STATE (LAFFEY)

C'Higgins C.J.
Henchy J.
Griffin J.

THE SUPREME COURT

THE STATE (AT THE PROSECUTION OF PATRICK LAFFEY)

Prosecutor/
Respondent

(216/1978)

and

HIS HONOUR JUDGE JOHN GRATTAN ESMONDE,
THE DIRECTOR OF PUBLIC PROSECUTIONS
AND THE GOVERNOR OF MOUNTJOY PRISON

Respondents/
Appellants

JUDGMENT delivered the 2nd day of July 1982 by C'HIGGINS C.J. Griffin J. concurring

This appeal has been brought against the Order of Mr. Justice Doyle, made in the High Court on the 18th July 1978, whereby he made absolute Conditional Orders of Certiorari and Habeas Corpus obtained by the Respondent as Prosecutor.

The relevant facts are as follows. The Respondent was charged before the District Court in Galway with 83 different offences. Having signed pleas of guilty he was sent forward to the Galway Circuit Court and appeared before His Honour Judge John Grattan Esmonde on the 19th January 1978. The Respondent was born on the 20th June 1962 and was, at the time of his appearance before the Circuit Court Judge, aged 15 years and 7 months.

He was, accordingly, a "young person" within the meaning of the Children's Act 1908 (see Section 131) as amended by Section 29 of the Children's Act 1941. The Circuit Court Judge heard evidence as to the offences, the background of the Respondent, his general behaviour and the circumstances of his arrest. He then sentenced the Respondent to two years' imprisonment in Mountjoy Prison and certified him "to be of so unruly a character and of so depraved a character that he cannot be detained in and is not a fit person to be detained in a place of detention for young persons under the Children's Act 1908 as amended." A "place of detention" for the purposes of the Children's Act 1908 is in fact registered by the Minister for Justice and is situated at Finglas Children's Centre (Remand and Assessment Unit). Having been so sentenced the Prosecutor applied for and obtained in the High Court Conditional Orders of Certiorari and Habeas Corpus on the basis that the sentence imposed upon him was contrary to the provisions of the Children's Act 1908. These Orders were directed

to the Circuit Court Judge, the Director of Public Prosecutions and the Governor of Mountjoy Prison. Cause was shown by means of an Affidavit sworn by Mr. Ciaran Keys, the State Solicitor for the County of Galway. In this Affidavit reliance was placed on what had been certified by the Circuit Court Judge as to the Respondent's character, and the sentence of imprisonment was sought to be justified under the provisions of Section 102(3) of the Children's Act 1908. As already indicated, on the hearing of a motion to make absolute the Conditional Orders notwithstanding the cause shown, Mr. Justice Doyle disallowed the cause shown and made absolute the Conditional Orders. Against this decision this appeal has been brought.

Section 102 of the Act contains, in subsection (1), an absolute prohibition on the sentencing of "a child" to imprisonment or penal servitude for any offence or to commit to prison in default of payment of a fine, damages or costs. In subsection (2) a similar prohibition is imposed in relation to the sentencing of

a "young person" to penal servitude for any offence. Subsection (3), however, deals with the circumstances under which a "young person" may be sentenced to imprisonment. Its provisions are as follows:

> "(3) A young person shall not be sentenced to imprisonment for an offence or committed to prison in default of payment of a fine, damages, or costs, unless the court certifies that the young person is of so unruly a character that he cannot be detained in a place of detention provided under this Part of this Act, or that he is of so depraved a character that he is not a fit person to be so detained."

The Appellants contend that this subsection means that, once the Court certifies that the "young person" is of the character specified, such imprisonment as the law provides and the Court thinks proper may be imposed upon him. On behalf of the Respondent it is submitted that, even where the Court so certifies a limitation on the duration of any imprisonment applies and is provided for by Section 106 of the Act. This Section is in the following terms:

> "(106) Where a child or young person is convicted of an offence punishable, in the case of an adult,

> with penal servitude or imprisonment or would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or costs, and the court considers that none of the other methods in which the case may legally be dealt with is suitable, the court may, in lieu of sentencing him to imprisonment or committing him to prison, order that he be committed to custody in a place of detention provided under this Part of this Act and named in the order for such term as may be specified in the order, not exceeding the term for which he might, but for this Part of this Act, be sentenced to imprisonment or committed to prison, nor in any case exceeding one month."

The Respondent submits that the effect of this Section is that the only Order that could be made in his case is an Order providing for his detention in accordance with the Section for a period not exceeding one month.

In my opinion, this submission is erroneous. It is clear from the wording of Section 106 that a prerequisite for its operation is that "the court considers that none of the other methods in which the case can legally be dealt with is suitable". One of the other methods provided for in the Act is imprisonment in accordance with Section 102(3). Once this method is

regarded by the court as being one "in which the case can legally be dealt with" as it clearly was, Section 106 could have no application.

In my view, therefore, the Circuit Court Judge acted properly and within his jurisdiction in imposing on the Respondent a sentence of two years' imprisonment. Accordingly I would allow this appeal and discharge the Orders made in the High Court.

STATE (LAFFEY)

O'Higgins C.J.
Henchy J.
Griffin J.

THE SUPREME COURT

1978 No. 118 S.S.
1978 No. 216

THE STATE (LAFFEY)

v.

JUDGE GRATTAN ESMONDE,
DIRECTOR OF PUBLIC PROSECUTIONS AND
GOVERNOR OF MOUNTJOY PRISON

Judgment of Henchy J.
delivered the 2nd JULY 1982
Griffin J concurring

Patrick Laffey ("the applicant") was fifteen years of age when he appeared in Galway Circuit Court in January 1978. He was therefore "a young person", as distinct from "a child" or "an adult", for the purposes of the Children Act, 1908 (as amended). He had been sent forward from the District Court to that Court for sentence (pursuant to s. 13 of the Criminal Procedure Act, 1967), after he had signed pleas of guilty to over 80 offences. They were in the main offences of dishonesty - larceny, breaking and entering with intent to commit a felony, and the like. For a youth of his age he had built up a dreadful record of

criminality, accentuated by what seemed to be inveterate violence of behaviour.

The applicant did not withdraw in the Circuit Court any of his pleas of guilty. Having heard evidence as to his character, the Circuit Judge certified him to be

> "of so unruly a character and of so depraved a character that he cannot be detained in and is not a fit person to be detained in a place of detention for young persons under the Children Act, 1908, as amended".

The validity of that certificate, made pursuant to s. 101(3) of the 1908 Act, has not been questioned. That subsection makes such a certificate a prerequisite for the imposition of a sentence of imprisonment on a young person. Because of his unruly and depraved character, the applicant was plainly unfit to be sent to a specified detention centre for young persons. His record and character suggested that he would have a malign influence there.

Upon the making of that certificate, the Circuit Judge sentenced the applicant to a term of two

years imprisonment on one offence. In doing so, he took into account all the other offences to which the applicant had pleaded guilty. The applicant was then lodged in Moutnjoy Prison to serve that term of imprisonment.

The next thing that happened was that in March, 1978 the applicant got a conditional order of certiorari to quash his conviction and sentence, together with what is commonly called a conditional order of habeas corpus. The ground relied on in support of that joint order apparently was that the Circuit Judge had no jurisdiction to impose the sentence of two years imprisonment.

When the matter next came before the High Court in July 1978, on a motion by the applicant to have the conditional orders of certiorari and habeas corpus made absolute, the Judge hearing the application disallowed the cause shown and made the conditional orders absolute. The applicant was then released from prison and now, four years later, is still at large.

It is by way of appeal from that order that the matter is now before this Court.

In making the conditional orders absolute, the Judge appears to have acceded to the submission that a sentence of over one month was prohibited by s. 106 of the 1908 Act. That section reads as follows:

> "Where a child or young person is convicted of an offence punishable, in the case of an adult, with penal servitude or imprisonment, or would, if he were an adult, be liable to be imprisoned in default of payment of any fine, damages, or costs, and the court considers that none of the other methods in which the case may legally be dealt with is suitable, the court may, in lieu of sentencing him to imprisonment or committing him to prison, order that he be committed to custody in a place of detention provided under this Part of this Act and named in the order for such term as may be specified in the order, not exceeding the term for which he might, but for this Part of this Act, be sentenced to imprisonment or committed to prison,

nor in any case not exceeding one month".

It is to be noted that this section is an enabling one. It enables the District Justice (or the Circuit Judge who has lawful seisin of the matter), when he considers that none of the other methods in which the case may legally be dealt with is suitable, instead of imposing a term of imprisonment, to commit the child or young person to a place of detention specified under Part V of the Act, and then only for a period not exceeding one month. But this was not a case where the Circuit Judge considered that the other methods for dealing with the applicant were unsuitable. On the contrary, by certifying after a full judicial investigation with sworn testimony that the applicant was unfit, for the reasons given in the certificate, to be detained in a specified place of detention, the Circuit Judge in effect made a judicial determination that a prison was the appropriate place to send the applicant to. That is the effect of the terms of s. 102(3). S. 106 has no application where such a

determination has been made. It applies only when a designated place of detention is determined to be the proper place to send the child or young person to, and the limit of one month has reference only to such place of detention.

I am satisfied that Judge Grattan Esmonde acted entirely within jurisdiction in imposing the sentence of two years imprisonment. It would have been fatuous if the legislature had fixed a maximum of one month's imprisonment or detention for a young person (i.e. a person aged fifteen years or upwards and under the age of seventeen: s. 131 of the 1908 Act as amended by s. 29 of the Children Act, 1941), no matter how heinous or multitudinous his offences. However, as I have shown, that is neither the expressed nor the implied intention to be gathered from the statute. The course taken by the Circuit Judge was fully authorised by the 1908 Act.

I would uphold this appeal, thus allowing the cause shown against the making absolute of the

conditional orders of certiorari and habeas corpus.

Approved
S.H.
9-7-82