

STATE (REDMOND)

1984 No 217 S.S. 50 ✓

THE HIGH COURT

THE STATE AT THE PROSECUTION OF FRANK REDMOND

Prosecutor

and

DISTRICT JUSTICE SEAN S. DELAP

Respondent

Judgment delivered on the 30th day of July 1984 by Finlay P.

This is an application to make absolute notwithstanding cause shown a Conditional Order of Certiorari made herein by the High Court on the 14th May 1984.

On the 5th March 1984, the Prosecutor was charged before the District Court with the following offence -

"for that you, the said accused, on the 26th day of February 1984 entered as a trespasser a bar at Heuston Station, a building known as the Bar at Heuston Railway Station in the Dublin Metropolitan District with intent to steal therein property of C.I.E. Contrary to Section 23(a) of the Larceny Act, 1916 as inserted by Section 6 of the Criminal Law (Jurisdiction) Act, 1976

To that charge the Prosecutor pleaded guilty and was sentenced by the learned District Justice to 8 months imprisonment. The learned District Justice on the Charge Sheet before him in court on that day entered the plea of guilty and the words "Defendant convicted and sentenced to 8 months imprisonment" and signed that entry. Another person was charged jointly with the accused with the same offence on the same occasion and was also convicted and sentenced to 8 months imprisonment.

The Prosecutor appealed against that sentence and when his appeal came before the Circuit Court on the evidence before me, he was

not represented by any solicitor and at the request of the Circuit Court Judge trying the appeal, a solicitor present in court undertook his defence. That Solicitor upon obtaining the papers including the certified copy of the District Court Order observed that in that Order, by what is a clear and manifest clerical error, the recital of the charge omitted the words "entered as a trespasser". He brought this to the notice of the learned Circuit Court Judge who then adjourned the appeal so as to enable the Prosecutor to contemplate the institution of proceedings for Certiorari in the High Court. The date of the certified copy of the Order of the District Court which was on the court file was 12th March 1984 and upon applying for a certified copy of the Order of the District Court, the Prosecutor was furnished with a certified copy dated the 30th March 1984 in which the words omitted from the original copy were entered.

The cause shown against the making of the Conditional Order absolute includes the Exhibiting on Affidavit of the charge sheet containing the charge made against the Accused and the entry of the learned District Justice signed by him.

In these circumstances, it is asserted on behalf of the Prosecutor that there is an element of impropriety in the issue of the second certified copy order of the 30th March 1984, obviously containing a correction of the clerical error which had occurred by way of omission in the certified copy dated the 12th March 1984. It is, therefore, submitted that the Court exercising its supervisory function with regard to an inferior court should mark its displeasure with what is described as this impropriety by granting an absolute Order of Certiorari.

On behalf of the Respondent, it was urged that the primary entry with which the Court should be concerned, is the entry made

by the District Justice at the time of the hearing before him on the charge sheet which is in the Dublin Metropolitan District equivalent to the entry in a Justice's Minute Book. Furthermore, it is urged that having regard to the decisions of the Supreme Court in The State Roche .v. Delap 1980 Irish Reports and The State Abenglen Properties Ltd. .v. Dublin Corporation 1982 I.L.R.M. that the Court should not exercise its discretion and grant an Order of Certiorari having regard both to the nature of the defect relied upon and to the fact that the Prosecutor has appealed and brought his appeal before the Circuit Court.

To determine the issues thus arising, it seems to me necessary to look firstly at what has actually occurred in this case. The Prosecutor is a person duly charged with a clear and unambiguous criminal offence known to the law before the District Court. On being so charged, he accepted responsibility for that offence and pleaded guilty and the learned District Justice sentenced him within his jurisdiction to 8 months imprisonment. Not only did he do that but he immediately recorded in full and complete fashion on the charge sheet his decision, thereby, creating an unambiguous record of the precise charge made against the accused, the plea of the accused and the conviction and sentence which followed that plea. Those proceedings were, from a judicial point of view, impeccable. They were within the jurisdiction of the District Justice, they were clear and complete and there is no suggestion that they infringed in any way against any concept of natural justice. The Rules of the District Court provide that there shall be made up an order and that a certified copy of that shall be issued to record the decision made by the District Justice. Quite clearly in this case, in making up such an order, a clerical error by way of omission occurred by some officer in

the District Court Office. That is not a matter which should be in my view a matter of great surprise though undoubtedly it should not have occurred, bearing in mind the great amount of litigation on the criminal side which passes through the Dublin Metropolitan District Court.

Having regard to the decisions to which I have been referred and in particular to the careful exposition by the Chief Justice in The State Abenglen .v. The Dublin Corporation of the real history, meaning and purpose of the relief of certiorari, the question I must ask myself is whether any conceivable interest of justice could be served by quashing a conviction duly made, properly recorded and within the jurisdiction of the District Court by reason of the clerical error of an official made at a later stage.

In the course of his judgment in The State Abenglen .v. The Dublin Corporation the Chief Justice at Page 597 stated as follows
"for the Court to act otherwise, almost as of course, once an irregularity or defect is established in the impugned proceedings would be to debase this great remedy."

It seems to me that this Statement of Principle applies with remarkable aptitude to the facts of the present case.

Furthermore, notwithstanding the provisions of the District Court Rules providing for the making up of an order and for the issuing of certified copies of it, it seems to me that the decision of Gavan Duffy P. in The State (Attorney General) .v. Judge Roe reported in 1951 Irish Reports 171 clearly indicates that where the entry in a Justice's Minute Book and for the purposes of the Metropolitan District as I have indicated a charge sheet is equivalent to that document, is complete and not merely informal or an aid to his

memory that in itself can be, if properly proved, a good record of the order made by him. In this case, the record contained on the charge sheet is, as I have indicated, a complete record of a valid conviction and a proper sentence. In these circumstances, I am satisfied that the cause shown must be allowed and the Conditional Order discharged.

approved
J. A. Fenley

31/7/1984.