

THE HIGH COURT

JUDICIAL REVIEW NO.

BETWEEN/

THE DIRECTOR OF PUBLIC  
PROSECUTIONS

Applicant

- AND -

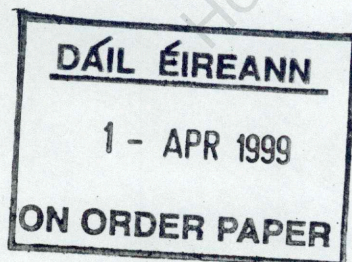
THE PRESIDING JUDGE OF THE  
DUBLIN CIRCUIT CRIMINAL COURT  
ON THE 12<sup>TH</sup> NOVEMBER, 1998,  
NAMELY HIS HONOUR JUDGE CYRIL  
KELLY

Respondent

- AND -

PHILIP SHEEDY

Notice Party



STATEMENT GIVING GROUNDS OF  
APPLICATION FOR JUDICIAL REVIEW

MICHAEL A. BUCKLEY  
CHIEF STATE SOLICITOR,  
OSMOND HOUSE,  
LITTLE SHIP STREET,  
DUBLIN 8.

REF: BRC/AB  
W.P. REF: BRCSTAT10.AB

2/99

THE HIGH COURT

1999 No. 72 JLC

JUDICIAL REVIEW NO.

BETWEEN/

Filed in Court 22/2/99  
David Lawler  
Asst. Registrar

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

- AND -

THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL COURT ON  
THE 12<sup>TH</sup> NOVEMBER, 1998, NAMELY HIS HONOUR JUDGE CYRIL KELLY

Respondent

- AND -

PHILIP SHEEDY

Notice Party

STATEMENT GIVING GROUNDS OF APPLICATION  
FOR JUDICIAL REVIEW

- A. Applicant's name: The Director of Public Prosecutions.
- B. Applicant's address: 14/16 Merrion Square, Dublin 2.
- C. Applicant's description: Statutory Officer, pursuant to the provisions of the Prosecution of Offences Act, 1974.
- D. Relief sought:-
  - 1. Judicial Review in the form of an Order of Certiorari quashing the Order made by the Honourable Circuit Judge on the 12<sup>th</sup> day of November, 1998, whereby he suspended the balance of the sentence previously imposed on the Notice Party, on the 20<sup>th</sup> of October, 1997.

All necessary Orders and Warrants required to implement the Orders made by His Honour Judge Joseph Matthews on the 11<sup>th</sup> June, 20<sup>th</sup> October and 6<sup>th</sup> November, 1997.

3. Further or other relief.
4. Costs.

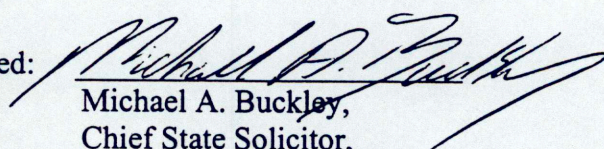
E. Grounds upon which relief is sought:-

1. The Respondent acted in excess of jurisdiction in purporting to vary the sentence of imprisonment imposed on the Notice Party at a time when a final Order had been made in respect thereof.
2. At the time when the purported variation of sentence was made, the Respondent had no seisin of the case and the case was never properly before him.
3. The Respondent acted in excess of jurisdiction and contrary to the principles of natural and constitutional justice in purporting to vary the said sentence when the Applicant had not been notified that any application in respect thereof was intended to be made.
4. The Respondent acted in excess of jurisdiction in purporting to vary the sentence of imprisonment previously imposed by another judge of the Circuit Court.

F. Name and registered place of business of the Solicitor for the Applicant:-  
The Chief State Solicitor, Osmond House, Little Ship Street, Dublin 8.

Dated this 19<sup>th</sup> day of February 1999

Signed:

  
Michael A. Buckley,  
Chief State Solicitor,  
Solicitor for the Defendants,  
Osmond House,  
Little Ship Street,  
Dublin 8.

**To: The Registrar,  
The Central Office,  
Four Courts,  
Dublin 7.**

**AND**

**To: The County Registrar,  
(on behalf of the Respondent),  
Arai Uí Dhalaigh,  
Inns Quay,  
Dublin 7.**

**AND**

**To: Philip Sheedy,  
66, Newtown Park,  
Leixlip,  
Co. Kildare.**

Houses of the Oireachtas

THE HIGH COURT

JUDICIAL REVIEW NO.

1999 72 JK

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

- AND -

Filed in Court 22/2/99  
David Fenwick  
Att. Registrar

THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL COURT ON  
THE 12<sup>TH</sup> NOVEMBER, 1998, NAMELY HIS HONOUR JUDGE CYRIL KELLY

Respondent

- AND -

PHILIP SHEEDY

Notice Party

AFFIDAVIT OF CIARA O'NEILL

I, Ciara O'Neill, Stenographer of the Department of Justice aged eighteen years and upwards DO MAKE OATH and say as follows:-

1. I am a Stenographer employed by the Department of Justice and I was present in Court and prepared a transcript of proceedings heard by His Honour Judge Matthews on the 11<sup>th</sup> of June, 1997 involving the above named Notice Party. I make this Affidavit from facts within my own knowledge, save where otherwise appears, and wherso appearing I say and believe the same to be true and accurate.

2. I beg to refer to a true copy of the transcript prepared by me as aforesaid, upon which, marked with the letter "A" I have signed my name prior to the swearing hereof.

**SWORN** the 19<sup>th</sup> day of Feb. 1999  
by the said *Ciana O'Neill*  
at *Arden Sq Arden Quay*  
*Dublin 4*

in the County of the City of Dublin  
before me a <sup>KB</sup> ~~Commissioner~~ for  
~~Oaths~~/Practising Solicitor, for the  
High Court and I know the  
Deponent.

*Liam W. M. G.*

DEPONENT

*Ardeen Denny*

COMMISSIONER FOR OATHS <sup>KB</sup>

PRACTISING SOLICITOR

Filed by Michael A. Buckley, Chief State Solicitor, Osmond House, Little Ship Street,  
Dublin 8.

Dated this 19<sup>th</sup> day of February 1999.

Houses of the Oireachtas

**THE HIGH COURT**

**JUDICIAL REVIEW NO.**

**BETWEEN/**

**THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

**Applicant**

**- AND -**

**THE PRESIDING JUDGE OF THE  
DUBLIN CIRCUIT CRIMINAL COURT  
ON THE 12<sup>TH</sup> NOVEMBER, 1998,  
NAMELY HIS HONOUR JUDGE CYRIL  
KELLY**

**Respondent**

**- AND -**

**PHILIP SHEEDY**

**Notice Party**

**AFFIDAVIT OF BRIAN McCREARY**

**MICHAEL A. BUCKLEY  
CHIEF STATE SOLICITOR,  
OSMOND HOUSE,  
LITTLE SHIP STREET,  
DUBLIN 8.**

**REF: BRC/AB  
W.P. REF: BRCAFF10.AB**

**2/99**



THE HIGH COURT

1999 72 JRC

JUDICIAL REVIEW RECORD NO.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

- AND -

THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT  
CRIMINAL COURT ON THE 12<sup>TH</sup> NOVEMBER, 1998 NAMELY  
HIS HONOUR JUDGE CYRIL KELLY

Respondent

- AND -

PHILIP SHEEDY

Notice Party

Filed in Court 23/2/99  
David Fowler  
Amt. Registrar

AFFIDAVIT OF BRIAN McCREARY

I, Brian McCreary, Senior Legal Clerk of the Office of the Chief State Solicitor,  
Osmond House, Little Ship Street, Dublin 2, aged 18 years and upwards, DO MAKE  
OATH and say as follows:-

1. I am a Senior Legal Clerk in the Office of the Chief State Solicitor, who acts on behalf of the above named Applicant in criminal proceedings brought against the Notice Party. I make this Affidavit from facts within my own knowledge, save where otherwise appears, and whereso appearing I say and believe the same to be true and accurate.

2. I beg to refer to a true copy of the Indictment and Book of Evidence in proceedings brought by the Director of Public Prosecutions against the Notice Party herein in respect of offences of dangerous driving causing death, contrary to Section 53(1) of the Road Traffic Act, 1961 as amended, and driving with excess alcohol, contrary to Section 49(7) of the Road Traffic Act, 1961 as inserted by Section 10 of the Road Traffic Act, 1994, upon which, clasped together and marked with the letter "A" I have signed my name prior to the swearing hereof.
  
3. I am informed that the Notice Party was arraigned in respect of these charges on the 11<sup>th</sup> of June, 1997 before his Honour Judge Joseph Matthews and pleaded guilty to Counts 1 and 3 in the Indictment aforesaid. The matter was then adjourned for sentence to the 20<sup>th</sup> of October, 1997.

I am informed that on the 20<sup>th</sup> of October, 1997 Judge Matthews ordered that the Notice Party be imprisoned for a period of 4 years in respect of Count 1 to be reviewed on the 20<sup>th</sup> of October, 1999 and further ordered that the Notice Party be disqualified from holding a driving licence for 12 years.

I beg to refer to certified copies of the said Orders made on the 11<sup>th</sup> of June and 20<sup>th</sup> October, 1997 aforesaid, upon which, clasped together and marked with the letter "B" I have signed my name prior to the swearing hereof. In addition I beg to refer to a true copy of the transcript of the said proceedings as exhibited in the Affidavits of Ciara O'Neill and Ailbhe Kavanagh, when produced.

4. Thereafter, I understand that on the 6<sup>th</sup> of November, 1997 Counsel on behalf of the Notice Party applied to Judge Matthews to vacate that part of the Order of the 20<sup>th</sup> of October, 1997 which had set down the 20<sup>th</sup> of October, 1999 as a review date for the said sentence, and the Court granted the said application.

I beg to refer to a certified copy of the said Order of the 6<sup>th</sup> of November, 1997 upon which, marked with the letter "C" I have signed my name prior to the swearing hereof. In addition I beg to refer to a true copy of the transcript of the said proceedings, as exhibited in the Affidavit of Brenda Colohan, when produced.

5 I am informed that this matter appeared in the Circuit Court list on the 12<sup>th</sup> of November, 1998. The Notice Party was represented by Counsel and the matter came before the Respondent who ordered that the balance of the sentence imposed on the Notice Party be suspended on the Notice Party's entering a bond to be of good behaviour for a period of 3 years.

I beg to refer to a certified copy of the said Order of the 12<sup>th</sup> of November, 1998, upon which, marked with the letter "D" I have signed my name prior to the swearing hereof.

In addition, I beg to refer to a true copy of the transcript of the said proceedings, as exhibited in the Affidavit of Michelle McGeever, Stenographer, when produced.

In this regard I say that I have obtained copies of all Psychologist and Probation Reports which were on the Circuit Court file in relation to these proceedings. It would appear that the said reports were prepared for the purpose of the original sentencing of the Notice Party by Judge Matthews on 20<sup>th</sup> October, 1997 and were before the Court on that date.

I beg to refer to the copies of the said reports, upon which, clasped together and marked with the letter "E" I have signed my name prior to the swearing hereof.

6. I say that I have carried out extensive enquiries in this office and it would appear that the State was not notified as to the Notice Party's intention to have this matter mentioned before the Circuit Court on the 12<sup>th</sup> of November, 1998 as aforesaid. I understand that Stephen Brown, a legal clerk in this office who was due to attend on the 12<sup>th</sup> of November, 1998, noticed the matter in the list on the 11<sup>th</sup> of November, 1998. As appears from his Affidavit Mr. Brown queried how this could be, in circumstances where a review date had been fixed for the 20<sup>th</sup> October, 1999. (In this regard it would appear that Mr. Brown had not noted that the review date had in fact been vacated at that stage.) As a result, Mr. Brown brought the file with him to the Circuit Court on the following day.

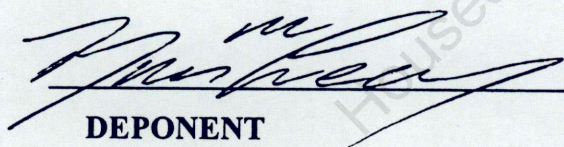
7. I say that I first learned that the Notice Party had been released from custody when I received a phone call from Sergeant Michael Whelan, of Tallaght Garda Station. Sgt. Whelan had apparently been contacted by the widower of Anne Ryan. Mr. Ryan apparently enquired as to how the Notice Party had been released from custody. I

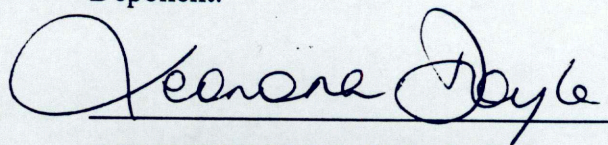
understand that the Gardaí were not notified as to the making of the Application to Judge Kelly as aforesaid.

8. In the premises I pray this Honourable Court for relief in the terms of the Statement of Grounds herein.

**SWORN** the 19<sup>th</sup> day of February 1999  
by the said *BEAN MCCREARY*  
at *55 Dame Street*

in the County of the City of Dublin  
before me a Commissioner for  
Oaths/Practising Solicitor, for the  
High Court and I know the  
Deponent.

  
**DEPONENT**

  
**COMMISSIONER FOR OATHS/  
PRACTISING SOLICITOR**

Filed by Michael A. Buckley, Chief State Solicitor, Osmond House, Little Ship Street,  
Dublin 8.

Dated this 19<sup>th</sup> day of February 1999.

**THE HIGH COURT**

**JUDICIAL REVIEW NO.**

**BETWEEN/**

**THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

**Applicant**

**- AND -**

**THE PRESIDING JUDGE OF THE  
DUBLIN CIRCUIT CRIMINAL COURT  
ON THE 12<sup>TH</sup> NOVEMBER, 1998,  
NAMELY HIS HONOUR JUDGE CYRIL  
KELLY**

**Respondent**

**- AND -**

**PHILIP SHEEDY**

**Notice Party**

**AFFIDAVIT OF STEPHEN BROWN**

**MICHAEL A. BUCKLEY  
CHIEF STATE SOLICITOR,  
OSMOND HOUSE,  
LITTLE SHIP STREET,  
DUBLIN 8.**

**REF: SB/AB  
W.P. REF: SBAFF10.AB**

**2/99**

**THE HIGH COURT**

**JUDICIAL REVIEW NO.**

**BETWEEN/**

MM 72 JK

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Applicant**

- AND -

**THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL COURT ON  
THE 12<sup>TH</sup> NOVEMBER, 1998, NAMELY HIS HONOUR JUDGE CYRIL KELLY**

**Respondent**

- AND -

**PHILIP SHEEDY**

**Notice Party**

**AFFIDAVIT OF STEPHEN BROWN**

✓

I, Stephen Brown, Legal Clerk, of the Office of the Chief State Solicitor, Osmond House, Little Ship Street, Dublin 8, aged eighteen years and upwards **DO MAKE OATH** and say as follows:-

1. I am a Legal Clerk in the Office of the Chief State Solicitor, and I make this Affidavit from facts within my own knowledge, save where otherwise appears, and whereso appearing I say and believe the same to be true and accurate.

Filed in Court 22 February 1999  
David Fenlon  
Asst. Registrar

Houses of the Oireachtas

2. I say that on the evening of the 11<sup>th</sup> of November, 1998 I noticed that the proceedings against the Notice Party herein were listed in the Circuit Court list for the following day. I noted from the file that the Notice Party had been sentenced on the 20<sup>th</sup> October, 1997 with a review date for the 20<sup>th</sup> October, 1999. For this reason I entered question marks on my copy of the Circuit Court list, together with the words "Review 20/10/99" and I beg to refer to a true copy of my Circuit Court list, upon which, marked with the letter "A" I have signed my name prior to the swearing hereof.
3. I say that I had not been notified as to the listing of this matter prior to noticing same in the Circuit Court list as aforesaid. A copy of the Court list was given by me, as a matter of course, to Ms. Eileen Creedon the head of the Criminal Trials Section on the evening of 11<sup>th</sup> of November. I have no recollection of discussing this particular matter with her or indeed with anyone else either in my office or in the office of the Applicant. Having noted this matter in the list, I brought the file with me to the Circuit Court on the following day.
4. On the morning of the 12<sup>th</sup> of November, 1998 while at Court I recall enquiring of Mr. Luigi Rea, B.L., Counsel for the Notice Party, as to the listing of the case. I do not recall his response. This case was one of 23 files I would have brought with me to Court that morning. I would have had discussions with Counsel appearing for both prosecution and defence and also with Gardaí in connection with a number of cases. Although I do not specifically recall making any submission to the Court. It appears from the transcript of proceedings prepared herein that I informed the Court that there was a review date.
5. I did not contact the investigating Garda as I did not have this case listed for review of sentence on the 12<sup>th</sup> of November, 1998. I have now been made aware that the investigating Garda was not in Court that day. I have no recollection of discussing this matter with anyone having left Court. I would have completed a

Case Report form on the evening of the 12<sup>th</sup> of November, 1998 and submitted that form to the Applicant's office in the normal course of events informing them of the listing and the result. I understand that this form went directly to the fees section in that office.

SWORN the 19<sup>th</sup> day of February 1999

by the said Stephen Braan

at 55 Dame Street

in the County of the City of Dublin

before me a ~~Commissioner for~~

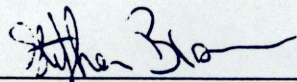
~~Oaths~~/Practising Solicitor, for the

High Court and I know the

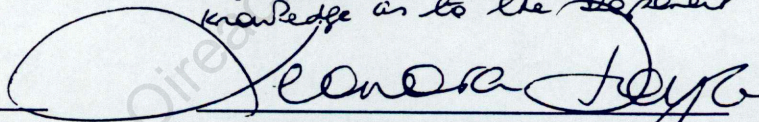
Brian McCreevy who certifies in ~~the~~

Deponent.

knowledge as to the Deponent



DEPONENT



~~COMMISSIONER FOR OATHS~~

PRACTISING SOLICITOR

Filed by Michael A. Buckley, Chief State Solicitor, Osmond House, Little Ship Street, Dublin 8.

Dated this 19<sup>th</sup> day of February 1999.



**THE HIGH COURT**

**JUDICIAL REVIEW NO.**

**BETWEEN/**

**THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

**Applicant**

**- AND -**

**THE PRESIDING JUDGE OF THE  
DUBLIN CIRCUIT CRIMINAL COURT  
ON THE 12<sup>TH</sup> NOVEMBER, 1998,  
NAMELY HIS HONOUR JUDGE CYRIL  
KELLY**

**Respondent**

**- AND -**

**PHILIP SHEEDY**

**Notice Party**

**AFFIDAVIT OF AILBHE KAVANAGH**

**MICHAEL A. BUCKLEY  
CHIEF STATE SOLICITOR,  
OSMOND HOUSE,  
LITTLE SHIP STREET,  
DUBLIN 8.**

**REF: BRC/AB  
W.P. REF: BRCAFF13.AB**

**2/99**

**THE HIGH COURT**

1999 **JUDICIAL REVIEW NO. 72**

**BETWEEN/**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Applicant**

**- AND -**

**THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL COURT ON  
THE 12<sup>TH</sup> NOVEMBER, 1998, NAMELY HIS HONOUR JUDGE CYRIL KELLY**

**Respondent**

**- AND -**

**PHILIP SHEEDY**

**Notice Party**

*Filed in Court 22/2/99  
David Lawler  
Ant. Registrar*

**AFFIDAVIT OF AILBHE KAVANAGH**

**I, Ailbhe Kavanagh, Stenographer of Irish Stenographers Limited, 4b Arran Square,  
Dublin 7 aged eighteen years and upwards DO MAKE OATH and say as follows:-**

1. I am a Stenographer employed by Irish Stenographers Limited and I was present in Court and prepared a transcript of proceedings heard by His Honour Judge Matthews on the 20<sup>th</sup> of October, 1997 involving the above named Notice Party. I make this Affidavit from facts within my own knowledge, save where otherwise appears, and whereso appearing I say and believe the same to be true and accurate.

2. I beg to refer to a true copy of the transcript prepared by me as aforesaid, upon which, marked with the letter "A" I have signed my name prior to the swearing hereof.

**SWORN** the <sup>th</sup> 19 day of Feb 1999  
by the said *Albhe Kavanagh*  
at *Aradan Sq Aradan Quay*  
*Dublin 7*

in the County of the City of Dublin  
before me a <sup>th</sup> ~~Commissioner for~~  
~~Oaths~~/Practising Solicitor, for the  
High Court and I know the  
Deponent.

*Albhe Kavanagh*

DEPONENT

*Aideen Donnelly*

<sup>th</sup> ~~COMMISSIONER FOR OATHS/~~  
PRACTISING SOLICITOR

Filed by Michael A. Buckley, Chief State Solicitor, Osmond House, Little Ship Street,  
Dublin 8.

Dated this 19<sup>th</sup> day of February 1999.

**THE HIGH COURT**

**JUDICIAL REVIEW NO.**

**BETWEEN/**

**THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

**Applicant**

**- AND -**

**THE PRESIDING JUDGE OF THE  
DUBLIN CIRCUIT CRIMINAL COURT  
ON THE 12<sup>TH</sup> NOVEMBER, 1998,  
NAMELY HIS HONOUR JUDGE CYRIL  
KELLY**

**Respondent**

**- AND -**

**PHILIP SHEEDY**

**Notice Party**

**AFFIDAVIT OF MICHELLE McGEEVER**

**MICHAEL A. BUCKLEY  
CHIEF STATE SOLICITOR,  
OSMOND HOUSE,  
LITTLE SHIP STREET,  
DUBLIN 8.**

**REF: BRC/AB  
W.P. REF: BRCAFF11.AB**

**2/99**

**THE HIGH COURT**

**JUDICIAL REVIEW NO.**

1999 No 72 J.A

**BETWEEN/**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Applicant**

- AND -

**THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL COURT ON  
THE 12<sup>TH</sup> NOVEMBER, 1998, NAMELY HIS HONOUR JUDGE CYRIL KELLY**

**Respondent**

- AND -

**PHILIP SHEEDY**

**Notice Party**

**AFFIDAVIT OF MICHELLE McGEEVER**

**I, Michelle McGeever, Stenographer of Irish Stenographers Limited, 4b Arran Square,  
Dublin 7 aged eighteen years and upwards DO MAKE OATH and say as follows:-**

1. I am a Stenographer employed by Irish Stenographers Limited and I was present in Court and prepared a transcript of proceedings heard by His Honour Judge Kelly on the 12<sup>th</sup> of November, 1998 involving the above named Notice Party. I make this Affidavit from facts within my own knowledge, save where otherwise appears, and whereso appearing I say and believe the same to be true and accurate.

Filed in Court 22/2/99  
David Lamb  
Asst. Registrar

2— I beg to refer to a true copy of the transcript prepared by me as aforesaid, upon which, marked with the letter "A" I have signed my name prior to the swearing hereof.

SWORN the 19<sup>th</sup> day of Feb 1999  
by the said *Michelle McGeehan*  
at *Arkan Sq Arkan*  
*Quay, D. 7.*  
in the County of the City of Dublin  
before me a <sup>AD</sup> ~~Commissioner for~~  
~~Oaths~~ Practising Solicitor, for the  
High Court and I know the  
Deponent.

*Michelle McGeehan*  
DEPONENT

*Ardren Danelly*  
AD · ~~COMMISSIONER FOR OATHS/~~  
PRACTISING SOLICITOR

Filed by Michael A. Buckley, Chief State Solicitor, Osmond House, Little Ship Street,  
Dublin 8.

Dated this 19<sup>th</sup> day of February 1999.

**THE HIGH COURT**

**JUDICIAL REVIEW NO.**

**BETWEEN/**

**THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

**Applicant**

**- AND -**

**THE PRESIDING JUDGE OF THE  
DUBLIN CIRCUIT CRIMINAL COURT  
ON THE 12<sup>TH</sup> NOVEMBER, 1998,  
NAMELY HIS HONOUR JUDGE CYRIL  
KELLY**

**Respondent**

**- AND -**

**PHILIP SHEEDY**

**Notice Party**

**AFFIDAVIT OF BRENDA COLOHAN**

**MICHAEL A. BUCKLEY  
CHIEF STATE SOLICITOR,  
OSMOND HOUSE,  
LITTLE SHIP STREET,  
DUBLIN 8.**

**REF: BRC/AB  
W.P. REF: BRCAFF14.AB**

**2/99**

**THE HIGH COURT**

1999 **JUDICIAL REVIEW NO.** 72

**BETWEEN/**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Applicant**

**- AND -**

**THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL COURT ON  
THE 12<sup>TH</sup> NOVEMBER, 1998, NAMELY HIS HONOUR JUDGE CYRIL KELLY**

**Respondent**

**- AND -**

**PHILIP SHEEDY**

**Notice Party**

*Filed in Court 22/2/99  
David Fowler  
Asst. Registrar*

*Houses of the Oireachtas*

**AFFIDAVIT OF BRENDA COLOHAN**



**I, Brenda Colohan, Stenographer of Irish Stenographers Limited, 4b Arran Square,  
Dublin 7 aged eighteen years and upwards DO MAKE OATH and say as follows:-**

1. I am a Stenographer employed by the Irish Stenographers Limited and I was present in Court and prepared a transcript of proceedings heard by His Honour Judge Matthews on the 6<sup>th</sup> of November, 1997 involving the above named Notice Party. I make this Affidavit from facts within my own knowledge, save where otherwise appears, and whereso appearing I say and believe the same to be true and accurate.



I beg to refer to a true copy of the transcript prepared by me as aforesaid, upon which, marked with the letter "A" I have signed my name prior to the swearing hereof.

**SWORN** the 19<sup>th</sup> day of Feb 1999  
by the said Brenda Colohan  
at Arden Sq Arden Quay  
D-7

in the County of the City of Dublin  
before me a <sup>HD</sup> ~~Commissioner~~ for  
~~Oaths~~/Practising Solicitor, for the  
High Court and I know the  
Deponent.

Brenda Colohan.

DEPONENT

Aileen Denneley

AK

~~COMMISSIONER FOR OATHS~~

PRACTISING SOLICITOR

Filed by Michael A. Buckley, Chief State Solicitor, Osmond House, Little Ship Street,  
Dublin 8.

Dated this 19<sup>th</sup> day of February 1999.

ESSO

113(99)

JUDICIAL REVIEW

2335

**THE HIGH COURT**

THE 22ND DAY OF FEBRUARY 1999

RE:-

THE DIRECTOR OF PUBLIC PROSECUTIONS

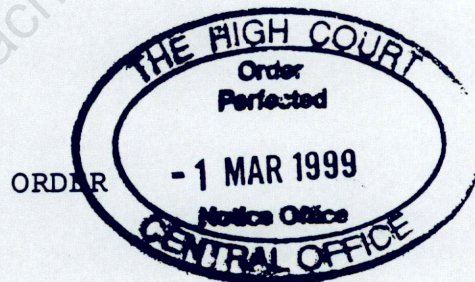
AND

THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL COURT ON THE 12TH DAY OF NOVEMBER 1998 NAMELY HIS HONOUR JUDGE CYRIL KELLY

AND

PHILIP SHEEDY

Nature of Document:-



Entering Fee:-

.....TWO..... Pages

Solicitor:-

Address CHIEF STATE SOLICITOR

G.1.

THE HIGH COURT

JUDICIAL REVIEW

No 72 JR 1999

Monday the 22nd day of February 1999

BEFORE MR JUSTICE BARR

**BETWEEN**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**APPLICANT**

**AND**

**THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL  
COURT ON THE 12TH DAY OF NOVEMBER 1998 NAMELY HIS**

**HONOUR JUDGE CYRIL KELLY**

**RESPONDENT**

**AND**

**PHILIP SHEEDY**

**NOTICE PARTY**

Upon Motion of Counsel for the Applicant made ex parte unto the Court this day for leave to apply by way of an application for judicial review for the following reliefs

- (1) An Order of Certiorai quashing the Order made by the Honourable Circuit Judge on the 12th day of November 1998 whereby he suspended the balance of the sentence previously imposed on the Notice Party on the 20th day of October 1997
- (2) All necessary Orders and warrants required to implement the Orders made by His Honour Judge Joseph Matthews on the 11th June 20th October and 6th November 1997

- (3) Further or other relief
- (4) Costs

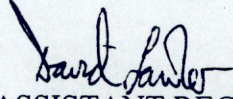
as set forth in paragraph D in the Statement dated the 19th day of February 1999 signed by the Solicitor for the Applicant

Whereupon and on reading the Statement and the Affidavits of Brian McCreary Stephen Brown Ailbhe Kavanagh Brenda Colohan Michelle McGeever and Ciara O'Neill all filed in Court this day verifying the facts set out in the said Statement and the exhibits referred to in said Affidavit

And on hearing said Counsel

IT IS ORDERED

- (1) that the Applicant do have leave to apply by way of application for judicial review for the reliefs set forth at paragraph D in the aforesaid Statement on the grounds set forth therein at paragraph E
- (2) that the said Applicant do serve an originating Notice of Motion together with copies of the aforesaid Statement and verifying Affidavit and of this Order on the County Registrar on behalf of the Respondent and on the Notice Party
- (3) that the costs of this application and Order be reserved

  
ASSISTANT REGISTRAR

Chief State Solicitor  
Solicitor for the Applicant

**Note** The Applicant is required to comply with Order 84 Rules 22 and 23 of the Rules of the Superior Courts and to notify the Respondent/Notice Party of the provisions of Order 84 Rule 22(4)

et72JR

**THE HIGH COURT**  
**RECORD NO. 73 1999**  
**JUDICIAL REVIEW**

**BETWEEN:**

**THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

**Applicant**

**- AND -**

**THE PRESIDING JUDGE OF THE  
DUBLIN CIRCUIT CRIMINAL COURT  
ON THE 12<sup>th</sup> NOVEMBER 1998, NAMELY  
HIS HONOUR JUDGE CYRIL KELLY**

**Respondent**

**-AND-**

**PHILIP SHEEDY**

**Notice Party**

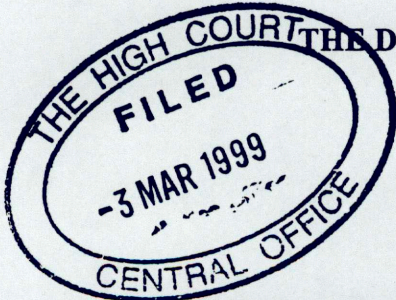
**NOTICE OF MOTION**

**MICHAEL A. BUCKLEY  
CHIEF STATE SOLICITOR  
OSMOND HOUSE  
LITTLE SHIP STREET  
DUBLIN 8**

THE HIGH COURT  
JUDICIAL REVIEW

Record No. 72 JR 1999

BETWEEN/



THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

- and -

THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL COURT ON  
THE 12<sup>th</sup> DAY OF NOVEMBER 1998, NAMELY HIS HONOUR JUDGE CYRIL  
KELLY

Respondent

-and-

PHILIP SHEEDY

Notice Party

NOTICE OF MOTION

TAKE NOTICE that on the *15<sup>th</sup>* day of *March* 1999, at the hour of 11.00 a.m. in the forenoon or at the first available opportunity thereafter Counsel acting on behalf of the above named Applicant will apply to this Honourable Court sitting at Court No.     , the Four Courts, Chancery Place, Dublin 7 for the following relief:-

*22/3/99 F.M.*

*25.3.99 PH  
To Laffay J.*

1. Judicial Review in the form of an Order of Certiorari quashing the Order made by the Honourable Circuit Judge on the 12<sup>th</sup> day of November, 1998, whereby he suspended the balance of the sentence previously imposed on the Notice Party, on the 20<sup>th</sup> of October, 1997.
2. All necessary Orders and Warrants required to implement the Orders made by His Honour Judge Joseph Matthews on the 11<sup>th</sup> June, 20<sup>th</sup> October and 6<sup>th</sup> November, 1997.
3. Further or other relief.

4. Costs.

**WHICH APPLICATION** will be grounded upon the proceedings already had herein, the Order of this Honourable Court made the 22<sup>nd</sup> day of February 1999 granting leave to apply for Judicial Review herein, the within Notice of Motion, an Affidavit of Service of the within Notice of Motion and the foregoing documents, the nature of the case and the reasons to be offered.

Dated this 3<sup>rd</sup> day of *March* 1999

Signed: *Michael A Buckley*

Michael A. Buckley  
Solicitor for the Applicant  
Chief State Solicitor  
Osmond House  
Little Ship Street  
Dublin 8

To: The Registrar  
Central Office  
Four Courts  
Dublin 7

And The County Registrar  
On behalf of the Respondent  
Aras Ui Dhalaigh  
Inns Quay  
Dublin 7

THE HIGH COURT  
JUDICIAL REVIEW  
REC. NO.72 JR 1999

BETWEEN/

THE DIRECTOR OF PUBLIC  
PROSECUTIONS

APPLICANT

AND

THE PRESIDING JUDGE OF THE DUBLIN  
CIRCUIT CRIMINAL COURT ON THE 12<sup>TH</sup>  
DAY OF NOVEMBER 1998, NAMELY HIS  
HONOUR JUDGE CYRIL KELLY

RESPONDENT

AND

PHILIP SHEEDY

NOTICE PARTY

STATEMENT OF OPPOSITION TO THE  
APPLICANT'S APPLICATION FOR  
JUDICIAL REVIEW ON BEHALF OF THE  
NOTICE PARTY

MICHAEL J. STAINES & CO.,  
SOLICITORS,  
LINCOLN HOUSE,  
LINCOLN LANE,  
SMITHFIELD,  
DUBLIN 7.



THE HIGH COURT

JUDICIAL REVIEW

REC. NO.72 JR 1999

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

-AND-

THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL COURT ON  
THE 12<sup>th</sup> DAY OF NOVEMBER 1998, NAMELY HIS HONOUR JUDGE CYRIL  
KELLY

RESPONDENT

-and-

PHILIP SHEEDY

NOTICE PARTY

STATEMENT OF OPPOSITION TO THE APPLICANT'S APPLICATION FOR  
JUDICIAL REVIEW ON BEHALF OF THE NOTICE PARTY

1. It is denied that the Applicant is entitled to the Relief claimed at paragraph D of the Statement Grounding this Application for Judicial Review or to any relief.
2. It is denied that the Respondent acted in excess of jurisdiction in making the Order of the 12<sup>th</sup> day of November 1998.
3. It is denied that a final Order was made in respect of the Notice Party herein as his sentence had originally been made subject to a review. It is and has been the accepted practice before the Dublin Circuit Criminal Court that applications to vary a review, to re-instate a review and/or to bring a review date forward in respect of sentenced prisoners will be heard and determined. The Applicant has been aware of this practice and has not objected in principal to such applications and has participated in same. Accordingly it was the established Court practice that the Notice Party, as a person sentenced to imprisonment subject to a review, could be the subject of a further Court order varying the review date or reviewing the sentence imposed. The Applicant acknowledges this practice of applications to vary Orders of the Court as regards sentence by his reliance on the further Order of His Honour Judge Joseph Matthews on the 6<sup>th</sup> November 1997 in which the review dated was apparently vacated.
- (c) It is denied that at the time of the Order of the 12<sup>th</sup> November 1998 the Respondent did not have seisin of the case. The Respondent was then the presiding judge of the Dublin

Circuit Criminal Court list by direction of the President of the Circuit Court (as acknowledged by the Applicant herein) and this matter was heard and dealt with by the Respondent in his capacity as presiding judge. The Notice Party will further rely upon the grounds as set out in paragraph 7 below.

- (D) It is denied that the matter was not properly before the Respondent. The Respondent was then the presiding judge over the Dublin Circuit Criminal Court list. It is acknowledged by the Applicant herein that the matter was listed in the Court list for the 12<sup>th</sup> November 1998 and the matter was thereby properly before the said learned Presiding Judge.
- (E) It is denied that the Respondent acted in excess of jurisdiction and contrary to the principle of natural and constitutional justice in purporting to vary the sentence of the Notice Party. The Applicant was notified that the application was listed for hearing as is acknowledged in the Affidavits filed on behalf of the Applicant. Furthermore the Applicant was represented in Court on the 12<sup>th</sup> November 1998 and made representations to the Court. The Respondent or Notice Party are not responsible for the failure of the Chief State Solicitor's Office to seek instructions from the Applicant, the failure to instruct Solicitor or Counsel to appear, the failure to make an application for second calling or for an adjournment, or the failure to make any further representations in relation to the Order made by the Respondent or for the failure to inform the prosecuting Garda of the listing.
- (F) It is denied that the Respondent acted in excess of jurisdiction in purporting to vary the sentence of imprisonment previously imposed by another Judge of the Circuit Court. The Notice Party in this case had originally been granted a review of his sentence and was entitled to apply to have that review re-instated and brought forward. It is the practice in the Dublin Circuit Criminal Court that one Judge can and will deal with another Judge's review. In particular a Judge may and frequently does deal with the case of another Judge where that Judge is not available or is no longer sitting in the Dublin Circuit Criminal Court. It is also possible for a Judge to deal with a case of another Judge when requested or permitted to do so by that other Judge. In this case the Judge who imposed the original sentence was no longer sitting in the Dublin Circuit Court and no suggestion is made in these proceedings that the Respondent had no express or implied consent to deal with the review on my application to reinstate the review from the Judge who originally imposed sentence subject to review.
- (G) If (which is denied) the Applicant is entitled to the Relief claimed at paragraph D 1 it is denied that this Honourable Court has jurisdiction to grant the relief claimed at Paragraph D 2 of the Statement Grounding this Application for Judicial Review. It is denied that this Honourable Court has original jurisdiction as regards the issue of Warrants or Orders for the enforcement of Orders of the Circuit Court.
- (H) If (which is denied) the Respondent acted in excess of jurisdiction or contrary to the principles of natural and constitutional justice the Applicant is not entitled to the relief claimed or any relief. The Applicant has been guilty of delay in taking these proceedings. The Applicant was aware from the outset of the Order made on the 12<sup>th</sup> November 1998. The Applicant, through his Solicitor, had been aware of the listing of the case before the 12<sup>th</sup> November 1998. The Applicant was represented in Court on the 12<sup>th</sup> November 1998 and made representation to the Court in respect of this matter. The result of the case was communicated to the Applicant at his office on the 12<sup>th</sup> November 1998. The Affidavits filed on behalf of the Applicant are silent as to the date on which the prosecuting Garda became aware of the Order made on the 12<sup>th</sup> November 1998 and as to the date upon which the prosecuting Garda communicated with the office of the Chief

State Solicitor. The Applicant has failed to give an explanation as to the delay in commencing these proceedings. In these circumstances, the Applicant is not entitled to the relief claimed on discretionary grounds. The Notice Party, in particular had intended to apply for late leave to appeal to the Court of Criminal Appeal or alternatively to reinstate and bring forward his right of review under the original sentence and the Notice Party has by reason of the course taken by the Respondent, and acquiesced in by the Applicant, failed to pursue these options.

(I) If (which is denied) the Respondent acted in excess of jurisdiction or contrary to the principles of natural and constitutional justice the Applicant is not entitled to the relief claimed or any relief. The Notice Party was not responsible for any defect (which is denied) in the manner in which the Order was made. The Notice Party has acted in good faith and in the belief that a valid Order had been made. The Notice Party has taken steps to reintegrate himself into society. The Notice Party would be greatly prejudiced if he were to be re-incarcerated as a result of these proceedings. Furthermore the re-incarceration of the Notice Party may result in a denial of his ability to appeal the said sentence and/or a denial of his right to apply for a reinstatement of his review.

3. NAME AND REGISTERED PLACE OF BUSINESS OF SOLICITOR FOR THE NOTICE PARTY;

Michael J. Staines & Company  
Solicitors  
Lincoln House  
Lincoln Lane  
Smithfield  
Dublin 7

Dated this 17<sup>th</sup> day of March 1999

SIGNED Michael J. Staines & Co.

Michael J. Staines & Company  
Solicitors  
Lincoln House  
Lincoln Lane  
Smithfield  
Dublin 7

THE HIGH COURT

JUDICIAL REVIEW

REC. NO.72 JR 1999

BETWEEN/

THE DIRECTOR OF PUBLIC  
PROSECUTIONS

APPLICANT

AND

THE PRESIDING JUDGE OF THE DUBLIN  
CIRCUIT CRIMINAL COURT ON THE 12<sup>TH</sup>  
DAY OF NOVEMBER 1998, NAMELY HIS  
HONOUR JUDGE CYRIL KELLY

RESPONDENT

AND

PHILIP SHEEDY

NOTICE PARTY

AFFIDAVIT OF PHILIP SHEEDY

MICHAEL J. STAINES & CO.,  
SOLICITORS,  
LINCOLN HOUSE,  
LINCOLN LANE,  
SMITHFIELD,  
DUBLIN 7.

THE HIGH COURT  
JUDICIAL REVIEW  
REC. NO.72 JR 1999

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

-AND-

THE PRESIDING JUDGE OF THE DUBLIN CIRCUIT CRIMINAL  
COURT ON THE 12<sup>th</sup> DAY OF NOVEMBER 1998, NAMELY HIS  
HONOUR JUDGE CYRIL KELLY

RESPONDENT



-and-

PHILIP SHEEDY

NOTICE PARTY

AFFIDAVIT OF PHILIP SHEEDY

I, PHILIP SHEEDY, Architect of 66 Newtown Park, Leixlip in  
the County of Kildare aged 18 years and upwards MAKE  
OATH and say as follows:

1. I say that I am the Notice Party in the above entitled proceedings and I make this Affidavit on his behalf. I make this Affidavit from facts within my own knowledge save where otherwise appears and where so otherwise I believe same to be true.
2. I make this Affidavit for the purposes of verifying the facts alleged in the Statement of Opposition to the Applicant's Application.
3. I say that I first appeared in the Dublin Circuit Criminal Court on Bill 826/96 on or about the 8<sup>th</sup> December 1996 at which time my arraignment was adjourned as the matter was not ready to proceed. I appeared again in March and May 1997 and the matter was again adjourned. On one occasion I believe the case was adjourned as my Counsel was unavailable. To the best of my recollection on each of those occasions the case was listed before His Honour Judge Cyril Kelly who was then the presiding judge of the Dublin

Circuit Criminal Court. I am informed and believe that it was the invariable practice of the Respondent to carefully read and consider and familiarise himself with the Books of Evidence and reports in cases listed before him.

4. On the 11<sup>th</sup> day of June 1997 my case was again listed before His Honour Judge Cyril Kelly presiding over the Dublin Circuit Criminal at Circuit Court No. 24. To the best of my recollection I was arraigned and pleaded guilty to Counts Numbers 1 and 3 on the indictment before His Honour Judge Cyril Kelly and not before His Honour Judge Joseph Matthews. I beg to refer to page 1 of Exhibit "A" of the Affidavit of the said Ciara O'Neill in which it refers to Judge Kelly. I say that the case was then adjourned for the purpose of obtaining an Probation and Welfare Service Report and for further Medical Reports to be obtained.
5. On the 20<sup>th</sup> October 1997 my case was transferred to His Honour Judge Joseph Matthews who sentenced me to 4 years imprisonment with a review after I had served 2 years. After the imposition of sentence I was in considerable shock as, I was not expecting a sentence of such considerable length. I say that until that day I had never heard of a "review" of sentence and I had no real understanding of what that meant. After the sentence was imposed I was taken into custody by the Prison Officers and brought to a holding cell. After a short period of time I was visited by my Counsel and Solicitor and I spoke with them just outside the holding cell. At that time I was advised that an application should be made to vary the Order by deleting the review and as I had no knowledge of the criminal justice system I believed I had no option but to agree to such an application. I was informed that an application would be made to the Judge on a later date.
6. I say that I was not present in Court on the 6<sup>th</sup> November 1997 when this matter was mentioned before His Honour Judge Matthews. I say that it is apparent from the transcript that the prosecution did not intervene at that time when an application to vary the review was made to the Court.
7. I say that the first time I heard that the review date had been lifted was when I was called to the office of the Governor of the Training Unit, Glengarriff Parade. I was informed by the Governor that the review had been lifted and he indicated his surprise to me. At that time I still had no proper understanding of the nature of the review or what it would have meant to me. I say that I now understand that where a review of sentence has been granted, the sentence has not been finalised and that the Circuit Court retains a power to review the matter at a later date and in some cases to change the date of review, and to release the prisoner before the expiration of the full sentence. I say

that I am informed and believe that this has been the long standing practice of the Dublin Circuit Criminal Court and that no objection to this practice has been taken by the Director of Public Prosecutions. I served the first 6 month of my sentence in the Training Unit, Glengarrif Parade and in or about Easter 1998 I was transferred to Shelton Abbey.

8.

During the course of my imprisonment I decided to change solicitor as I wished to have the benefit of the advice of a solicitor who was more experienced in criminal law. I retained my present solicitor, Michael Staines to advise and act for me in relation to my sentence from in or about the beginning of 1998. In or about November 1998 I was visited by my solicitor while in Shelton Abbey and I was informed that my case was now listed in Circuit Court 24 on the 12<sup>th</sup> November 1998. I was informed at that time that an application to reinstate the review would be made together with an application to have the review date brought forward. I say that I have been informed and believe that it a regular occurrence to have matters listed for the purpose of applying for an early review date and/or for the purpose of reinstating or vacating a review date. I am also informed and believe that there have been occasions when such applications for early review dates have been made successfully. I am also informed and believe that on some occasions one Judge, without objection from the Director of Public Prosecutions, reviews the sentence that has been imposed by another Judge. I am informed and believe that this occurs not only where one Judge has retired or been elevated to the High Court but also where a Judge no longer sits regularly on that particular Circuit or in that particular Court. I was made aware that it was likely that the matter would not be dealt with on the 12<sup>th</sup> November 1998, but was likely to be adjourned to a later date. I also understood that if the application was unsuccessful it was the intention of my new solicitor and new counsel to seek leave to appeal against my sentence on the grounds that it was an excessive sentence. I was informed that a judgment of the Court of Criminal Appeal in the case of DPP -v- Paul McDonald on the 27<sup>th</sup> July 1998 gave good reason to hope for a favourable result on any late appeal that I might make.

9.

I say that on 12<sup>th</sup> November 1998 I was brought to the Dublin Circuit Court from Shelton Abbey by prison officers. At this time I was represented by Counsel instructed by my new Solicitor. I recall my Counsel asking me to point out the Garda or any of the witnesses who were present in the Court as he did not know them. It was at all times my belief and that of my legal advisers that the Director of Public Prosecutions was aware of the matter being listed

and would be represented in Court by the Chief State Solicitor's Office or by Counsel and would have all relevant personnel present in Court to deal with my application. I say that I have been informed and believe that it is quite usual to list cases for mention before the President of the Dublin Circuit Criminal Court who sits in Circuit Court 24.

At that time His Honour Judge Matthews was no longer sitting on a regular basis in the Dublin Circuit Criminal Court.

10.

I say that when the case was mentioned, His Honour Judge Kelly dealt with the case. I say and believe that at all times he was acting within his jurisdiction and in the exercise of his discretion in so doing. I say and believe that the learned Judge was conversant with this case as the matter had appeared before him on previous occasions. I have been informed and believe that the learned Judge, while sitting as the presiding judge of the Dublin Circuit Criminal Court list, studied the cases due before him each morning and was always conversant with the salient features of each case. I say that I have been informed and believe that His Honour Judge Kelly was in the habit of having read Probation and other Reports that were on the Court file in each case before the start of Court proceedings. I also note from the papers filed on behalf of the Director of Public Prosecutions in these proceedings, that there is no evidence whether His Honour Judge Matthews was aware or unaware, or agreed with or acquiesced in the listing of the matter before the Respondent and subsequent Order and I am not aware as to whether he was ever so aware or so agreeable and had no reason to suspect at any time that he was not.

11.

I say that I am surprised that the Director of Public Prosecutions makes the case in the Statement Grounding his Application for Judicial Review that he was not notified that any application in respect of the matter was to be made on the 12<sup>th</sup> November 1998. It is clear from the Affidavit of Stephen Brown, Legal Clerk, that he had noticed the matter in the list the day before. I also note that Mr. Brown does not indicate how long he had the list in his possession prior to noticing the case in the list. I say that it is also clear that the list was brought to the attention of the Solicitor who was Head of the Criminal Trials Section of the Chief State Solicitor's Office. I say that it is clear from the foregoing that the Chief State Solicitor, as Solicitor acting on behalf of the Director of Public Prosecutions, had knowledge of the listing of the case. I say that I have been informed and believe that it is the normal, proper and accepted practice that information in the possession of the Chief State Solicitor is treated as information in the possession of the Director of Public Prosecutions. Indeed I have been informed and believe that contact with the Director of



Public Prosecutions is nearly always made through the office of the Chief State Solicitor. I say that it appears from the papers furnished by the Director of Public Prosecutions in these proceedings that no action was taken on foot of the notification received by the Chief State Solicitor's Office. There was no attempt to brief Counsel (or indeed to ensure that a Solicitor would be available to deal with the matter) and no consideration as to whether Counsel should be briefed or as to whether instructions should be sought. There was no attempt to contact the Garda involved in the case or, if deemed necessary, to contact the office of the Director of Public Prosecutions.

12.

I say that it is also apparent from the transcript of proceedings on the 12<sup>th</sup> November 1998 that the prosecution was in fact represented in Court on that day. It is apparent from the Affidavit of Stephen Brown that he made representations to the Court. It is unclear from the Affidavits filed on behalf of the Director of Public Prosecutions why Counsel or Solicitor did not make representation to the Court. I am informed and believe that it is usual for Counsel appearing for the Director in another matter before the Court to be asked to stand in to deal with another case in which the nominated Counsel is not present in Court or for legal executives to indicate no objections when Counsel is not present in matters where the Director of Public Prosecutions is not objecting to any order. I say and believe that if the prosecution were not in a position to deal with this case an application for an adjournment could have been made. It is apparent from the transcript that no attempt was made to either put the matter to second calling, to seek an adjournment or to contest the Order being made by the learned Judge. Furthermore it is apparent from the Affidavit of Stephen Brown and from his intervention recorded on the transcript that the prosecution believed that the review date of the 20<sup>th</sup> October 1999 still stood.

13.

I say that it is also apparent from the Affidavit of Stephen Brown that the Office of the Director of Public Prosecutions was informed on the 12<sup>th</sup> November 1998 of the listing of the case and the result of the case on that date. I say that no action appears to have been taken by the Director as a result of that information. I say that the Affidavits filed on behalf of the Director of Public Prosecutions are silent as to the date on when the prosecuting Garda became aware of the Order of the 12<sup>th</sup> November 1998. The Affidavit of Brian McCreery is also silent as to the date when he was contacted by Sergeant Michael Whelan of Tallaght Garda Station. I say that the Director of Public Prosecutions has not given any explanation as to his delay in seeking review of these proceedings.

14.

I say that since my release from custody on the 12<sup>th</sup> November 1998 I have been trying to put my life back in order after serving 13 months in prison. I am now 31 years old and I have returned to my occupation as an Architect with South Dublin County Council. I have accepted my guilt in relation to my driving on the 9<sup>th</sup> March 1996 and the death and injury that resulted. I feel, and have felt, great remorse and sorrow for what I did on that day. I accept and have always accepted that I was to be punished by the criminal justice system for my actions. I believed that on my release from custody as Ordered by the Dublin Circuit Criminal Court on the 12<sup>th</sup> November 1998 that the custodial part of my sentence had been served and that I would not be called upon to serve the balance remaining unless I breached my bond to be of good behaviour for a period of three years. I have not breached that bond and it is and has been my intention to live the rest of my life as a law abiding citizen. I am attending a psychiatrist at present as my role in causing the accident and the entire proceedings that followed have had a profound effect on my psychological well being and life.

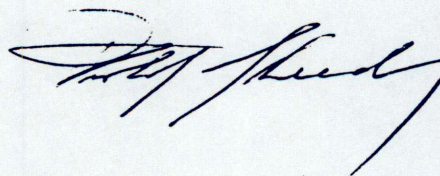
15.

I say and believe that I have been dealt with in accordance with law by the Dublin Circuit Criminal Court. I further say and believe that at this time it would be prejudicial to me and render an injustice to me if I were to be re-incarcerated as a result of these proceedings. I have made every attempt to reintegrate myself in society since my release. Furthermore if I am re-incarcerated I may be denied the opportunity to apply for leave to appeal in light of the further time that has elapsed since my sentence was imposed or be prejudiced in the conduct of such an appeal. It is also the case that the lapse of time might prejudice any attempt I would make to have my review re-instated before the Dublin Circuit Criminal Court.

16.

I therefore pray this Honourable Court for an Order refusing the leave sought in the Applicant's Statement Grounding this Application for Judicial Review.

Sworn by the said PHILIP SHEEDY  
this 19<sup>th</sup> day of March 1999  
at 4 An Spire Alley

  
in the County of the City of Dublin  
before me a Commissioner for Oaths/  
Practising Solicitor and I know the  
Deponent

  
.....  
COMMISSIONER FOR OATHS/  
PRACTISING SOLICITOR

This Affidavit is filed on behalf of the Notice Party by Michael J. Staines & Company Solicitors, Lincoln House, Lincoln Lane, Smithfield, Dublin 7 this 19<sup>th</sup> day of MARCH, 1999.

Houses of the Oireachtas

1999

No. 72JR

## THE HIGH COURT

Thursday, the 25<sup>th</sup> day of March 1999

(Judicial Review)

BEFORE MISS JUSTICE LAFFOY

Between:

The Director of Public Prosecutions

Applicant

and

The Presiding Judge of the  
Circuit Criminal Court on

12<sup>th</sup> November 1998 namely

His Honour Judge Cyril  
Kelly

and

Philip Steedy

Respondent

Notice Party

The Notice of Motion for an  
Order of Certiorari by way  
of Judicial Review having been  
at hearing this day in

the presence of Counsel for  
the Applicant and Counsel for  
the Notice Party and there  
being no Appearance for or  
on behalf of the Respondent

Whereupon and Counsel for  
the Notice Party stating that  
the Notice Party has withdrawn  
his Opposition to the making  
of this Order

The Court DOETH GRANT

an Order of Certiorari quashing  
the Order made by the  
Respondent on the 12<sup>th</sup> day of  
November 1998 whereby he  
suspended the balance of the  
sentence previously imposed on  
the Notice Party on the  
20<sup>th</sup> day of October 1997

And IT IS ORDERED  
that the Governor of Mountjoy  
Prison do receive and hold  
the Notice Party Philip Sheedy  
on foot of the Order and warrant  
of Judge Matthews dated the  
20<sup>th</sup> day of October 1997

and the Order of ~~the~~ Judge  
Matthews <sup>Judge of the Circuit Court</sup> dated the 6<sup>th</sup> day of  
November 1997 wherein IT

WAS ORDERED that the  
Review date in the Order of the said  
Circuit Judge dated the 20<sup>th</sup>  
day of October 1997 be vacated  
(the Notice Party having undertaken  
to surrender himself to the said  
Governor of Mountjoy Prison)

Liberty to Apply

And the Court doth make no  
Order as to costs

Chief State Solicitor  
Solicitor for the Applicant

Gerard Jaeger  
Assistant Registrar

Number  
of Order  
On Index .....

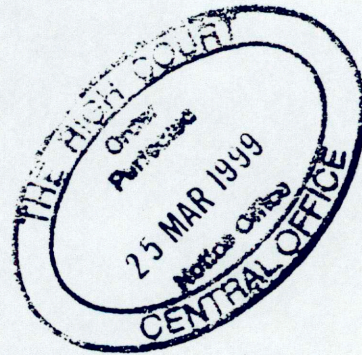
3416

**THE HIGH COURT**

The 25<sup>th</sup> day 1102-4 1999

v.

Houses of the Oireachtas



Mr. ....  
Solicitor.

Address .....

.....

✓ ✓

D26 (1.4.1999)

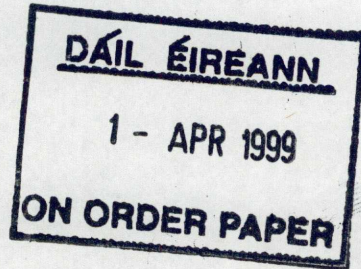
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Affidavits and other Court Documents  
filed in the High Court in Judicial  
Review of Proceedings in the case of  
the Director of Public Prosecutions,  
His Honour Judge [redacted]

and [redacted]

To be checked



[Laid by Office of the Attorney General]