

**THE HIGH COURT
JUDICIAL REVIEW**

2018 No. 1067 J.R.

BETWEEN

MARK MOONEY

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

**NOTE OF EX TEMPORE RULING of Mr Justice Garrett Simons delivered on 10
September 2019.**

1. This ruling is delivered supplemental to the principal judgment which was delivered in these judicial review proceedings on 23 August 2019, *Mooney v. Director of Public Prosecutions* [2019] IEHC 625.
2. It is important to emphasise at the outset the nature of the jurisdiction which this court is exercising. As explained in detail in the principal judgment, this is not an appeal on the merits. Rather, the matter comes before the High Court by way of supervisory jurisdiction.
3. As it happens, on the particular facts of this case, there was a significant dispute between the parties as to whether the case was one which was properly one for the High Court or should, instead, have been dealt with by way of an appeal to the Circuit Court. That particular issue was resolved in favour of allowing judicial review for the reasons set out at paragraphs 28 to 33 of the principal judgment.
4. There is consent this morning between the parties as to the form of order including, in particular, the remittal of the matter to the District Court on a particular basis. The matter is to be remitted to the District Court in Wexford pursuant to Order 84, rule 27 of the Rules of the Superior Courts, with a direction that the District Court reconsider the sentence and any ancillary orders, and reach a decision in accordance with the findings of the High Court as set out in the principal judgment of 23 August 2019. For the avoidance of any doubt, the order will also record that the District Court judge is bound by his predecessor's acceptance of jurisdiction, and the Applicant is bound by his guilty plea. The Respondent is to pay the Applicant's costs, to include all reserved costs, the costs of the written legal submissions, and the costs of two counsel on the application for leave to apply for judicial review. Such costs to be taxed in default of agreement.
5. The underlying criminal proceedings involve an offence of harassment pursuant to section 10 of the Non-Fatal Injuries against the Person Act 1997. The injured party in this case appeared before the High Court as a litigant in person this morning. The injured party has requested the court to address a distinct issue which is the question of the District Court's jurisdiction. The injured party makes the point that the offence in respect of which the accused has pleaded guilty has had a devastating effect on her both psychiatrically and psychologically, and she feels that the case is not one which should be dealt with at the District Court level but should have been escalated to the Circuit Court to be dealt with on

the basis of a jury trial, and would then attract the more serious penalties which are applicable to a trial on indictment.

6. The maximum sentence which the District Court can impose pursuant to section 10 of the Non-Fatal Offences against the Person Act 1997 is twelve months. On conviction on indictment, the Circuit Court may impose a term of imprisonment not exceeding seven years.
7. Counsel on behalf of the Director of Public Prosecutions confirmed that the Director had consented to the matter being dealt with on a summary basis.
8. Whereas the court has sympathy for the position of the injured party, it is essential to reiterate the limited nature of this court's jurisdiction on an application for judicial review. This court can only deal with the case that has been brought before it. This court's jurisdiction is expressly limited by the statement of grounds put forward by an applicant in judicial review proceedings.
9. No issue was raised before this court as to the correctness or otherwise of the District Court judge's decision to accept jurisdiction. It is simply not a matter that came before this court and, accordingly, cannot be the subject of a ruling.
10. Moreover, there has to be fair procedures, and the sequence of events in this case is crucial. It seems that the Director of Public Prosecutions ("*the DPP*") consented to the case being disposed of on a summary basis. The District Court judge accepted jurisdiction, and it was only after that had occurred that the accused person formally entered a plea of guilty. Therefore, the only matter remaining before the District Court was to determine the appropriate sentence upon conviction. It would be unfair to the accused person if, having entered a plea of guilty on a particular basis, he was now to find himself in a situation whereby he was subject to the more severe sentences applicable at the Circuit Court level.
11. So, for two reasons then I must refuse the application made on behalf of the injured party. First, the question of the correctness or otherwise of the acceptance of jurisdiction by the District Court simply is not a matter in this case. It is not a matter before this court. Secondly, even if it were something that I could revisit; given the particular chronology in this case, I think it would work an injustice to do so.
12. I can understand why the injured party is aggrieved, but an informed decision was made by the Director of Public Prosecutions that the case was one which could be dealt with summarily, and the District Court judge agreed with this. Those procedural steps having taken place, the clock cannot now be unwound. Therefore, the matter proceeds as indicated in the spoken order. The matter is to go back to the District Court to be dealt with as a summary matter only, and the accused person is bound by his previously entered plea of guilty.