



**THE COURT OF APPEAL**

**Record Number: 2023/63**

**McCarthy J.**

**Neutral Citation Number [2023] IECA 187**

**Kennedy J.**

**Burns J.**

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

**BETWEEN/**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

**PROSECUTOR**

**- AND -**

**PETER DINNEGAN**

**ACCUSED**

**JUDGMENT of Ms. Justice Tara Burns delivered on the 11<sup>th</sup> day  
of July, 2023**

1. On 10 March 2023, His Honour Judge Keenan Johnson signed a Consultative Case Stated relating to the proper interpretation and application of s. 99 of the Criminal Justice Act 2006, as amended by the Criminal Justice (Suspended Sentences of Imprisonment) Act 2017 ("the 2006 Act"). The question posed for answer by this Court arose in an application seeking the activation of a suspended

sentence imposed by the Circuit Court, on appeal from the District Court and is as follows:-

*“In the circumstances where an Order of the District Court was varied by the Circuit Court on appeal does the District Court have jurisdiction to amend an Order of that higher Court?”*

### **Background**

2. The Accused came before Mullingar District Court on 15 October 2020. He was convicted and sentenced of the following offences:-
  - (i) Section 4, Criminal Justice (Theft and Fraud Offences) Act 2001 - Imprisonment for 6 months concurrent to a sentence currently being served;
  - (ii) Section 4, Criminal Justice (Theft and Fraud Offences) Act 2001 - Imprisonment for 6 months concurrent to a sentence currently being served;
  - (iii) Section 4, Criminal Justice (Theft and Fraud Offences) Act 2001 - Imprisonment for 6 months concurrent to a sentence currently being served;
  - (iv) Section 2, Criminal Damage 1991 - Imprisonment for 6 months concurrent to a sentence currently being served;
  - (v) Section 13, Criminal Justice Act 1984 - Imprisonment for 6 months concurrent to a sentence currently being served.

3. The Accused appealed to Mullingar Circuit Court. On 11 December 2020, His Honour Judge Johnson varied the sentences imposed on offences (i) and (iv), set out above, to impose a 6 month term of imprisonment which he suspended for 5 years on condition that the accused enter a bond of €500 to keep the peace and be of good behaviour. The remaining sentences of the District Court were affirmed.
4. On 28 July 2022, the Accused appeared before Mullingar District Court where he was convicted and sentenced on new charges. During the course of the sentencing hearing, it became apparent that the new charges were committed during the currency of the suspended sentences which had been imposed by Judge Johnson. The District Judge returned the Accused to the Circuit Court pursuant to s. 99(8A) of the 2006 Act for an application seeking the activation of the suspended sentences to be made.
5. At the hearing before the Circuit Court, an issue arose as to whether the Circuit Court had jurisdiction to deal with the application in light of the Circuit Court imposing the suspended sentences on appeal or whether the District Court was the correct venue being the original court of jurisdiction.

6. His Honour Judge Johnson determined that as this was an important point of law which frequently arose it was necessary to seek the opinion of this Court.

### **Section 99 of the 2006 Act**

7. Section 99 of the 2006 Act provides *inter alia*:-

“(1) Where a person is sentenced to a term of imprisonment (other than a mandatory term of imprisonment) by a court in respect of an offence, that court may make an order suspending the execution of the sentence in whole or in part, subject to the person entering into a recognisance to comply with the conditions of, or imposed in relation to, the order.

...

(8A)

(a) Where a person to whom an order under subsection (1) applies—

(i) commits an offence after the making of that order and during the period of suspension of the sentence concerned (in this section referred to as the ‘triggering offence’), and

(ii) subject to subsection (8B), is convicted of the triggering offence, the court before which proceedings for the triggering offence are brought shall, after imposing sentence for that offence, remand the person in custody

or on bail to a sitting of the court that made the said order...

...

(8C) Subject to subsection (8D), a court to which a person has been remanded under subsection (8A) shall revoke the order under subsection (1) concerned unless it considers that the revocation of that order would be unjust in all the circumstances of the case, and where the court revokes that order, the person shall be required to serve the entire of the sentence of imprisonment originally imposed by the court, or such part of the sentence as the court considers just having regard to all of the circumstances of the case, less any period of that sentence already served in prison and any period spent in custody... pending the revocation of the said order

...

(22) Where an order under subsection (1) is made by a court on appeal from another court—

(a) the reference in subsection (8A) to the court that made the order under subsection (1),

(b) the references in subsections (8C) ... to the court that may exercise jurisdiction under each of those subsections,

...

shall be construed as references to the court from whose order or decision the appeal was taken”.

8. Section 99(9) and (10) of the 2006 Act as originally enacted, which are referred to in the Case Stated, were found to be unconstitutional in *Moore v. DPP* [2016] IEHC 244.

### **Submissions**

#### *Accused's Submissions*

9. The Accused submits that a Judge of the District Court cannot have jurisdiction to amend an order of the Circuit Court and that the 2006 Act incorrectly confers that jurisdiction upon the District Court.
10. The Accused points to the options available to a court on an activation application pursuant to s. 99(8C) of the 2006 Act which impliedly involve the exercise of judicial discretion. The common law principle that courts of a lower jurisdiction are bound by the precedent and orders of the higher courts is also referenced. The Accused further submits that when entering a bond on the imposition of a suspended sentence, the bond is specific to the court in which it was entered and cannot be remitted to a lower court without the permission of the court before which the bond was originally entered into.

11. It is argued that s. 99(8C) of the 2006 Act has judicial discretion at its core with the options of activating, revoking, suspending or varying the original suspended sentence available to the court. It is submitted that in light of the wide discretion available to a judge determining such an application, it is improper that a District Court Judge could determine the outcome of an application to activate a suspended sentence when it was not imposed by that court, but rather by the Circuit Court.

*The Prosecutor's Submissions*

12. The Prosecutor submits that as the District and Circuit Courts are courts of local and limited jurisdiction, their jurisdiction is conferred by statute which, in this area, is clearly set out in s. 99(22) of the 2006 Act. It is submitted that s. 99(22) is clear in its terms to the effect that the District Court is the appropriate court for an application for the activation of a suspended sentence to be brought before, in circumstances where it was the original court which had imposed a sentence even though that sentence was varied to a suspended sentence by the Circuit Court on appeal.
13. With respect to the bond entered into, the Prosecutor has produced the actual bond entered into by the Accused in the Circuit Court which establishes that the bond did not require him to come back before the Circuit Court but rather required him, if called upon, to serve the sentence of the court. The bond is silent as to what court has

jurisdiction to make that Order. In light of the terms of that Bond, the argument raised by the Accused in this regard does not hold weight.

### **Discussion and Decision**

14. Section 99(22) of the 2006 Act is clear as to its intent and meaning. It distinctly provides that when a suspended sentence imposed on appeal is triggered, the court which has jurisdiction to determine the outcome of an application to activate the suspended sentence, is the court which originally imposed sentence. No ambiguity or obscurity arises in relation to this sub-section.
  
15. While the effect of that sub-section is that a District Court will determine what to do in relation to a suspended sentence of the Circuit Court, this does not interfere with the exercise of judicial discretion in an unlawful manner.
  
16. First and foremost, the District and Circuit Courts are courts of local and limited jurisdiction that derive their jurisdiction from statute. In the instant case, a jurisdiction is conferred on the District Court in relation to the activation of a suspended sentence imposed on appeal. Secondly, the sentence imposed by the Circuit Court, acting as an appeal court, relates to an offence within the remit of the District Court where the sentence parameters are confined to the jurisdiction



of the District Court, as stated by the Supreme Court in *The State (White) v. Martin* (1976) WJSC-SC 1458.

17. In that scenario, a situation does not arise where the District Court, when the matter is re-entered before it, is considering a suspended sentence which was outside of its jurisdiction. Rather the District Court is considering a sentence which it had jurisdiction to impose.
18. Accordingly, nothing improper in terms of the exercise of judicial discretion arises. The Oireachtas are entitled to regulate the method for re-activation of a suspended sentence in the manner provided and nothing unlawful arises. Indeed, as commented upon by Whelan J. when delivering the judgment of the Court of Appeal, in *DPP v. Kirwan* [2019] IECA 176, the exercise of judicial discretion is fully engaged in such an application. She stated at paragraph 60:-

“The sentencing judge exercises discretion with full knowledge of the triggering offence and the sentence imposed. The statutory function regarding reactivation is exercised, as with every imposition of a sentence, in accordance with the fundamental principles of sentencing law including the principles of totality, justice, and proportionality. Such factors will be taken into account in determining the justice of the case”.

**Conclusion**

19. Section 99(22) of the 2006 Act is clear and unambiguous in its terms and requires that an application to activate a suspended sentence which was imposed by the Circuit Court on appeal from the District Court, be brought before the District Court. This is a lawful jurisdiction to impose on the District Court in relation to offences within its remit.
  
20. Accordingly, in terms of the question posed by the Circuit Court, the answer to the question is "Yes".