Jr. 289 of 1989.

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THE HIGH COURT

(JUDICIAL REVIEW)

BETWEEN

DEREK CARPENTER

APPLICANT

AND

DISTRICT JUSTICE BRIAN KIRBY AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

Judgment of Mr. Justice Barr delivered the 29th day of January, 1990.

On 2nd January, 1989 the applicant was charged with a firearms offence as set out in Blanchardstown charge sheet No. 118 in which the place where the offence is alleged to have been committed was stated to be "at Mulhuddard Dublin 15". It was not specifically stated that that place is in the Dublin Metropolitan District. The applicant was duly brought before

the learned first respondent sitting as a Justice of the Dublin Metropolitan District and the matter was adjourned on several occasions. In due course instructions were obtained from the Director of Public Prosections who indicated that he was not willing to consent to the charge being dealt with summarily in the District Court save on a plea of guilty. The applicant did not wish to take that course and so he was remanded from time to time pending preparation and service of a "Book of Evidence". It appears that after the Book was prepared it was adverted to by the Director that the usual formula "in the Dublin Metropolitan District" had been omitted from charge sheet No. 118 and he decided that it would be unsafe to proceed with a complaint based on the charge sheet in question and that the better course would to be re-charge the applicant. Accordingly, when the matter was again before the court on 6th June, 1989 the perceived difficulty was explained to the first respondent by counsel for the second respondent and it was intimated on behalf of the latter that he proposed to withdraw the existing charge. In the light of this the learned District Justice struck out the complaint. The relevant part of his order is as follows:-

> "The complainant having withdrawn the said charge, I did order that the said charge be struck out".

On 27th September, 1989 the applicant was charged afresh with the same offence but with the words "in the Dublin Metropolitan District" having been added immediately following the place of offence.

The applicant applied to the learned President of the High Court for judicial review on 23rd October, 1989 and an order was made giving him leave to apply for the reliefs sought on the following grounds:-

"(a) In striking out the proceedings grounded on the Blanchardstown charge sheet No. 118 of 1989 the first named respondent acted in excess of the jurisdiction conferred on him by Section 8 of the Criminal Procedure Act 1967.

(b) In withdrawing the charges grounded upon Blanchardstown charge sheet No. 118 of 1989 for the purpose of re-charging the applicant with the same offences the second named respondent adopted procedures which were fundamentally unfair and unjust and therefore unlawful".

When the matter came on for hearing on this date counsel for the applicant intimated that it was proposed to proceed on the basis of the second ground only.

Having regard to the provisions of Article 2(a) of the District Court Districts (Dublin) (Amendment) Order, 1982, it seems to me that the second respondent's concern about the possible invaliditly of the original charge sheet amounted to an excess of caution. However, his unease appears to have been shared or accepted by the learned District Justice. His order striking out the complaint is the appropriate order to be made where the court perceives that it has not, or may not have, jurisdiction to deal with the matter before it. The point is made on behalf of the applicant that some distinction should be drawn between the striking out of a charge by a District Justice (as in the present case) and the striking out of the complaint before the court. In my view there is no significant distinction between the two. I am satisfied that the order made by the learned first respondent on 6th June, 1989 amounted to the striking out of the complaint contained in Blanchardstown

charge sheet No. 118 and that it is a good and valid order. It follows that that order having been made, the second respondent was entitled to re-charge the applicant with the same offence. I do not accept that in taking the course which he did, the Director of Public Prosecutions adopted a procedure which was unjust or unfair to the applicant. There was some delay in re-charging the latter but not to such an extent as to taint the second charging with illegality and Mr. Mackey specifically indicated that he did not seek to rely on any such point. I have considered the authorities cited by him and I have come to the conclusion that they are not at variance with the view which I have formed. The application is refused.