

STATE (WARD)

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1983 No. 434 S. S.

THE HIGH COURT

IN THE MATTER OF THE CONSTITUTION AND

IN THE MATTER OF AN APPLICATION FOR HABEAS CORPUS

THE STATE (AT THE PROSECUTION OF FRANK WARD)

.v.

THE GOVERNOR OF MOUNTJOY PRISON

Judgment of Ellis J., delivered in Open Court on the 25th day of
July 1983.

The Prosecutor, Frank Ward, is at present a prisoner in
detention in Mountjoy Prison.

He is not represented by a Solicitor.

On 28th July 1981 the Prosecutor was found guilty and convicted
by the Special Criminal Court sitting at Green Street Courthouse,
Dublin, of the following offences on which he had been tried:--

Count No. 1 - shooting with intent to murder contrary to

section 14 of the Offences Against the Person Act,

1961, and

2.

Count No. 2 - robbery contrary to section 23(1) of the Larceny Act, 1916 as amended by section 5 of the Criminal Law (Jurisdiction) Act 1976.

On 29th July 1981 he was sentenced by the Court to 12 years penal servitude in respect of his conviction on Count No. 1 and to 12 years imprisonment in respect of his conviction on Count No. 2, both sentences to run concurrently from 29th July 1981.

He is, at present, serving these two sentences in Mountjoy Prison.

In his application the Prosecutor alleges and complains that his said detention is unlawful and that he is being unlawfully detained and accordingly he has applied to this Court for an order of habeas corpus directed to the Governor of Mountjoy Prison.

The reasons given by the Prosecutor for his application for an order of habeas corpus are as set out in writing annexed to his affidavit on which his application is grounded. They are three in number and I quote them as follows:

1. "Because the Special Criminal Court that tried and convicted me did so I believe without lawful jurisdiction as is required by section 43 sub-section (1) of the Offences

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"Against the State Act 1939. Because the offences for which I was tried are two non-scheduled offences. And the Attorney General did not certify that the ordinary courts were in his opinion inadequate to secure the effective administration of justice, and the preservation of public peace and order. In relation to my trial for these two non-scheduled offences. As is required by section 47 sub-section (2) of the Offences Against the State Act 1937.

2. And because I have never been charged before the Special Criminal Court with these two offences as is required by section 30 sub-section (4) of the Offences Against the State Act 1939.

3. The last point I wish to make is that I was not lawfully convicted by the Special Criminal Court. In that the verdict of guilty pronounced by the Special Criminal Court in my trial had not been determined according to the opinion of the court. And I contend that in the absence of proof that the Special Criminal Court had formed the opinion that I was guilty as is required by section 40 sub-section (1) of the Offences Against the State Act 1939 that I was not lawfully convicted."

By notice dated 29th July 1981 the Prosecutor caused to be served a notice of his intention to apply to the Court of Criminal Appeal for leave to appeal against his conviction and sentence on Count No. 2 as aforesaid, and by notice of 30th July 1981 he caused to

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be served a notice of his intention to apply to the Court of Criminal Appeal for leave to appeal against his conviction and sentence on Count No. 1 as aforesaid. The said applications were heard by the Court of Criminal Appeal on 24th January 1983 and were treated by the Court (of which I was a member) as the hearing of the said appeals which were refused and dismissed by the Court on the said 24th January 1983.

Two copies of the certified transcript of the Prosecutor's trial by the Special Criminal Court were given to his then solicitor on 14th October 1982.

I have fully considered and investigated each of the said grounds or reasons given by the Prosecutor on which he relies in support of his application for an order of habeas corpus. I will deal with each separately.

Reason No. 1

This reason is based on an allegation by the Prosecutor that the Director of Public Prosecutions (who would have been the proper person to do so) did not certify by giving the necessary or relevant Certificate to which the Prosecutor refers in order to confer

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jurisdiction on the Special Criminal Court to try him.

The Prosecutor has no basis for this allegation which is made without merit and in which he is mistaken. I am quite satisfied that the required certification to which the Prosecutor refers was in fact given by the Director of Public Prosecutions and was produced and handed into Court by Counsel for the Prosecution. At page 2 of Book J of the transcript of the trial it appears that Senior Counsel for the Prosecution, Mr. Noel McDonald handed in the relevant Certificates in respect of the non-scheduled offences for which the Prosecutor was on trial in respect of the three accused (there being two other co-accused persons on trial with the Prosecutor) who included the Prosecutor, Frank Ward.

Reason No. 2

The Prosecutor similarly has no basis for this allegation which again is without merit and in which he is also mistaken. I am quite satisfied the Prosecutor was properly charged with the said two offences before the Special Criminal Court. At pages 21 and 22 of Book E of the certified transcript of the trial it appears that Detective Sergeant Martin Donnellan gave evidence that at 8.20 p.m.

on 31st December 1980 at the Bridewell Garda Station he spoke to Frank Ward (the Prosecutor) and told him that on the instructions of the Director of Public Prosecutions he was being taken before the Special Criminal Court on that night at 9.00 p.m. on the charges of armed robbery and attempted murder, and that later that night at 8.55 p.m. at the Special Criminal Court he handed the Prosecutor copies of the charges, and that at 9.00 p.m. he (the Prosecutor) appeared in the Special Criminal Court and was formally charged by, that is before, Mr. Justice McMahon and the Court consisting of three Judges. This evidence was not repudiated and was accepted by the Court. I am satisfied that the offences with which the Prosecutor was charged were the same two offences in the said Count No. 1 and the said Count No. 2 on which the Prosecutor was tried, convicted and sentenced as aforesaid by the Special Criminal Court.

Included in the Prosecutor's grounds of appeal in his appeal to the Court of Criminal Appeal was Ground No. 14 that "The Appellant (the Prosecutor) was not properly charged in Court." This ground of appeal was not argued by Counsel then appearing for the Prosecutor, and in common with all other grounds was refused and dismissed.

Reason No. 3

I am satisfied that there is no validity or substance in this allegation and that it is based on misconception.

As appears from the certified transcript of the trial, the Judgment which was read by the presiding Judge, Mr. Justice Hamilton, referred throughout to, and was stated to be the Judgment of the Court, and the finding that the Prosecutor was guilty as charged was stated by him to be the finding of the Court, each member of which was present taking part in and sitting with Mr. Justice Hamilton at all times throughout the trial, Judgment and findings.

For these reasons I am of opinion and so hold that the Prosecutor has failed to show that his detention is unlawful, and having fully considered and investigated the Prosecutor's allegations I am satisfied that he is being detained in accordance with the law.

I therefore refuse and dismiss the Prosecutor's application for an order of Habeas Corpus as sought.

I direct that a copy of this Judgment and the appropriate order giving effect thereto be served on the Prosecutor.

W. R. Ellis.

27/5/83.