APPROVED JUDGMENT

NO REDACTION NEEDED

THE COURT OF APPEAL

Record No: 324/2023

Neutral Citation: [2025] IECA 27

Edwards J.

McCarthy J.

MacGrath J.

Between/

JOHN STOKES

Appellant

V

THE COURTS SERVICE

-AND-

THE COMMISSIONER OF AN GARDA SÍOCHÁNA

-AND-

THE MINISTER FOR JUSTICE AND EQUALITY

Respondents

JUDGMENT delivered by Mr. Justice Edwards on the 11th day of February, 2025.

Introduction

1. The present appeal has been brought by Mr. John Stokes (i.e., "the appellant") against the judgment of the High Court delivered by Phelan J. on the 3rd of November 2023 (bearing

the neutral citation of [2023] IEHC 602), the order being perfected on the 4th of December 2023.

2. The said Judge refused to grant judicial review for the following reliefs:

i. "*An Order of Prohibition by way of an application for Judicial Review prohibiting the further prosecution of the process of enforcement and recovery under Section 7 of the Fines (Payment and Recovery) Act 2014, in respect of fines imposed on the applicant by the District Court on 3rd of February, 2016;*

ii. *A Declaration by way of an application for Judicial Review that the prosecution of the said process in respect of the applicant is in breach of the applicant's constitutional right to fair procedures;*

iii. *A Declaration by way of an application for Judicial Review that the prosecution of the said process in respect of the applicant is unjust, oppressive and/or invidious by reason of delay;*

iv. *A Declaration by way of an application for Judicial Review that the respondents acted in breach of their duty to prosecute the said process in respect of the applicant in a timely manner;*

v. *A Declaration by way of an application for Judicial Review that the prosecution of the said process in respect of the applicant is in breach of the applicant's right to private and family life pursuant to Article 8 of the European Convention on Human Rights and Fundamental Freedoms*."

Background

3. On the 3rd of February 2016, the appellant was convicted in the District Court of a number of road traffic related offences committed on dates in 2014 and 2015. Three of the convictions were for driving without insurance, contrary to s. 56 of the Road Traffic Act 1961, on three separate occasions. A number of fines were imposed on the appellant totalling

€1,700, which were due to be paid in full by the 1st of August 2016. However, on the 23rd of February 2016, the appellant was committed to custody for 5 ½ years' imprisonment with the final 18 months suspended in respect of an unrelated Circuit Court matter. The 1st of August 2016 came and went, the appellant being in prison on the unrelated matter on the date in question, and for a considerable time in the lead up to that date, and indeed thereafter, and the fines were never paid. Whilst he was granted temporary release on the 14th of March 2019, he was not fully released until the 6th of April 2019. The fines remained unpaid following his eventual release and the appellant took no steps to attempt to pay them.

4. On the 16th of January 2018, a Notice pursuant to s. 7(4) of the Fines (Payment and Recovery) Act 2014 ("the Act of 2014") issued addressed to the appellant requiring him to attend before the District Court on the 11th of April 2018 concerning the non-payment of the said fines due by him. A warrant for his arrest, as a 'fined person' who had failed to appear, was then issued on the 11th of April 2018 when the appellant failed to attend court. The appellant was in fact still detained in custody serving the unrelated sentence. The said warrant, which was still outstanding, and which had never been withdrawn or cancelled, was very much later executed by arrangement at the District Court sitting at Dún Laoghaire on the 25th of February 2021, some two years and ten months indeed after it had been issued.

5. The appellant had provided the authorities in Shelton Abbey with his address in Courtown, Co. Wexford at the time that he obtained temporary release in March 2019, and he had remained at that address until approximately November 2020 when he moved with his partner to an address at Rochestown Avenue in Dún Laoghaire where he has resided since. The High Court judge found that the appellant had lived openly following his release and did not attempt to conceal his whereabouts or evade service of the warrant and in fact had engaged with various State authorities during the relevant period, including with the Department of Social Protection from whom he was claiming Jobseekers' Allowance.

6. As stated, on the 25th of February 2021, the warrant was ultimately executed by arrangement at Dun Laoghaire District Court and the appellant was represented by counsel on this occasion. The case was adjourned to the 24th of March 2021 to District Court No. 2 in the Criminal Courts of Justice, where the appellant applied through his solicitor to the presiding judge for the proceedings to be struck out on grounds of delay. It was submitted that the appellant had been in custody when the arrest warrant had issued and had the warrant been executed sooner, the appellant would have had the opportunity to have a sentence imposed in lieu of payment of the outstanding fines which would have run concurrently with the sentence then being served by him. The District Court judge referred to the decision in *DPP v. Fogarty* [2019] IEHC 308 regarding the power of the Court to strike out the proceedings and declined to do so, adding that the appellant had been present in Court on the date of the imposition of the fines and was aware of the Order and had not appealed it. As the High Court judge in this matter has since pointed out, the transcript record of the proceedings before the District judge (which was exhibited), properly interpreted, points to the District Court judge declining to strike out the proceedings not on the basis that he lacked any jurisdiction at all to do so, but rather that he could not do so at that point, and without first considering the enforcement options open to him. The District Court judge also stated that the Court could not predict what might have happened had the warrant been executed sooner and that, accordingly, it was not established that the appellant had been prejudiced. The District Court judge then indicated that he would consider a Community Service Order in accordance with s. 7(5)(a)(ii) of the Act of 2014. His solicitor confirmed to the District Court judge that the appellant was willing to complete community service if eligible.

7. To determine if the appellant's case was a suitable case in which a Community Service Order might be made, the case was then adjourned to the 16th of June 2021 with a direction that the appellant file a Statement of Affairs pursuant to the Act of 2014. The

District Judge also requested a community service suitability report from the Probation and Welfare Service for that date. The District Court judge further afforded the appellant an opportunity to apply for a legal aid certificate through a law centre run by the civil Legal Aid Board, noting the court's understanding that the appellant would not be entitled to avail of the criminal legal aid scheme.

8. On the 16th of June 2021, the Court was informed of the appellant's intention to proceed by way of judicial review. As such, the enforcement proceedings were adjourned pending the determination of the within proceedings.

9. The appellant applied *ex parte* to the High Court (Meehan J, presiding) on the 21st of June 2021 for, and duly obtained, leave to apply for the reliefs specified at paragraph 2 of this judgment by way judicial review. The leave application was grounded upon affidavits of the appellant and of his solicitor, Tony Collier, both sworn respectively on the 16th of June 2021. The second and third respondents who are represented by the same legal representatives filed their Statement of Opposition and verifying affidavit on the 28th of March 2022. The first respondent filed its Statement of Opposition and verifying affidavit on the 3rd of May 2022. The appellant filed an affidavit in reply on the 21st of November 2022. The substantive matter came on for hearing before the High Court (Phelan J. presiding) on the 12th of October 2023, and judgment was delivered on the 3rd of November 2023. Mr. Stokes was unsuccessful in his claim and the High Court's Order dismissing his application was perfected on the 4th of December 2023.

10. The appellant filed his Notice of Appeal in this Court on the 20th of December 2023. The respondents filed their Notices thereafter and did not seek to cross-appeal any of the findings made against them by the trial judge.

The High Court's Judgment

11. In her judgment, which bears neutral citation [2023] IEHC 602, the High Court judge sets out in detail, in paragraphs 13 to 16 thereof, a summary of the affidavit evidence relied upon by the respondents to explain delays that had arisen. Ultimately, she was satisfied that the time taken to administer and enforce the fines process had been inordinate and that there had been no adequate explanations for such periods of delay as had occurred. It is not necessary for the purposes of this appeal to reprise the affidavit evidence on this issue. Suffice it to say that I adopt Phelan J's summary of the affidavit evidence concerning delay, and agree with her conclusions as to the existence of excessive and inordinate delay which was not adequately explained, and so my judgment should be read in conjunction with the relevant paragraphs of her judgment to which I have previously alluded.

12. The High Court judge also succinctly, and with admirable clarity, summarised, between paragraphs 17 to 26 inclusive of her judgment, the relevant statutory scheme arising under the Act of 2014. Again, I adopt Phelan J's summary, and the present judgment should be read in conjunction with the relevant paragraphs of her judgment concerning that scheme just alluded to.

13. The High Court judge found that the first named respondents (i.e., the "Courts Service") were properly joined to the proceedings despite its argument against being joined due to the nature of its statutory functions. The High Court found the Courts Service to be a *legitimus* contradictor in respect of delays complained of in the issue of the Fines Notice and as such, did not fault the joinder of the Courts Service. In their submissions, the Courts Service indicated that this issue would not be further pursued in this appeal.

14. The High Court also held that there was some logic to joining the third respondent (i.e., the "Minister") to these proceedings despite similar protests by the Minister that she should not have been joined. The Court noted the Minister's oversight role and general responsibility for all State agencies involved in the delay at issue in these proceedings

together with her interest in the *Fogarty* case. Ultimately, the High Court judge found that the Minster was not a necessary party in the proceedings. The Court found that any costs implications in joining an unnecessary party may be academic in this case as the Minister was jointly represented with An Garda Síochána.

15. The High Court judge dismissed the respondents' arguments that the proceedings should be dismissed on grounds of delay. The High Court judge was satisfied that the within proceedings having been commenced within time limits fixed under the Rules of Superior Court 1986 measured from the refusal of the appellant's application to strike out on the 24th of March 2021, and that no extension of time was required.

16. Regarding the question as to whether the maintenance of enforcement proceedings in the District Court would be unlawful, the trial judge considered the caselaw referred by the appellant (*Cunningham v. Governor of Mountjoy* [1987] ILRM 33; *Long v. Assistant Commissioner O'Toole* [2001] 3 IR 548; *Dalton v. Governor of the Training Unit* [2000] IESC 49; *Cormack & Farrell v. DPP* [2009] 2 IR 208; and *Finnegan v. Superintendent of Tallaght Garda Station and Governor of the Training Unit* [2021] 1 ILRM 206) and ruled that by contrast with that caselaw, the present case does not concern "*a certainty or high likelihood of imprisonment but the mere possibility of same at the end of an adjudicative process which has yet to conclude*" given the options open to the District Court under the Act of 2014.

17. The High Court judge acknowledged that the appellant could bear "*no responsibility*" for the delay in the case and that the delay involved being 16 months following the issue of the Fines Notice and almost 3 years since the execution of the arrest warrant, which she stated was "*plainly excessive*". The question to be answered according to the High Court judge was what the legal consequences of such a significant delay are.

18. She went on to note that the District Court judge's observation that he did not have jurisdiction to strike out the Fines Notice having regard to the decision in *Fogarty* appeared to change in the course of the hearing on the 24th of March 2021 and should not be understood as a denial of any jurisdiction to strike out the fines matter "*but rather a decision that he could not strike out the fines summons without first engaging in a consideration of prescribed matters identified under s. 7(5) of the 2014 Act*".

19. The High Court judge found that the judge in the District Court rightly refused to strike out the Fines Notice on the 24th of March 2021 as he had not yet considered the prescribed matters in s. 7(5) of the Act of 2014. She found the District Court to be free to conclude imprisonment would not be appropriate in view of the circumstances of the case, namely the delay, if the Court proceeds to consider the imposition of a term of imprisonment.

20. The High Court judge found whether the appellant is suitable for a recovery or attachment order to be a matter for the District Court to determine. She also found the imposition of Community Service for non-payment of fines from 2016 not to be unfair, invidious or oppressive, finding that the matter was one for the District Court to consider stating: "…*I cannot and do not conclude that every possible sanction under the 2014 Act is necessarily oppressive, invidious or unfair to the Applicant because of the delay in the enforcement process in this case and that any of the possible sanctions open to the District Court would reach the level of injustice at this remove akin to that which prompted the Supreme Court to intervene in the Finnegan scenario*".

21. The High Court judge noted the lack of an inevitability or certainty of a return to prison or that the "*reasonably likely outcome in view of the evidence to the effect that the Applicant has been found suitable for same"* (a community service order) to be the imposition of "a *manifestly unfair or oppressive potential outcome as to make the further maintenance of enforcement proceedings untenable thereby warranting an order by*

restraining the process" and refused the reliefs sought by the appellant. Furthermore, the High Court judge declined to intervene where the District Court had "*yet to assess the appropriate penalty*" and that the application was therefore premature. The District Court retains a jurisdiction to ensure fair procedures under s. 7 of the Act of 2014 and "*there is no inevitability of an unfair, disproportionate, invidious, oppressive or unjust sanction*".

22. In conclusion, Phelan J. ruled:

> *"75. While the delays at issue are clearly inordinate and have not been explained, unlike other cases where the Court has intervened by way of judicial review, there is no inevitability of a return to prison or the imposition of a manifestly unfair or disproportionate penalty in this case. The District Judge dealing with an application under s. 7 of the 2014 Act has a range of options open. While these options include the possibility of imprisonment for nonpayment of the fine, it also includes the possibility of a community service order or a strike out of the Fines Notice by reason of delay. The judge of the District Court is well placed in the first instance to safeguard the Applicant's rights to due process deriving from the requirements of constitutional justice. Special circumstances have not been demonstrated in this case to warrant the exceptional measure of restraining that process by way of judicial review.*
>
> *76. For all these reasons, I refuse the relief sought in these proceedings."*

Notice of Appeal

23. By a Notice of Appeal lodged the 20th of December 2023, the appellant now appeals to this Court against the High Court Judge's refusal to grant Judicial Review. In support of this, the appellant has advanced seven grounds as follows:

1. *"The learned Trial Judge erred in law in determining that the delay found by the learned Trial Judge to be caused entirely by the Respondents and to be unacceptable, inordinate and excessive and for which there was no or no adequate explanation does not render the continuation of the enforcement process unfair and/or in breach of the Appellant's constitutional right to fair procedures and/or unjust, oppressive and/or invidious and/or in breach of the Appellant's right to private and family life pursuant to Article 8 of the European Convention on Human Rights and Fundamental Freedoms.*
2. *The learned Trial Judge erred in fact in law in seemingly distinguishing the within case from the decision and principles identified in Finnegan v. Superintendent of Tallaght Garda Station and Governor of Wheatfield Prison [2021]1 ILRM 206 and in the related line of jurisprudence.*
3. *The learned Trial Judge failed to have regard or sufficient regard to the crimes in respect of which the Appellant was convicted, the sentence imposed in respect of those crimes, the manner in which the Respondents conducted themselves in the process complained of, the complete lack of culpability on the part of the Appellant in relation to the delay and the fact that the Appellant's location and presence was known at all material times to the Respondents. The learned Trial Judge erred in fact and in law accordingly in determining that it would not be unfair to permit the District Court proceedings from going ahead.*
4. *The learned Trial Judge erred in fact and in law in considering that what is required is an "inevitability" of a "return to prison or the imposition of a manifestly unfair or disproportionate penalty" prior to intervening by way of judicial review. In the enforcement process complained of, the Appellant faces a real prospect of a sentence or penalty by way of community service order or by way of a term of imprisonment if*

the enforcement process is continued. There is no requirement in law for there to be an inevitable return to prison. Nor is there any requirement in law of a manifestly unfair or disproportionate penalty. The Appellant is entitled to not face such prospects or the continuation of the enforcement process in the circumstances obtaining in the present case.

5. *The learned Trial Judge erred in fact and in law in finding that it was premature to seek relief by way of judicial review. The learned Trial Judge erred in fact and in law in postponing matters to the District Court for final determination. The learned Trial Judge furthermore erred in fact and in law in essentially determining that the matter could await a determination of the District Court following which if necessary further judicial review proceedings could be brought. The Appellant is entitled to an Order at this stage of the process to prevent the further continuation of the enforcement process on the grounds of unfairness.*
6. *The learned Trial Judge erred in fact and in law in considering that the public interest in Court ordered sanctions being respected in the present case outweighed the Appellant's individual circumstances in the context of the excessive delay for which there was no or no adequate explanation.*
7. *The learned Trial Judge erred in awarding the costs of the proceedings to the Respondents."*

Submissions to the Court of Appeal

Appellant's Submissions

24. It has been submitted on behalf of the appellant that the net issue to be decided by this Court is whether the cumulative effect of the delays in the enforcement process is such as to

render the continuation of the enforcement proceedings contrary to the requirements of constitutional justice as being unfair or oppressive or invidious.

25. The appellant contends that while imprisonment is not inevitable or guaranteed, it is more than a "*mere possibility*". Should the enforcement process continue, the appellant is exposed to four possible penalties under s. 7 of the Act of 2014 being in this sequence: an attachment order, a recovery order, a community service order or imprisonment. It was submitted that the appellant is not suitable for a recovery order nor an attachment order as he is not a man of means or in employment. Thereby the remaining options provided for under s. 7 of the Act of 2014 are a Community Service Order or imprisonment.

26. It was submitted that an order for imprisonment would clearly be prejudicial to the appellant at this point, and had the appellant been before the court in respect of the payment and recovery process when he was otherwise in custody, he would have had the opportunity to seek a term of imprisonment in lieu of the fines or any other orders. The appellant contends that the District Court judge would likely have acceded to that application and any sentence imposed would have been proportionate to the fines in question and would have been made concurrent to the sentence then being served by the appellant.

27. It was submitted that a Community Service Order will entail the appellant working for a period of between 30 and 100 hours and, in any event it is, by definition, an Order imposed in lieu of imprisonment, which may be imposed if he fails to satisfactorily complete the period of community service in question. This, in the appellant's submission, also amounts to a penalty which he says he should not be exposed to at this remove.

28. The appellant says the starting point must be the undisputed findings of the trial judge that the respondents were entirely responsible for the very significant delay prior to the execution of the warrant and for which they have offered no adequate explanation. It was submitted that authorities cited to the Court, including *Cunningham v. Governor of Mountjoy*

[1987] ILRM 33; *Long v. Assistant Commissioner O'Toole* [2001] 3 I.R. 548, *Dalton v. Governor of the Training Unit* [2000] IESC 49 and *Finnegan v. Superintendent of Tallaght Garda Station* [2021] 1 ILRM 206 all support the appellant's position. Particular reliance is placed on the *Finnegan* decision, and we were referred to the dicta of McKechnie J. at para 83 of his judgment where he said:

> "*Persons ... who deliberately evade the authorities may be looked at differently to those who have returned to their natural habitat so to speak, who have lived openly, have engaged with state agencies and have otherwise got on with their lives"*

and at para 88, where he sought to distil from the authorities a list of relevant factors considered by the courts in determining at what point, and in what circumstances the execution of a committal warrant, or the power of arrest is unjust, oppressive and/or invidious. He identified the following factors as being relevant:

- The crime for which the subject person was convicted;
- The sentence or other penalty or sanction imposed;
- How and in what manner it became necessary to have the warrant issued;
- The part played by the subject person;
- The length of time said to constitute the delay;
- Any reasons given or explanation offered in respect thereof.

29. The appellant submitted that applying these principles of the present case it can be said that:

- The appellant was convicted of road traffic offences rather than more serious or violent offences. Noone was injured as a result of those offences;
- He was blameless in the delay and failure to execute the warrant as he was in custody;

- He could not have been aware that he was the subject of an arrest warrant;
- The authorities were at all times aware of his whereabouts at the time of the issue of the arrest warrant;
- The appellant provided his address in Wexford to the authorities in Shelton Abbey at the time he obtained temporary release;
- He could therefore not be equated to an absconding prisoner;
- The delay itself of over four years is self-evidently extensive;
- No explanation has been provided for the delay;
- He has lived an open, transparent and law-abiding life since his release from custody.

30. The appellant contends that the trial judge erred in distinguishing this case from the decision in principles identified in *Finnegan*. He says the factors identified in *Finnegan* must be applicable to the instant case. Specifically, he complains that the court failed to have regard to the nature of the crimes in respect of which the appellant was convicted and erred in focusing on the process before the District Court exclusively. The point is made that Mr. Stokes was convicted of road traffic offences in contrast to more serious offences that come before the courts. Further, the appellant is blameless in respect of any aspect delay and the explanation for the delay, or absence thereof, is a very relevant factor. It is complained that insufficient account was taken of the fact that no adequate explanation was offered for the inordinate delay in this case. Despite this there was a determination that excessive delay did not render the continuation of the enforcement process unfair, invidious and/or oppressive. The appellant contends that this determination was quite simply wrong.

31. The appellant further contends that the trial judge erred in determining that an inevitability or certainty of return to prison was required to warrant intervention by way of judicial review. It is suggested that insufficient account was taken of the fact that the

appellant faces a real prospect of a sentence or penalty by way of Community Service Order or by way of a term of imprisonment if the enforcement process is continued. He said there is no requirement in law for there to be an inevitable return to prison nor is there any requirement in law for the imposition of a manifestly unfair or disproportionate penalty. Rather the court must be concerned with fairness. It was submitted that the appellant should not have to face such prospects for the continuation of the enforcement process in the circumstances case.

32. Issue was also taken with the trial judge's determination that it was premature to seek relief by way of judicial review and that the matter could await a determination by the District Court as to whether to make any orders pursuant to s. 7(5) of the Act of 2014, and if so what orders. It was contended that the appellant was entitled to an order striking out at this stage of the process, to prevent continuation of the enforcement process on the grounds of unfairness. To allow the process to continue would, it was contended, be disproportionate and in breach of the appellant's constitutional rights.

Respondents' Submissions

33. The respondents submit that on a correct interpretation of s. 7 of the Act of 2014, where a fine has been imposed and remains unpaid after the due date, the Oireachtas has placed a mandatory statutory obligation on the appropriate court official to issue a notice which informs the fined person of the obligation to appear before the District Court, which is what has happened in the present case.

34. They further submit that the High Court's findings that the enforcement process was underway and that it would allow the District Court to make whatever orders it saw fit (including an outright dismissal of the application because of the passage of time), were entirely correct, proportionate, and consistent with established precedent.

35. It was submitted that the District Court retains a jurisdiction to police constitutional fairness in the proceedings which come before it, and that this has been confirmed on numerous occasions, as exemplified in *Ellis v. O'Dea* [1989] I.R. 530. The respondents submit that should the District Court find - at the conclusion of the statutory process and having heard from the respective parties - that it would be unfair given the passage of time to impose one sanction or another, or conclude that the process should be terminated altogether as being no longer capable of a fair resolution given this factor, then it may employ its residual jurisdiction accordingly.

36. We were referred to the case of *Cully v. Minister for Transport, Tourism and Sport* [2022] IEHC 113 § 59 in support of a submission that the subject of enforcement proceedings is not entitled as a matter of law to a disposal of the case against them without even the prospect of having to go to court. It was submitted that sometimes vindicating one's rights will unavoidably require going through the requisite court processes and unless there is some exceptional justification that is usually most appropriately done in the summary court vested with the matter and not in a court of review.

37. On the issue of delay, all parties are in agreement that there was delay in enforcing the fines in this instance and that the principles set out by the Supreme Court in *Finnegan* offer guidance in such situations. It is accepted by the respondents, on the authority of *Finnegan* and other well-established authorities, that extreme delay when accompanied by demonstrated prejudice may sometimes defeat an otherwise valid warrant - even where it issued within the permitted time.

38. That having been said, the first respondent highlights that there is no definite time-limit in which the Courts Service must issue the requisite Notice either under s. 7(4) of the Act of 2014, nor under the District Court Rules – the District Court (Fines) Rules 2016 (S.I. 19/2016). The amended Order 23, Rule 9 of the District Court Rules specifies that the

relevant notice may issue, "*at any time after the due date for payment*". The first respondent states that the absence of a time-limit, where there is in contrast one specified for the re-issuance of committal warrants within the same rule, does suggest that fines are intended to be enforceable for longer than those other instruments and that on this point one cannot be prescriptive.

39. Further, the first respondent contends that elements of the present case may be distinguished from *Finnegan* and suggests that insufficient prejudice has been demonstrated by the appellant to justify the course of relieving the appellant from the fines altogether, as he seeks in this application for judicial review. The first respondent quotes a passage from the Supreme Court in *The Minister for Justice and Equality v. Ivo Smits* [2021] IESC 27 as follows:

> *"the primary reason for the fact that a warrant issued by the court has not been fully executed, and the sentence therefore not served, will be the wrongful act of the person who absconds, and who does not thereafter surrender.*
>
> *The decision in Finnegan, therefore, establishes that the jurisdiction to relieve a person who has absconded from the obligation to serve a sentence in this State is rooted in constitutional principles and, moreover, to be exercised only in very exceptional cases."*

40. In replying submissions, the State respondents submitted that imprisonment is merely a possible order that could be made at the end of the enforcement process and the High Court judge was correct to find so. The State respondents contend that the instant case differs from that of *Finnegan* insofar as the process which led to the imposition of a period of imprisonment had concluded in *Finnegan*, which is not the position here where there is an adjudicative process in being and where on the facts the imposition of a period of custody

remains no more than one (arguably remote) possibility amongst others, including the possibility of the imposition of a community service order; or, indeed, that the proceedings might be struck out as oppressive, if a District Judge were to be persuaded that that was the case.

41. The respondents highlight that the appellant has previously been found to be suitable for community service where a period of 30-100 hours may be set. It is submitted that it is therefore hard to see how the appellant can maintain in his submissions that there is a "*real prospect of a sentence*".

42. In response to the appellant's contention that he is prejudiced and that he should have been entitled to strategically default on the fine debt in 2018/2019 so as to run it in with the sentence he was then serving and thus, it cannot be revisited upon him now, the first respondent maintains that it must be taken into consideration that the prejudice which is being asserted arises directly in consequence of the appellant's own acts of default in failing to pay the fine in the first instance. The first respondent contends that there is no legitimate entitlement to expect such "*calculated*" advantage.

43. It is submitted by the first respondent that the appellant's claim that he would be inconvenienced by having to do community service in lieu of the fine which he neglected to pay is not sufficient to outweigh the public interest in the enforcement of fines which have been lawfully imposed as penalties in respect of criminal offending so found. The first respondent contends that this consideration, the prospect of making a non-custodial reparation, does not appear to reach or even approach the levels of prejudice, unfairness or injustice which prompted the Supreme Court to intervene in *Finnegan.*

44. The High Court judge addressed the asserted prejudice at some length and found that the mere prospect of a custodial sentence was not sufficient to establish this factor.

45. In so far as the District Court prompted the appellant's solicitor to consider an application for legal aid, the first respondent suggests that this was in the nature of a gesture of judicial consideration, and not a veiled threat of custodial sanction as had been suggested in the written submissions on behalf of the appellant.

46. The respondents submit that the appellant has failed to show that the continuation of the process currently underway before the District Court would be other than fair. The essential facts have been established as regards the impugned process, namely penalties were imposed at the end of a criminal process which determination was not appealed, fines went unpaid and as part of the enforcement process the appellant has been found suitable for community service.

47. The respondents ultimately submit that the enforcement proceedings should be returned to the District Court for their lawful continuation, as emphasised by the High Court judge in her judgment, as follows:

> "*The judge of the District Court is well placed in the first instance to safeguard the applicant's rights to due process deriving from the requirements of constitutional justice. Special circumstances have not been demonstrated in this case to warrant the exceptional measure of restraining that process by way of judicial review*.".

Analysis & Decision

48. In circumstances where I have found the respondents' argument to be completely persuasive, I have arrived at a clear view that this appeal ought to be dismissed.

49. The High Court judge was correct in identifying that a question arises as to what might be the legal consequences of the accepted inordinate delay in this case. The appellant must be afforded the opportunity of contending that continuation of the enforcement proceedings against him would be oppressive on account of delay, and of receiving a judicial determination on that issue. However, if, as I believe the High Court judge correctly

determined to be the case, there remains an ongoing adjudicative process before the District Court, then that is the appropriate forum before which the appellant should make any such argument. In my assessment the High Court judge was not wrong in concluding that, pending the outcome of that ongoing adjudicative process, the continuation of the enforcement process is not unfair and/or in breach of the appellant's constitutional right to fair procedures and/or unjust, oppressive and/or invidious, and/or in breach of the appellant's right to private and family life pursuant to Article 8 of the European Convention on Human Rights and Fundamental Freedoms. It would have been premature to have reached any other conclusion, and inappropriate to do so having regard to the ongoing adjudicative process before the District Court, which is fully equipped to vindicate his asserted rights, including by terminating the enforcement proceedings with no further order should the District Court deem it that that is what is indeed required to vindicate his rights.

50. I consider that the circumstances of this case are distinguishable from those in *Finnegan* in a situation where an adjudicative process has yet to be completed in the District Court, in the course of which the appellant can press his arguments that the enforcement process ought to be terminated as being oppressive. The High Court judge was right in so holding, in my assessment. What may yet happen in the District Court cannot be pre-judged. There are several possibilities, including at least the possibility of the imposition of a community service order, alternatively the imposition of a term of imprisonment, alternatively a termination and striking out of the enforcement proceedings for being oppressive of the offender.

51. While the appellant will be at liberty to contend before the District Court that the enforcement proceedings should be terminated due to inordinate delay of such extent as to render such proceedings oppressive of him; the respondents' have also put arguments before this Court to the effect that the appellant can show no real prejudice; that he seeks to gain a

"*calculated*" advantage; that there is a strong public interest in ensuring that there is enforcement of the payment of fines; that it is open to the appellant even yet to pay the fines imposed on him, the validity of which he does not dispute, and in that way bring the enforcement process to an end; that it would be contrary to public policy that a person should expect to be able to avoid legal consequences for criminal wrongdoing, and cynically seek to do so, on the basis of a contention that any enforcement order would inevitably have been subsumed by, or run in with, a further penalty imposed for yet further wrongdoing, entitling that offender to get, in effect, "a free ride" in respect of the initial wrong doing that had led to the fines imposed upon him; and further that the *Finnegan* jurisdiction to strike out for oppression should only be exercised exceptionally and that there is nothing exceptional about this case. No doubt these arguments will be reprised in response to any submission made to the District Court contending for a strike out. It will then be a matter for the District Judge to weigh and consider the arguments on both sides, and decide judicially what the justice of the case requires. It is not necessary, nor would it be appropriate, for me to express a view on that, in light of having formed the view that these are matters properly to be adjudicated upon by the District Court in the context of the ongoing enforcement proceedings.

52. What is crystal clear in so far as I am concerned is that this is not an appropriate case in which to grant relief by way of judicial review. The appellant had at all stages, and retains, the possibility of seeking vindication of his constitutional and human rights before the District Court; if indeed, he can establish that any of his rights have been, or will be, irremediably breached by the enforcement process that is in being.

53. What can be said is that the High Court in this case engaged in a most careful, indeed meticulous, analysis of the issues raised in this litigation. I agree entirely with the High Court judge's analysis and find no error whatever in her approach.

54. Accordingly, and as previously stated, I consider that this appeal must be dismissed.

McCarthy J: I agree.

MacGrath J: I also agree.