

**THE HIGH COURT**

**[2020 No. 177 JR]**

**BETWEEN**

**DAVID PRESCOTT**

**APPLICANT**

**- AND -**

**THE GOVERNOR OF CLOVERHILL PRISON**

**RESPONDENT**

**- AND -**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**NOTICE PARTY**

**JUDGMENT of Mr Justice Max Barrett delivered on 31st March, 2020.**

1. The background facts to this application can usefully be detailed by way of summary chronology:

- 26.12.2019. Mr Prescott, who has been charged with various serious offences, is brought to the District Court and remanded in custody to 31.12.2019 for a bail application.
- 31.12.2019. Mr Prescott is remanded in custody with consent to bail on conditions.
- 16.01.2020. District Court accedes to requested change in bail conditions.
- 21.01.2020. Mr Prescott seeks, and is granted, a variation of his curfew conditions.
- 31.01.2020. Mr Prescott is arrested for breach of bail conditions, his bail is subsequently revoked, and he is remanded in custody.
- 27.02.2020. Mr Prescott makes a further bail application. Here, it is useful to quote from the statement of grounds:

*"[T]he learned District Judge indicated that he was of the opinion that it was necessary to establish a change in circumstance in order for him to consider the application for bail in accordance with the decision of Mr Justice Charleton [in Roche (aka Dumbrell) v. Governor of Cloverhill Prison [2014] IESC 53]. The learned judge accepted that there was a common law power to hear a bail application, but he held that in the absence of the Defence outlining substantive changes in circumstance, he would not consider the application....The learned District Judge held that in the absence of [a] change in circumstances being provided he was not going to consider a bail application".*

2. Mr Prescott is aggrieved by the manner in which the District Judge proceeded and now seeks, *inter alia*, "(i) [a]n [o]rder of certiorari...quashing the refusal of [the] District Judge...to entertain a bail application...(ii)...a Declaration...that the establishment of a change of circumstances is not a condition precedent to the making of the application for bail before one [District Court] Judge...subsequent to a revocation of an earlier grant of

*bail by another [District Court] Judge...(iii) a Declaration...that the learned District Court Judge was required to consider the application sought to be moved...".*

3. Section 28(2) of the Criminal Procedure Act 1967 ("Act of 1967"), as amended, provides as follows:

*"Refusal of bail at a particular appearance before the District Court shall not prevent a renewal of the application for bail at a subsequent appearance or while the accused is in custody awaiting trial".*

4. This provision merely states what can be done, or, more exactly, identifies a thing that the law does not prevent from being done, in a stated factual matrix. It does not state *how* matters are to be done. It is common case between the parties that the Act of 1967 does not provide a complete code supplanting all aspects of the common law concerning bail; hence the common law continues to be of relevance.
5. At the hearing of the within application, not a little time was spent on the judgment delivered by Charleton J. for the Supreme Court in *Roche, op. cit.*, in particular, the following observation, under the heading "*Bail at common law*", at para.15:

*"The reality is that at common law, an accused is entitled to apply to the court of trial or to the High Court for bail and is under no limitation in that regard, save perhaps that of showing a relevant and appropriately probative change of circumstances where repeated calls on that jurisdiction are made".*

6. One of the challenges that appears to an outsider to present for the Supreme Court when it is called upon to interpret the law is (i) to state the law with sufficient certainty as to perform, if the court might respectfully observe, a useful function within the courts system, but also (ii) to allow sufficient flexibility in what it states, *inter alia*, so as not to create unforeseen difficulties when its interpretation of a given law or legal issue plays out in later practice. That is all that the court sees in the above-quoted text: Charleton J. (a) states the common law position and (b) indicates a condition that may (not must) be applied where there are repeated calls on the bail jurisdiction of a court, thus leaving it to the relevant judge, as master of the proceedings before her/him, to decide how best to proceed in any one instance.
7. In his clear exposition of the law on behalf of the Supreme Court, Charleton J. provides a complete answer to the within application. Thus, (i) this is a case in which repeated call was made on the bail jurisdiction of the District Court, (ii) the District Court was therefore entitled to seek a relevant and appropriately probative change of circumstances by way of limitation on the right of the accused to apply for bail, and that is what the District Court judge did. No such change presenting here, that was the end of matters. There is no legal flaw presenting in how the District Court judge acted: he enjoys, in effect, the prior *imprimatur* of the Supreme Court in proceeding as he did. This case is not one involving a situation akin to that which presented in *Gill v. Connellan* [1987] IR 541 where a District Judge effectively precluded an applicant's solicitor from making such points as the

solicitor wished to make. In the within matter, for the reasons stated, the learned District Judge acted with all propriety and in accordance with law.

8. Issues as to alternative remedies, *res judicata* and the form which might be expected of a statute amending the common law were raised by the respondent. There is, however, no need for the court to consider these issues when so complete and clear an answer to Mr Prescott's application is provided by relatively recent Supreme Court authority.
9. It follows from the foregoing that all the reliefs sought must, respectfully, be refused.