's submissions appear to operate from the premise that the plain, ordinary meaning of the subsection supports his position. I am less convinced that this is so if one scrutinises the actual wording in question. The sub-section refers to an appeal lying in criminal cases from 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*". Therefore, if we subtract the explicit exclusions (namely, an order returning for trial, an order binding to the peace and/or good behaviour, and an order for estreatment of recognizance), we are left with: "*any order….for the payment of a penal or other sum or for the doing of anything at any expense or for the undergoing of any term of imprisonment*". This appears to refer only to orders consisting of the imposition of sentences and does not explicitly refer to convictions.

68. The consequence of this appears to be that the respondent is in reality driven to rely primarily on the judgment of Henchy J. in *Lambe* rather than the wording of s.18(1) itself. In *Lambe,* the Supreme Court confirmed the right of an accused person to change from a plea of guilty in the District Court to one of not guilty in a Circuit Court appeal. However, it is important to recognize that the decision was reached in a context where the accused man's plea of guilty had been entered into in what might be described as the 'ordinary' way, and not under the special provisions in s.13(2)(a) of the 1967 Act. The judgment simply does not speak to the position where the plea was entered pursuant to s.13(2) of the 1967 Act, which creates a very particular type of guilty plea, as described in detail both in *T.H. v. Director of Public Prosecutions* by McKechnie J. and *O'Connor v. District Judge*

Michael Walsh by McDermott J. Moreover, it takes us away from the "plain meaning" of the statute approach and into a qualitative analysis of a Supreme Court decision.

Context and Purpose with a view to ascertaining the intention of the Oireachtas

69. It seems to me, therefore, that an examination of the plain meaning of the two statutory provisions does not bring us very far on the issue of the proper scope of an appeal in respect of a plea entered pursuant to s.13(2)(a) of the 1967 Act. I turn therefore next to context and purpose, recalling the remarks of Murray J in *Heather Hill,* including his remark this approach applies whether or not one the court is concerned with "*a provision that relates to the imposition of a penal or other sanction*."

70. I do not consider that it makes any difference to the outcome to decide whether or not either of the provisions in issue falls within that definition, as there do not appear to me to be competing "strict" and "less strict" interpretations in this case in the way there were in cases such as *DPP v. Moorehouse* [2006] 1 IR 421*, McDonagh,* or *Brown.*

71. For the first contextual point of note, one does not have to travel very far. It is very striking indeed that within the same section of the 1967, another provision explicitly deals with the possibility of a change of plea in the Circuit Court, namely s.13(4), and that it is clearly confined to where a person has been sent forward on a signed plea to the Circuit Court for sentence. The sub-section explicitly says that such a person " *may withdraw his written plea and plead not guilty to the charge*" . Further, it proceeds to address what is to happen next in that eventuality: this " *shall have the same operation and effect in all respects as an order of a justice of the District Court sending the accused forward for trial to that court on that charge, and the Attorney General shall cause to be served on him any documents required to be supplied to the accused and not already served*".

72. In other words, if a person wishes to change his plea from guilty to not guilty after being sent forward to the Circuit Court for sentencing on a signed plea (the procedure in s.13(2)(b)), the 'normal' procedure is reinstated whereby the normal steps preceding a trial re-commence, including service of the evidence upon the accused. I consider it highly significant that no such provision is made for a person who has pleaded guilty and been sentenced in the District Court pursuant to the other sub-paragraph, s.13(2)(a). The absence of any such provision speaks eloquently to the Oireachtas in 1967 not having envisaged that such a situation would arise. Why did it not envisage this? It seems likely that it was because that the only appeal envisaged from an order made after the use of the s.13(2)(b) procedure was an appeal restricted in scope to the issue of sentence.

73. Let us now broaden the context to a consideration of the 1967 Act as a whole, and indeed its position within the procedural scheme of modern Irish criminal justice in terms of the jurisdictional limits of the District Court. Although this may sound like a far-reaching enterprise, I mean only to sketch in outline the contours of that system with a view to placing the 1967 Act, and s.13 thereof, within its overall context.

74. In this regard it may be helpful to conceive of the development of the modern Irish criminal justice system as a road travelled from one point to another, with staging posts along the way. Taking the pre-Independence criminal justice system as our point of departure, key features included (i) its clear demarcation as between courts of summary jurisdiction and courts involving trial by jury, and (ii) its classification of offences into indictable and summary offences. Concepts such as hybrid offences (triable either way), or

indictable triable summarily, lay as yet in the future, as did the concept of a “minor” offence.

75. The latter was introduced by the 1922 Free State Constitution which provided, in Article 72, that “*No person shall be tried on any criminal charge without a jury save in the case of charges in respect of minor offences triable by law before a Court of Summary Jurisdiction and in the case of charges for offences against military law triable by Court Martial or other Military Tribunal*”. This introduced the key concept of “minor offences,” which was repeated in Article 38 of the 1937 Constitution. Article 38 provides that “*save in the case of the trial of offences under section 2, section 3 or section 4 of this Article no person shall be tried on any criminal charge without a jury*”. While sections 3 and 4 concern special criminal cases and courts martial respectively, section 2 provides that “*Minor offences may be tried by courts of summary jurisdiction*”. On the journey along the road I have described, the minor v. non-minor distinction in Article 38 of the Constitution therefore becomes a guiding compass.

76. This important division of offences into two categories – minor and non-minor- is of a constitutional order and is superior to, and independent from, any statutory or common law classification. It is, as it were, a master classification which ultimately overrides all other classifications, and the determination of which side of the line a particular offence falls on, is a judicial one.

77. Article 38 of the Constitution also created a relationship between this constitutional minor/non-minor classification and the pre-existing indictable/summary classification of offences in the following manner: it provides a guarantee of trial by jury such that a non-minor offence may not be “tried” (that is the word used in Article 38.2) by a court of

summary jurisdiction. It is clear, therefore, that there is a constitutional bright-line as between "minor" and "non-minor" offences, and that this has important implications for the right to trial by jury, which in turn sets a limit on the possible jurisdiction of a summary court, which is of course the District Court.

78. Another important staging post along our journey is s.2 of the Criminal Justice Act 1951. S.2 of the 1951 Act created a route upon which some cases involving indictable offences could travel to summary trial, a slip-road from the main highway as it were, while simultaneously ensuring that the constitutional imperatives in Article 38 of the Constitution were honoured. It did so by providing that scheduled offences (i.e. offences in the First Schedule to the Act, or otherwise scheduled) could be *tried* summarily upon three conditions: (i) that the District Court was of the view that the offence was "minor"; (ii) that the accused person had no objection; and (iii) that the Attorney General (for which was later substituted the DPP) consented.

79. Obviously the first of these conditions was to ensure compliance with the constitutional imperative of jury trial for "non-minor" offences. However, if the offence were adjudged to be "minor," it could be tried in the District Court notwithstanding its legal classification as an indictable offence. It may be noted that trial in this context meant a determination of whether the accused was a guilty, and not merely a sentencing exercise.

80. Thus, s.2 provided for summary trial of some indictable offences, but the District Court's jurisdiction was carefully controlled in order to ensure constitutional compliance.

81. It may be noted that an indictable offence never loses its character as an indictable offence even though it may, subject to compliance with statutory conditions, be tried summarily: *DPP v. G.G. (A Minor)* [2009] 3 IR 410, *DPP (O'Brien) v. Timmons* [2004] 4

I.R. 545. This may be contrasted with so-called "hybrid" offences which are triable "either way," a characterisation which is present from the very statutory creation of the offence itself, the introduction of which has become very common in the last few decades.

82. This brings us to the 1967 Act, another important staging post along the road. Part 2 of the Act as originally enacted, entitled "Preliminary Examination of Indictable Offences in the District Court", concerned itself with the procedures for sending forward offences from the District Court to the Circuit Court and contained provisions for the preliminary examination procedure, as well as depositions and other matters. S.13 was contained within that Part. The Act was extensively amended by the Criminal Justice Act 1999 to remove the preliminary examination procedure which, by then, was considered somewhat cumbersome and obsolete in practical terms. The default position under the post-1999 procedural regime is that a person charged with an indictable offence is sent forward from the District Court to the Circuit (or Central, as appropriate) Criminal Court without the necessity of a preliminary examination.

83. The procedures in 1967 Act, as originally enacted and as amended, might be conceived of in general terms as a kind of indictable offence "Sorting Hat" which, instead of assigning students to the four houses of Hogwarts as it does in the Harry Potter books, sorts as between different cases of indictable offence; sending some to the Circuit Court for trial, some to the Circuit Court for sentence, and keeping some for sentencing itself. It may be noted that, to continue the analogy, it is not merely the judge (the "hat") which does the sorting; key roles are also played by the DPP and the accused person in the sorting process.

84. In this context, s.13(2) is one of the key provisions in the sorting process. S.13(2), then and now, concerned situations where an accused person charged with an indictable

offence wished to *plead guilty* at an early stage of the proceedings (unlike s.2 of the 1951 Act, which concerns *trial,* and which is explicitly distinguished and maintained by s.13 itself*)*. S.13(2), as set out earlier, provides for two outcomes when a person pleads guilty in the District Court to an indictable offence. Under s.13(2) (a) the person who pleads guilty is dealt with in the District Court and benefits from the reduced sentencing powers of that court. Under s.13(2)(b) the person who pleads guilty is sent forward on signed pleas to be sentenced by the Circuit Court. Essential to the procedure envisaged in (a) is the dual requirement of the consent of the DPP and the entry of a plea of guilty by the accused person in circumstances where he or she understands the nature of the offence and the facts alleged. One might describe the latter condition as an "informed plea of guilty." It is not necessary to repeat the detailed description of s.13 set out in *T.H. v. Director of Public Prosecutions* and *O'Connor v. District Judge Michael Walsh* which have already been set out earlier in this judgment save to note, again, that the accused person's guilty plea is an essential precondition to it being dealt with by the District Court.

85. What is the purpose of s.13(2) in the overall context of the 1967 Act? It seems to me to be self-evident that the purpose of the provision was to create procedures for guilty pleas in indictable offence cases, and that these procedures were to include an option whereby some of those cases could stay in the District Court and be sentenced there. The benefit for an accused person who travelled this particularly pathway (option (a) in s.13(2) was and is that he or she would stay within the sentencing parameters of the District Court. By pleading guilty and accepting the jurisdiction of the District Court, and foregoing the possibility of jury trial in the Circuit Court, the person had the comfort of staying within the District Court sentencing powers, which of course are considerably less than those of

the Circuit Court. As McKechnie J. said in *T.H.,* the procedure is "*frequently used to the distinct advantage of an accused person*".

86. This, then, is the statutory and constitutional context in which s.18(1) of the 1928 Act falls to be considered. I consider this overall context to be relevant without necessarily treating the other pieces of legislation within the framework as being strictly *in pari materia*. Rather, I consider the framework to be relevant insofar as it shows that the question of the District Court's jurisdiction with regard to indictable offences is carefully nuanced within that framework, and that it should not readily be assumed that the right of appeal is automatically the same for an indictable offence to which a guilty plea has been entered in the District Court, as it is for a summary offence, or a hybrid offence suitable for summary disposal.

87. What, then, of the authorities cited to the Court? The DPP refers to the principle in the *White* case, namely that appellate jurisdiction is to be exercised within the jurisdictional limits of the court appealed from, unless there is a statutory provision to the contrary. As the Supreme Court held in that case, set out earlier in this judgment, a court dealing with a criminal appeal from the District Court cannot exceed the sentencing parameters of the District Court, such as the aggregate maximum period of imprisonment. The DPP argues that it follows that the Circuit Court in this case cannot accept the case on a different jurisdictional basis than the configuration which was before the District Court i.e. a configuration which involved (a) an informed plea of guilty by the accused person, (b) consent from the prosecutor, and (c) the restricted sentencing powers of the District Court. This is certainly a principle of great importance.

88. The respondent points to the decision in *State (DPP) v. Roe* [1985] IR 307, a decision on costs, also set out earlier in this judgment, in which the existence of a particular Circuit Court Rule on costs was held to confer jurisdiction on the Circuit Court on appeal to make the relevant order notwithstanding that the District Court could not have made such an order. It might be argued that *White* is the more apt analogy because it concerns the criminal and sentencing jurisdiction of an appellate court. However, the lynchpin of the respondent's argument is the Supreme Court's decision in *Lambe* which, he argues, interprets s.18(1) as conferring a right to change one's plea from guilty to not guilty in *all* appeals from the District Court to the Circuit Court.

89. With regard to the latter point, it may be noted that Henchy J in *Lambe* drew attention specifically to s.50 of the Courts (Supplemental Provisions) Act 1961. This section provides that where a person appeals against a District Court order of conviction and sentence, and either (i) the notice of appeal states that the appeal is against so much only of the order as relates to the sentence, or (ii) the appellant, on the hearing of the appeal, indicates that he desires to appeal against so much only of the order as relates to the sentence, then, notwithstanding any rule of law, the Circuit Court shall not, on the hearing of the appeal, re-hear the case. *except to such extent as shall be necessary to enable the court to adjudicate on the question of sentence.* Henchy J. said that "[*a]part from the situation covered by that section, every defendant in a criminal case in the District Court who appeals is entitled to a full re-hearing, and the Circuit Court has jurisdiction to substitute its own order for the whole or any part of the order appealed against*." Arguably, this supports the respondent's argument that a specific statutory carve-out for s.13(2)(a) cases would be needed in order to exempt them from the broad right of appeal conferred by the 1928 Act.

90. However, I think there is a danger of over-extending the scope of the decision in *Lambe* as well as a risk of ignoring both the purpose of s.13(2) itself and the wording of s13(4) which I consider to be of considerable importance.

91. As I have already said, the purpose of s.13(2)(a) of the 1967 Act was in my view to create a procedure whereby an accused person could benefit from being sentenced within the range of District Court sentencing powers as a *quid pro quo* for pleading guilty early and consenting to the District Court dealing with the matter. The prosecutor was also factored into the 'bargain' insofar as his or her consent was also required. It was, in a sense, to be a three-handed bargain. It seems to me that this statutory 'bargain' option was carefully structured with an eye to the overall set of complex and interlocking statutory provisions, which in turn take account of (a) the constitutional classification of offences into minor and non-minor offences, and consequent constitutionally required limit to the District Court's criminal jurisdiction; (b) the common law and statutory distinction between indictable and summary offences; and (c) the different stages of criminal procedure, in particular the distinction between (i) the determination of guilt (or otherwise) and (ii) sentencing. In my view, the respondent's contention that s.18(1) of the 1928 Act should be read as encompassing an appeal from a case where the plea was entered pursuant to s.13(2), in which he can change his plea of guilty to one of not guilty, simply because no statutory provision expressly rules it out, cannot be correct. To allow such an appeal would involve unravelling a bargain to which the accused person was not the only party, and more importantly, would upset the delicate jurisdictional balance struck as between the various statutory provisions. I would consider that the presence of s.13(4) indicates that the Oireachtas gave thought to the question of plea-changing in the Circuit Court, but concluded that it was only necessary to provide for plea-changes in respect of signed pleas

sent forward to that court because it would *never* be appropriate for an accused involved in the s.13(2)(a) procedure to plea-change in the Circuit Court. Its silence is not indicative of a *lacuna* but rather a particular understanding of the s.13(2)(a) procedure. One might consider the following point in that regard: if the respondent is permitted to change his plea, what procedure follows thereafter prior to the full hearing, in terms of pre-trial steps including disclosure? It is to my mind inconceivable that the statute would have provided for this in the case of s.13(2)(b) but not s.13(2)(a) if it had envisaged the possibility of a plea-change in a s.13(2)(a) case.

92. An interesting issue which was not explicitly addressed in submissions was what the Circuit Court's sentencing powers would be in the event that the respondent were permitted to change his plea, and were to be subsequently convicted following a hearing in the Circuit Court. If it were to be contended that they are restricted to those of the District Court, I would have no hesitation in rejecting this proposition. First of all, it would encourage an accused person to play a tactical game whereby he could plead guilty in the District Court, change his mind if not happy with the sentence, and then enter a not-guilty plea in the Circuit Court with the safety-net of restricted (i.e. District Court -level) sentencing powers. This would place him at a position of considerable (and unfair) advantage when compared with (i) an accused who pleads not guilty to an indictable offence from the beginning and is sent forward for trial, (i) a person who pleads guilty and is sent forward for sentence, and (iii) a person who pleads guilty, is sent forward on a signed plea, and then changes his plea to one of not guilty in the Circuit Court. It would be an invidious form of having one's cake and eating it. Again, I would consider it inconceivable that the Oireachtas intended this outcome; and the clearest indication of that is the presence of s.13(4) and the fact that it applies to s.13(2)(b) cases only.

93. Taking all of the above into account, I am of the view that it would not be correct to interpret s.18(1) of the 1928 Act as permitting a change of plea on appeal, after the use of the s.13(1)(a) procedure set out in the 1967 Act. I reach this conclusion on the basis of the wording of s.18(1) and s.13(2), and a consideration of the purpose and overall statutory context of s.13, as well as the wording of s.13(4) which specifically envisages a scenario where there can be a change of plea in the Circuit Court in respect of a plea of guilty entered under s.13(2)(b) but remains deafeningly silent on a change of plea in the Circuit Court for a plea of guilty entered pursuant to s.13(2)(a).

94. I should say that I do not consider either provision, or both together, to raise any ambiguity, whether by reason of the statutory wording or the context. The outcome appears to me to be clear.

95. Nor do I consider it necessary to consider the question of absurdity, whether in terms of the common law principles or the Interpretation Act 2005.

96. One final point. Henchy J, in reaching his conclusion in *Lambe, s*pecifically referenced a concern that the alternative interpretation could leave a Circuit Court judge "*powerless to correct a situation where the defendant had unjustifiably pleaded guilty in the District Court — for example, in mistake, or to an offence unknown to the law*". However, it seems to me that s.13(2) of the 1967 Act builds into its mechanism an awareness of the potential problem of mistake. It will be recalled that one of the conditions in s.13(2)(b) is that " *the court is satisfied that he understands the nature of the offence and the facts alleged*". The latter condition addresses the potential of a mistaken understanding

of the situation; before the plea is entered, the District Judge has to be satisfied of the relevant matters and therefore that the plea is being entered on an informed basis.

Conclusion

97. Accordingly, I am of the view that a person who has pleaded guilty and been sentenced pursuant to s.13(2)(a) of the 1967 cannot change his plea on appeal. The scope of the Circuit Court appeal is confined to sentence.

98. I would therefore answer the case stated in the negative: