THE HIGH COURT

[2024] IEHC 298

2023 884 JR

BETWEEN:

JOHN PAUL COLLINS

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

Judgment of Ms. Justice Mary Rose Gearty delivered on the 15th of May 2024

1. Introduction

1.1 This Applicant was sentenced to a term of imprisonment for theft. A week later, the case was relisted in the same District Court in order to remand the Applicant to another District Court so that a suspended sentence could be reactivated. He argues that this re-entry of the case was *ultra vires* the powers of the District Court and that there was no power to send him to a second court once the first judge was *functus officio*, having imposed sentence.

1.2 The purpose of the reactivation provision is to create a procedural mechanism to bring an accused person before the original sentencing court. This is an administrative step, albeit in a penal provision, therefore it is one that can be interpreted so as to permit the remand of an accused on a date after the first sentence has been imposed. The District Judge was *functus officio* as regards the sentencing matter, not as regards this remand request to facilitate reactivation. An accused must be remanded to the original court which imposed a

suspended sentence within 15 days, the limit set by statute within which that reactivating court must consider the issue. This remand was within the relevant time period and the Orders sought are refused.

2. Factual Background

2.1 This Applicant pleaded guilty to theft and was sentenced at the District Court sitting in Nenagh on 14th July 2023. Judge MacGrath, sitting at Nenagh, was not advised that the man was the subject of a suspended sentence, imposed in Balbriggan by Judge Dempsey. The Balbriggan sentence had been suspended for a period of 18 months and was active from 9 September 2021 to 8 March 2023. As the date of the theft offence before Nenagh District Court was 1st December, 2022, this meant that the Nenagh offence was a triggering offence, in respect of the Balbriggan offence, raising the prospect of that sentence, previously suspended, being reactivated.

2.2 The prosecuting guard, noting the suspended sentence after the Nenagh sentence had been imposed, re-entered the matter into the Nenagh District Court list at the next sitting, one week later on 21st July, 2023. On that date, the Applicant was produced and Judge MacGrath was given details of the Balbriggan suspended sentence. The Judge then remanded the Applicant to Balbriggan District Court for Judge Dempsey to consider the possible reactivation of the suspended sentence under s.99 of the Criminal Justice Act, 2006. Judge MacGrath advised the accused to speak to his solicitor in respect of the matter before he was due in Balbriggan, on 27th of July 2023.

2.3 An application for leave to seek judicial review was made on 26th July 2023, the leave application was heard on notice to the Respondent in October 2023 and leave to apply was granted. The contested application for an order of certiorari, quashing the remand to Balbriggan, was heard before me on the 9th May, 2024.

3. Legal issues arising

3.1 The Applicant contends that there is no mechanism whereby a matter can be re-entered in this way. The relevant section, he argues, must mean that an accused is remanded by the sentencing court during the same sitting as sentence is imposed. It was submitted that the District Judge had no power to deal with the matter a week later; having imposed sentence, she was *functus officio* or, in other words, her official task had been performed and she had no further power to act. He also submits that he was not afforded fair procedures.

3.2 The Respondent argues that the provision permits a remand after sentence is imposed and does not specify a time within which this must be done. Further, it is argued that the two processes, though dealt with in one section, are distinct. One relates to the imposition of a sentence, the other is an administrative, and mandatory, statutory obligation to remand the accused to another court so that the separate matter of a suspended sentence can be addressed. While the Court was *functus officio* in respect of the theft offence, it was not in respect of the remand to Balbriggan, a separate case that was addressed, validly, a week later.

3.3 The Respondent also submits that the Applicant cannot argue that he did not receive fair procedures as this issue was not raised in the pleadings. The Applicant points to a general plea in the statement of grounds alleging that the Court acted *ultra vires* and to paragraph 11 of the Respondent's grounds, arguing that the Statement of Opposition, which suggests that the Applicant was treated fairly, requires him to address this argument.

4. Relevant Provisions

4.1 This section has been the subject of a number of judgments. In the opening paragraph of the Supreme Court judgment in *DPP v. Carter & Kenny* [2015] IESC 20, O'Donnell J remarks that:

"Section 99 of the Criminal Justice Act 2006 … is an apparently innocuous procedural provision… Nevertheless it has given rise to innumerable practical difficulties and problems of interpretation, only some of which are illustrated by the present cases. What these cases do demonstrate clearly however is that the provision is one of considerable complexity and difficulty, requiring some learned debate, fine distinctions and considerable argument. Only one thing is clear and beyond dispute: s. 99 is in need of urgent and comprehensive review."

4.2 I begin with this quotation as it dates back to 2015 and the section has since been amended in a way that reflects the comments made in *Carter* by Mr. Justice O'Donnell, as he then was. The new subsection, s.99(8A) of the Criminal Justice Act of 2006 ("s. 99(8A)") ensures that a judge who deals with a new, or triggering, offence is obliged to sentence the accused first and then, and only then, she must send the accused to the original court in which a suspended sentence has been imposed. s. 99(8A) allows the original court to know the full picture: what condition of the sentence has been broken (here, a theft had been committed) and what were the consequences (here, a 3-month sentence). In this way, as suggested by O'Donnell J., the final sentence imposed or, more accurately, reactivated, reflects the totality of the conduct of the accused.

4.3 Given the centrality of the *Carter* decision to the amended section (the relevant portion of which is set out below), an understanding of that judgment is crucial to understanding the effect of s.99(8A). The amendment of s.99 was made in 2017 and s. 99(8A) of the 2006 Act (as amended) now reads:

> *"(8A) (a) Where a person to whom an order under subsection (1) applies* [this refers to the imposition of a suspended sentence]-
>
> *(i) commits an offence after the making of that order and during the period of suspension of the sentence concerned (in this section referred to as the "triggering offence"), and*
>
> *(ii) subject to subsection (8B), is convicted of the triggering offence,*

the court before which proceedings for the triggering offence are brought shall, after imposing sentence for that offence, remand the person in custody or on bail to a sitting of the court that made the said order to be held-

(I) no later than 15 days after such remand, or

(II) if there is no sitting of that court within that period, to the next sitting of that court thereafter,

and, if there is no sitting of that court on the day to which that person has been remanded, he or she shall stand so remanded to the sitting of that court next held after that day."

4.4 In short, and as applied to these facts, the section provides that the Judge in Nenagh shall, after imposing sentence, remand the accused to a sitting in Balbriggan so that Judge may address the issue of reactivation. The section is silent as to time frame other than to direct that the sitting in Balbriggan must be within 15 days and the remand must be made after the sentence is imposed.

4.5 The section, on its face, does not require that the remand by the new court, under s.99(8A), must take place at the same court sitting as when sentence is imposed for the triggering offence. The Respondent relies on the plain meaning of the words used in the statute, whereas, she submits, the Applicant's case depends on reading additional wording into it, such as "*remand forthwith*" or "*at the same sitting of the court*".

4.6 As a matter of simple interpretation, the argument for a literal meaning has much to commend it. The problem arising in most such cases is in determining whether a failure to abide by an interpretation in strict conformity with the wording is one that deprives a court of jurisdiction. Here, the problem is less about strictness of construction but about possible ambiguity. The word *"after"* could, reasonably, mean "*immediately after*" or "*at some time after*". To decide which is more congruent with the legislation, one must consider the relevant cases, particularly those involving the same section or its earlier iterations.

5. *Carter* - Correcting Errors and Acting without Jurisdiction

5.1 As discussed above, s. 99(8A) is a pre-condition to the reactivation of a sentence, it is mandatory in nature, but the sub-section is silent as to exactly when the remand must be dealt with, other than that it must be after the new sentence is imposed and the sitting of the original court to which he is remanded must be within 15 days of the imposition of the new sentence.

5.2 Criminal law provisions should be clear and must be interpreted strictly. If extending criminal liability, this must be by unambiguous terms, to paraphrase Henchy J. in *DPP v. Flanagan* [1979] IR 265. The question arises here, however, whether this section is extending liability? The provision undoubtedly enables the reactivation of sentences and appears to be a penal section in most respects but the subsection in question appears to be a procedural one which facilitates a remand. The language in which the earlier version of s.99 is described in *Carter* suggests that this is so.

5.3 Before looking at *Carter*, other relevant authorities describe the background against which this section must be interpreted. The Respondent cites *Richards v. O'Donohue* [2016] IESC 74. In a much-quoted passage, O'Malley J. concluded:

> *"I consider that there must be, for at least some reasonable period of time, a jurisdiction to vacate an order made in those circumstances where sufficient reason is offered promptly to the court. I agree with Birmingham J. and with the observations of Geoghegan J. in* Kennelly v. Cronin *[2002] 4 I.R. 292 that the sheer volume of cases dealt with in the District Court and, on appeal, the Circuit Court, requires the availability of a relatively informal mechanism for the correction of mistakes and misunderstandings. The problem is to define the parameters of the jurisdiction, having regard to current court listing systems, the necessity to observe fair procedures, the necessity to act rationally, and the requirement to give reasons."*

5.4 The Applicant relies on *DPP v. Devine* [2011] IECCA 67. There Finnegan J. considered the almost identical provisions in s.99(9) of the Act, which also required a remand to the court which imposed the suspended sentence. This provision was also concerned with reactivation and is a pre-cursor to the current s.99(8A). However, s.99(9) required the reactivation hearing to take place *before* sentencing for the new offence. The second court, hearing the new offence, had no jurisdiction to impose a sentence before the hearing at which the original court considered the matter of reactivating the suspended sentence.

5.5 The *Devine* case involved a consideration of the effect of failing to apply the express provisions of the equivalent section. While this may appear very relevant to the current case, to compare the two does not help to solve the issue of how best to apply s.99(8A) to these facts. *Devine* confirms only that the Judge in Balbriggan could not have dealt with the suspended sentence *before* the Judge in Nenagh had disposed of the new, triggering offence. It cannot be extended to deal with this issue, which is whether the remand to Balbriggan was valid.

5.6 The remand of this Applicant was made after the sentence was imposed and ensured that the case appeared in the Balbriggan list before 15 days had passed, thus fulfilling the express terms of the section. The Applicant asks me to read into s. 99(8A) the implicit condition that the remand must be made after sentence, but at the same sitting as the sentence is imposed, and *Devine* is not authority for this proposition.

5.7 That is the background, in terms of case law, against which this case was argued. *Carter* itself is the most useful case to consider in interpreting the new section. Recall, this was a judgment dealing with an earlier and relatively inefficient version of s.99. At that time, the new court had to send the matter back to the original sentencing court before it could impose the new sentence. But there was no provision as to time, in other words, no deadline for either court. O'Donnell J., directly addressed that deficiency in these comments:

"6. The section is drafted in prescriptive terms no doubt to try and control the process and ensure a smooth and prompt processing of the matter. It is open to real doubt however, whether section 99 achieves this objective. As the words italicised in this paragraph suggest, much of this case involves a consideration of what is meant by "next sitting" in the many different circumstances in which section 99 comes into play. In that regard it is also worth observing at this general level, that the section shows no particular concern for urgency, or if it does, does little to achieve it. No requirement of expedition is contained in the process, either at initiation or completion. Thus the process is triggered by a conviction but the time for the remand to the suspending court is identified only in that it must be before sentence. Thus the convicting court could adjourn the matter to some convenient date, and will not fall foul of the Act so long as the section 99 remand is made before sentence is imposed. At the other end of the process there is no requirement imposed on the suspending court to deal with the matter within any time scale, and certainly not forthwith or immediately. It is only when the suspending court has dealt with the question of reactivating the suspended portion of the sentence that the section comes into play again and prescribes that the person then be remanded to the next sitting of the convicting court. Thus quite a lot of time can elapse between the triggering conviction and the time when the sentencing court comes to impose sentence. It is in this context that the statutory phrase "next sitting" is to be approached, understood and interpreted."

5.8 The relevant provision, s.99(8A), was enacted after this judgment issued. The Supreme Court in *Carter* had not only expressed its views on the lack of a deadline or timeline, but it also suggested that the reactivation hearing should take place after the new sentence was imposed. Looking again at the wording of s.99(8A), we see that these suggestions were adopted; a 15-day deadline was created, after sentence is imposed, for the reactivating court to consider

whether or not to reactivate the suspended sentence. So, both the sequence and the imposition of a deadline suggested in *Carter* now appear in the section.

5.9 One theme in the judgment of O'Donnell J. in *Carter* was to endorse a line of authorities leading to the conclusion that statutes must be read in a practical manner which does not frustrate their purpose. This must be done in a way that is consistent with the principle that criminal statutes are strictly applied and interpreted in order to vindicate the rights of the accused to fair procedures, in particular where the right to liberty is at issue. Any substantive rule, including a rule of procedure, must be followed if it is a precondition to, or effectively confers, jurisdiction on the court. Identifying which rule might deprive a court of jurisdiction is exactly the issue here.

5.10 In *Carter*, the issue was the meaning of the phrase "*next sitting*". The Supreme Court confirmed that a mandatory remand to the next sitting of the court means the next sitting that is reasonably practicable. If read otherwise, a person who is arrested at 11am, in one hypothetical example given, could not be validly remanded if there was a sitting at 11.15am but, for obvious logistical reasons, the accused was not remanded to that court but to a sitting a week later. The issue no longer arises due to the new s. 99(8A) containing the temporal limitation that the sitting in question must be within 15 days of the date of sentence for the triggering offence. Nonetheless, the Supreme Court having taken that pragmatic view of the effect of the phrase "*next sitting*" is instructive when considering the phrase under review here: "*after sentence is imposed*".

5.11 In his discussion of the issue, O'Donnell J. examined various cases and schools of thought about the construction of statutory provisions, contrasting the obligations created by statute with those created by the common law. In one line of authority, the failure to strictly observe rules which provide a mechanism for bringing an accused before the court can be ignored once the accused is in the court room and in another, the failure deprives the court of

jurisdiction. The distinction is that in the latter case, a failure to abide by the strict rule is an error which goes to jurisdiction.

5.12 The Court in *Carter* confirmed that a failure to abide by the terms of s.99, insofar as it arose in that case, went to jurisdiction. In other words, the court has no jurisdiction as the case is not properly before it. But having so concluded, O'Donnell J. noted that the phrase the "next sitting" could be interpreted as meaning the next sitting, within a reasonable time. In this way, the literal meaning of the phrase was not adopted and a failure to appear at the very next sitting in time did not deprive the Court of jurisdiction. The passages of the judgment in question are so central to this issue that I will quote them in full:

> "*the High Court Judge was correct to conclude that the true interpretation of section 99 was jurisdictional or perhaps more correctly, that failure to comply with section 99 could not be treated as a mere defect in securing the attendance of the accused in court. On its true interpretation, section 99(10) required that for the court to exercise jurisdiction under the section the person must be validly remanded under section 99(9). Subsection 10 of section 99 opens with the words "A court to which a person has been remanded under subsection (9) …" which must mean that a valid remand under subs. (9) is a predicate for the exercise of power conferred by subs. (10) I should, for completeness, say that this conclusion rests upon the assumption upon which the case was argued, that section 99 now replaces all common law power, and is the sole and statutory basis for both the imposition and the reactivation of suspended sentences. While the question of whether there remains a common law power to reactivate a suspended sentence which was not removed by the creation of the statutory jurisdiction under section 99, was touched on in this Court, it was not the subject of detailed argument in the High Court or on this appeal and accordingly I express no opinion thereon.*
>
> *39. However, it should be noted that <u>this reasoning would not necessarily apply in the same way to a remand from a reactivating court under section 99(10) to</u>*

the convicting court under section 99(10A). That court is exercising its power to impose sentence in respect of a matter properly before it. The jurisdiction to do so comes from the court's jurisdiction to try the offence. Trial, adjudication and sentence are normally indivisible parts of the administration of justice. Accordingly, the power to impose a sentence does not appear to be created or conferred by section 99(10A), or to be dependent upon it. That section at best merely provides a mechanism to secure the individual's attendance before the court. That however does not arise in this case, and accordingly, I would dismiss the appeal against the decision of the learned High Court Judge and affirm the answers she gave to the case stated.

40. Finally, I should say that there is an obligation on the prosecution in the sentencing court and which is aware of the existence of a suspended sentence and therefore the applicability of section 99, to be in a position to inform the court of the next sitting of the suspending court. This should be ascertainable without difficulty in relation to the District and Circuit Courts in Dublin, but even in the case of provincial District Courts and sittings of the Circuit outside Dublin this should not pose particular difficulty since the Courts Service website sets out terms and sittings of all the courts together with up to date information on changes to sittings. By the same token the representative of the accused should seek to ensure that the court has accurate information to allow it to discharge its function."

5.13 The issue that did not arise in *Carter*, remand from a reactivating court to an original sentencing court, has arisen here but in reverse order as the sequence of events has since been altered so the accused moves from the triggering offence sentence to the reactivating court. For the reasons outlined by O'Donnell J. in *Carter*, who noted (albeit *obiter*) that the subsection in question was, *"at best… a mechanism to secure the individual's attendance before the court"*, it seems to me that failure to abide by this subsection could not deprive the original court of jurisdiction unless it brought the case outside of the 15-day

period within which the suspended sentence had to be considered. Here, that did not happen; the remand was within the time permitted by the statute.

5.14 The argument that the Judge in Nenagh was *functus officio* is also answered in the passage quoted above, it seems to me. Again, in the words of O'Donnell J., the *"trial, adjudication and sentence are normally indivisible parts of the administration of justice"*. It is this unitary trial process that ended when the Nenagh Judge pronounced sentence. It is not correct to say that the court cannot embark on another process, which amounts to a mechanism to secure the attendance of the accused before another court, in a separate sitting. What is required, as suggested in the words of O'Malley J. in *Richards*, is that the process is fair and that the accused has an opportunity to consider the substantive case. Here, the substantive case was that being made in Balbriggan, not the procedural mechanism whereby he would be brought before that Court.

5.15 A similar approach was taken by Meenan J. in the case of *Martin v. DPP* [2018] IEHC 598. There, the High Court was asked to quash orders re-entering a case in a District Court list. The Court held that there was no requirement for a special procedure specifically permitting the re-entry of a case. Having cited O'Malley J. in *Richards*, in the following passage which is relied upon by the Respondent in this case, Meenan J. noted:

> *"What is disputed … is the procedure followed by the District Judge to re-enter the no order charges. To my mind, the procedure to be followed depends upon the nature of the step in re-entering the no order charges. If the step is administrative in nature, then little formality is required. If, however, it is a substantive legal step then some formality, by way of application of a rule or an adapted rule, is required. This is to safeguard the applicant's constitutional right that he be given a fair hearing which encompasses a right to be heard and reasonable time to prepare his defence and make submissions*."

5.16 It is also useful to consider the conclusions of Meenan J. as they summarise, in my view, the situation in this case also:

"*Unlike* Richards, *what is at issue in this case is not the making of a final order but rather an administrative step so that a final order can be made at a future hearing which the applicant has notice of. At that hearing, the applicant will have the opportunity to exercise his constitutional rights*."

5.17 This view, that no special procedure was required for the re-entry of the case in Nenagh, was that taken by Judge MacGrath. The District Court Judge advised the Applicant to contact his solicitor in advance of the listing in Balbriggan but did not suggest that the remand itself be adjourned while he took advice. This was a remand she was required to make within 15 days and which the Judge was, within the plain words of the statute, making *after* she had imposed sentence, but within a reasonable time thereafter. The accused was to appear before Balbriggan where a judge would be considering the substantive matter, that is where the fair procedures element of the process would require a solicitor and Judge MacGrath ensured that the Applicant was afforded his constitutional rights for that aspect of the case which was the substantive hearing date at which a final order would be made in respect of an entirely separate sentence. Judge MacGrath was *functus officio* as regards the sentence she had imposed but she took no further step in relation to that case. One week later, the Judge dealt only with the administrative step of remanding the Applicant to another Court where a separate sentencing process recommenced, she did not revisit the sentence imposed on the Applicant and did not interfere with her final order. The case can be distinguished, therefore, from *Redmond v. DPP* [2024] IEHC 150, on which the Applicant relied.

5.18 For completeness, echoing the words of O'Donnell J. in Carter, this case was also argued on the assumption that section 99 replaces all common law power and is the sole and statutory basis for both the imposition and the reactivation of suspended sentences.

6. The Grounds not Pleaded

6.1 The Respondent has submitted that any issue of fair procedures was not pleaded in this case and should not be considered. This refers to the fact that the remand in Nenagh was made at a time when the accused was not represented and that there was insufficient notice to the Applicant of that application, who learned of the Respondent's intention on the day of the application itself. This case has been decided on the statutory interpretation argument alone and not on a new argument about fair procedures.

6.2 Order 84, r. 20 (3) of the Rules of the Superior Courts provides:

> "*It shall not be sufficient for an applicant to give as any of his grounds for the purposes of paragraphs (ii) or (iii) of sub -rule (2) (a) an assertion in general terms of the ground concerned, but the applicant should state precisely each such ground, giving particulars where appropriate, and identify in respect of each ground the facts or matters relied upon as supporting that ground*"

6.3 Our adversarial legal system relies heavily on the work done by both sides in each case and, most importantly, on the principle that all arguments should be made in one case and that all claims and points of defence must be pleaded sufficiently clearly to give the other side a chance to respond to those points.

6.4 The Supreme Court in *A.P. v. Director of Public Prosecutions* [2011] IESC 2; [2011] 1 I.R. 729 held that an applicant is confined to the grounds as pleaded unless and until an application to amend the statement of grounds has been made and granted. If no such application is made, the case is confined to the grounds as pleaded. This precedent guides me along a path on which I am already inclined to travel. There is a mechanism whereby a new point can be raised in judicial review proceedings and that is via an application to amend the statement of grounds. This was not done here.

6.5 The Applicant argued that the fair procedures issues had been raised, on his interpretation of the grounds pleaded. This argument, in effect, was that the general issue of *ultra vires,* which was pleaded by the Applicant, covered a fair

procedures argument. This is not sufficient to raise the point. While it may be correct in a general way, it is only correct insofar as every conceivable fairness point could, arguably, be sheltered under the loose covering of "*ultra vires*".

6.6 The plea that the Applicant was not treated fairly in a specific way is what must be pleaded, not a generic claim under the heading *"ultra vires"*, which means no more than that the Court has acted outside its powers. If this was the only matter pleaded, the Respondent would be none the wiser about the case and could not draft a Statement of Opposition. What is required in pleadings is a claim that is specific enough so that the Respondent knows what is being alleged. There was no such specific claim made here, other than claims referring to the ambit of s.99(8A) and the jurisdiction of the Balbriggan Court.

6.7 The statement of grounds concerned various interpretations of the meaning of s.99(8A) and no claim that there was a lack of fair procedures. This was confirmed by the initial legal submissions lodged at the leave application stage. There was no reference to fair procedures therein, namely, the argument that the Applicant did not have sufficient notice of the re-entry in Nenagh to allow him to instruct a solicitor and contest the remand to Balbriggan. I cannot, and will not, extend the leave application in that way, particularly where there has been no application to amend the statement of grounds.

6.8 Finally, it was argued that the grounds of opposition raised the issue by stating that the Applicant had been treated fairly and this required a response. Pleadings do not generate new branches in this organic way. Nor does the argument surmount the obstacle of the Applicant's failure to apply to amend the statement of grounds. It remains necessary to state a claim with enough detail that it can be anticipated and argued. It is not sufficient to raise such specific complaints as a lack of notice to point to the opposition statement, itself relatively generic, that the Applicant had been treated fairly. Such a defence argument cannot open the door to new, specific grounds of unfairness unless a motion on notice for leave to amend the grounds is successful.

7. District Court on its Own Jurisdiction

7.1 Finally, it was argued that the District Court was not given the opportunity to consider the issues raised in this case. Rather than addressing his arguments to the Judge sitting in Balbriggan, the Applicant applied to the High Court to quash the remand. The Applicant argues that the District Court cannot be asked to review a decision made by a colleague, but that is not what would have arisen had the argument been made there. The District Court in Balbriggan would have been asked to decide, as a matter of law, whether or not it had jurisdiction to hear the re-entered case and whether it had been properly listed before that Court so as to enable the Court to deal with reactivation.

7.2 In *Volkswagen Group Ireland Limited v. Higgins* [2017] IEHC 809, Ní Raifeartaigh J. stated:

> *"... it seems to me that the High Court in judicial review proceedings should only engage with an issue of the jurisdiction of the District Court where a determination on jurisdiction has been made by the District Court itself and it is suggested that it is irrational/unreasonable within the judicial review meaning of those terms."*

7.3 As in the *Volkswagen* case, the District Court did not rule on jurisdiction here. Ní Raifeartaigh J. held that the District Court should have ruled on its own jurisdiction first before the High Court is asked to do so. The matter was remitted to the District Court for such a ruling. In this case, no determination was made by the District Court because the objection of the Applicant was never made to the District Court. The *dicta* of Ní Raifeartaigh J. are directly relevant here. Rather than causing inevitable delay, this Court has ruled on the issues raised. As this judgment has already confirmed, it would have been, and remains, within the jurisdiction of Judge Dempsey to deal with the reactivation, or indeed any Judge in Balbriggan, as the remand is to a sitting of that Court.

8. Conclusion

8.1 The Orders of Certiorari and Prohibition sought are refused. The District Court in Nenagh had jurisdiction to consider the remand of the Applicant to the original sentencing court even a week after the triggering offence was dealt with. The question of that remand was not an integral part of that unitary trial but a separate, administrative matter. The Nenagh Court was not *functus officio*.

8.2 The Balbriggan Court should have been asked to rule on the issue. The case will be remitted to that Court to deal with the reactivation of the sentence.

8.3 Having heard the parties as to costs, the successful Respondent was granted an order for the costs of this case. The Order remitting the matter to the District Court and granting costs will be stayed for a period of 28 days from the date of perfection of the Order. Thereafter, any question of a stay will be a matter for the relevant appellate Court if an appeal is lodged within that time.