

STATE (M. DERMOTT)

1984 No. 415 S.S. ✓ 12

THE HIGH COURT

THE STATE (DEREK McDERMOTT) .V. DISTRICT JUSTICE SEAN MAGEE

Judgment of Mr. Justice O'Hanlon delivered on the 22nd day of April 1985

In this case I propose to allow the cause shown and to discharge the conditional order of certiorari granted by Mr. Justice Egan on the 31st July, 1984.

The Prosecutor appeared before the District Court on a charge of driving a mechanically propelled vehicle without being insured, contrary to the provisions of the Road Traffic Acts, 1961/68, and on conviction was sentenced to six months' imprisonment, and disqualified from driving for a period of three years. The case was dealt with by the Respondent on the 9th April, 1984, on which occasion the Prosecutor was unrepresented and pleaded guilty to the charge.

At an earlier sitting of the District Court, he had applied to District Justice Peter A. Connellan for a Certificate for Legal Aid under the provisions of the Criminal Justice (Legal Aid) Act, 1962, as extended by the Criminal Procedure (Amendment) Act, 1973, but this application was unsuccessful. The present application to quash the conviction of the Prosecutor is based upon the contention that District Justice Connellan wrongfully refused to grant a Legal Aid Certificate when the Prosecutor, because of his lack of means, and having regard to the comparative seriousness of the charge he was facing, should have been granted legal representation at the expense of the State.

In the grounding affidavit the Prosecutor avers that when he applied for the Legal Aid Certificate he was unemployed and in receipt of £62 per week from the Department of Social Welfare, and had a wife and two young children to support. The application for Legal Aid was made on the 23rd February, 1984, and he said, further, that the motor car in relation to the user of which the charge was brought

had been disposed of by him within three weeks of the alleged offence (which was alleged to have occurred on the 16th August, 1984).

It is apparent from the affidavits which have been filed in this case that District Justice Connellan embarked upon the inquiry which he was required to make for the purpose of operating the provisions of the statutes relating to legal aid, and made a decision which it was within his jurisdiction to make that the Prosecutor had not satisfied him that the case was one where it was appropriate to grant a Legal Aid Certificate. I do not think it is appropriate to use the procedure by way of certiorari for the purpose of embarking upon what is in reality an appeal against an Order duly made by a District Justice, acting within the jurisdiction conferred upon him by statute, unless in the process of doing so there has been some patent failure on his part to observe fair procedures, as he is constitutionally required to do. The fact that the High Court might consider that it would have reached a different conclusion in relation to a particular application than that which was reached by the District Court is not, in my opinion, sufficient to justify it in quashing an Order apparently made within jurisdiction by a District Justice who must be presumed, until the contrary is shown, to have carried out his functions in a proper manner.

For this reason I find that there are no grounds for impugning the validity of the Order made by District Justice Magee when the case came on for trial before him on the 9th April, 1984.

*R. J. O'Hanlon*  
5/6/1985.