

APPROVED



**THE HIGH COURT
IN THE MATTER OF AN APPLICATION UNDER
ARTICLE 40.4.2° OF THE CONSTITUTION**

**Record No. 2026 1377 SS
Neutral Citation: [2026] IEHC 618**

BETWEEN:

JORDAN CRONIN

APPLICANT

-and-

**THE GOVERNOR OF CLOVERHILL PRISON and THE DIRECTOR OF PUBLIC
PROSECUTIONS**

RESPONDENTS

-and-

THE MINISTER FOR JUSTICE, HOME AFFAIRS, AND MIGRATION

NOTICE PARTY

JUDGMENT of Ms. Justice Cathleen Noctor delivered on 9 September 2026

Introduction

1. This judgment is delivered in respect of an inquiry pursuant to Article 40.4.2° of the Constitution into the lawfulness of the applicant's detention at Cloverhill Prison arising from an order of the District Court judge made on 26th August 2026. An Order opening the inquiry was made on 31st August 2026 and the inquiry was heard by me on 7th and 8th September 2026.

2. The inquiry arises against a backdrop of a dispute between the Minister for Justice, Home Affairs and Migration (“*the Minister*”) and certain solicitors about rates of payment in respect of representing persons accused of criminal offences in the District Court. As a result of this dispute, it appears that there are little or no solicitors willing to accept assignments under the new Criminal Justice (Legal Aid) (Amendment) Regulations 2026 (S.I. No. 303/2026) before certain District Courts. One consequence of the foregoing is that accused persons are regularly appearing before the District Court without legal representation, including at bail hearings.

3. Prior to the commencement of the hearing on 7th September 2026, the Director of Public Prosecutions (“*DPP*”) was joined as a respondent to the proceedings and the Minister was joined as a notice party.

4. Unfortunately, after the commencement of the inquiry on 7th September 2026, the live-link facilities from Cloverhill prison to the courtroom, and through which the applicant was appearing, malfunctioned. For this reason, the hearing was adjourned and concluded on the night of 8th September 2026. In circumstances where I was urged by counsel for the first named respondent (“*the Governor*”) and the Minister to consider certain judgments of the Supreme Court that were not provided to the court in the course of the hearing on 8th September 2026, I reserved this judgment until today, 9th September 2026, and in the interim carefully considered all of the written and oral submissions and the additional judgments to which I was referred.

Background and District Court Hearing

5. The applicant appeared before the District Court judge on 26th August 2026. He was charged with violent disorder contrary to section 15 of the Criminal Justice (Public Order) Act 1994.

6. In this inquiry, the parties had the benefit of the written transcript of the District Court hearing (*“the hearing”*). It is evident from the written transcript of the hearing (*“the transcript”*) that, in advance of the hearing, garda Adam Kelly (*“the prosecuting garda”*) prepared a five-page document containing information pertinent to his objection to bail. Such a document is colloquially referred to as a *“bail pack”* and this too was in evidence before this court. It is evident from the bail pack that the prosecuting garda proposed to object to bail on the basis that, if granted, the applicant *“would evade justice”*. The fact that he pursued this objection is clear from the transcript. The objection was, in essence, based on the applicant’s history of taking bench warrants. While the prosecuting garda addressed other matters in his evidence, the parties agree that he never raised an objection to bail pursuant to section 2 of the Bail Act 1997, as amended (*“section 2 objection”*).

7. Notwithstanding the foregoing, in the course of the hearing, the District Court judge asked the applicant what he had to say to the prosecuting garda’s statement or contention that *“there’s a risk that something similar could happen again if you were granted bail”* and *“the offence is a serious one and there’s a risk that if you were granted bail that you could commit another serious offence”*.

8. Before ruling on the matter of bail, the District Court judge told the applicant that there were *“two key points”*, namely *“how serious the alleged offence is”* and *“the likelihood of a reoffence if you were granted bail”* (page 6 of the transcript). In his ruling, the District Court judge said *“I have heard you and I have heard what the guard has said. In the circumstances I am going to remand you in custody, I am going to refuse bail. The reasons for that are that I believe that on your warrant history and also the seriousness of the charge against you and the circumstances, the proximity of where you are staying and where the injured party is living, I think there is a risk of reoffence. I am not comfortable with that risk and for that reason I am going to remand you in custody”* (page 7 of the transcript).

9. With the above being the outcome of the hearing, it is appropriate to consider in some more detail the events as they unfolded in the District Court hearing. At the outset, the applicant said that he had a solicitor and that he had *“tried to speak”* to him that very day but he was not available. The District Court judge then assigned legal aid. He then announced that *“this is a serious charge”* and told the applicant *“you need to have - - get legal advice and you need legal representation but we have to deal with the issue of bail today. Right”*.

10. Thereafter, it appears that the District Court judge was handed a copy of the *“bail pack”* insofar as he then explained the concept to the applicant. The bail pack was provided to the applicant after the hearing had commenced before the District Court judge. It appears that the District Court judge offered the applicant *“a few minutes”* to read the bail pack and told him to *“sit down and relax and read”* it and advised him that he could ask questions about it. Simultaneously, however, the District Court judge addressed the prosecuting garda as *“essentially it’s bench warrant history”* and the prosecuting garda immediately commenced giving evidence. This coincided with the time-period that was afforded to the applicant to read the bail pack. Indeed, when the applicant addressed the court while the prosecuting garda was giving evidence of his objections to bail, the District Court judge suggested that the applicant continue on reading the bail pack.

11. Shortly after this, the transcript records that the prosecuting garda offered to read the bail pack out. According to paragraph 8 of the affidavit sworn by the prosecuting garda in the inquiry, he avers that he did so because *“the applicant appeared to have difficulty reading it”*. The applicant’s solicitor avers that the applicant is illiterate. He further avers he was informed by the applicant’s mother that the applicant suffers from PTSD and mental health issues, cannot read, was an additional needs student and left school at a very young age. While no first-hand evidence of the latter difficulties have been put before the Court on behalf of the applicant, it is clear from the transcript that the prosecuting garda observed that the applicant

had difficulty reading the bail pack and he volunteered to (and did) read portions of the bail pack to the applicant while he was giving evidence. This precise sequence would not have been known to the applicant's solicitor when he swore an affidavit on 28th August 2026 because the transcript only became available following an Order for its release made on 1st September 2026. Indeed, in relation to the bail pack, the affidavit of the prosecuting garda avers, that “[w]hen the applicant appeared to have difficulty reading it, I read the objection aloud in court” (paragraph 8 of the affidavit). That said, it is clear from the transcript that only slightly in excess of two of the five pages of the bail pack were in fact read out to the applicant. The specifics of the 16 bench warrants upon which the prosecuting garda relied were not read out. However, the prosecuting garda directed the court to the details thereof in the bail pack. In terms of the two offences for which it was asserted that the applicant was on bail on the date of the alleged violent disorder, these were not read out to the applicant, but the prosecuting garda referred the court to the fact that “*they’re outlined in the document there aswell*”. The prosecuting garda gave evidence that “*as a result of what is outlined in the document, it is my belief that if Jordan Cronin is granted bail he will subsequently attempt to evade justice before the courts*”.

12. The prosecuting garda averred that, insofar as it was asserted that the applicant was illiterate or that he suffered from PTSD in a manner which affected his ability to participate in the bail hearing, neither concern was brought to his attention at any stage during his dealings with the applicant before the District Court judge. This averment is not disputed by the applicant but, in the view of this Court, this does not take away from the applicant's difficulties or the prosecuting garda's evidence of his observations concerning the applicant's “*difficulty reading*” the bail pack and which gave rise to the prosecuting garda reading portions of it to the applicant while giving evidence to the Court.

13. Thereafter, the dates of the bench warrants were not read out to the applicant, and the

District Court judge summarised them by reference to years (page 5 of the transcript) e.g. saying “[f]or 2023 there’s seven, 2022 there’s three”. On the occasion of each summary the applicant replied “yes”. Counsel for the DPP urged upon this court that exchanges should be read as meaning that the applicant was in a position to confirm the number of bench warrants that he had taken in any given year to the District Court judge. I disagree with this proposition, notwithstanding the fact that it is this court’s opinion that the real issues in the case do not turn on either interpretation. In this court’s view, none of these responses may reasonably be interpreted as an affirmation on the part of the applicant of the existence of a specific number of bench warrants for him in a specific year. The information appears to have been presented to the applicant as statements of fact (rather than questions) and after which the applicant said “yes”. In the course of this particular exchange (pages 5-6 of the transcript), the only answer provided by the applicant that might reasonably be interpreted as a positive affirmation is when the applicant said “yes” when it was put to him that he was (as of 26th August 2026) on bail for two offences (page 6 of the transcript).

14. It is clear from the evidence that the prosecuting garda opposed bail on an *O’Callaghan* basis (i.e. *People (Attorney General) v. O’Callaghan* [1966] IR 501) and specifically that, if granted bail, the applicant would evade justice.

15. In the course of the hearing, the District Court judge appears to have misinterpreted the evidence of the prosecuting garda. That this is so is apparent from the fact that on two occasions (recorded on page 6 of the transcript), the District Court judge asked the applicant what he had to say in respect of the prosecuting garda’s contention that “*there’s a risk that something similar could happen again if you were granted bail*” and “*if you were granted bail that you would commit another serious offence*”. Notably, both questions were predicated on the assumption that the presumption of innocence did not apply to the alleged violent disorder. In response to the District Court judge asking him what did he say to this particular contention,

the applicant said “*I understand that ...*”. He said nothing further prior to the District Court judge asking the prosecuting garda if any conditions might alleviate his concern. At this point, the prosecuting garda responded in the negative. He then gave evidence that the complainant resided in hostels on a particular street and “*so there could be further complications there in terms of meeting the witness or injured party. Again, like they reside very close. Its that kind of community at the moment as well where’s a lot of people availing of*” (page 7 of the transcript). While he did not finish this sentence before the District Court judge commenced speaking, it is not unreasonable to infer that the prosecuting garda intended to refer to persons availing of temporary accommodation in this particular area. At this point, upon enquiry from the District Court judge, the prosecuting garda confirmed that he could not determine whether or not the applicant and the complainant were known to each other. Thereafter, the District Court judge asked if the applicant had anything to say to this, and the applicant volunteered that he would not stay on Gardiner Street, would sign on every day and stay away from the area. In a further exchange, the applicant confirmed that he would change his address. Following this, the prosecuting garda’s position was “*my objection is as it stands Judge*”.

16. Thereafter, the District Court judge asked the applicant “*is there any witness you’d like to call or anybody else you’d like to call to give evidence on your behalf?*” and the applicant said no. The District Court judge asked the applicant if he understood what was happening and advised him that the hearing was not about the alleged offence and only concerned the issue of bail. He advised him that the “*two key points*” were “*how serious*” the alleged offence was and the likelihood of “*a reoffence*” if he was granted bail. Again, the latter assumes that the applicant had committed the alleged violent disorder. He informed the applicant that he had to make up his mind on those issues, asked the applicant if he wished to address him on them, and the applicant said that he would change his address and sign on. Thereafter, the District Court judge made his ruling in the terms set out above (at paragraph 8).

Position of the parties

17. At the outset of the hearing on 7th September 2026, and again on 8th September 2026, counsel for all parties confirmed to the court that they were in agreement that the law set out by Simons J. in *Ennis and others v. Governor of Cloverhill Prison* [2026] IEHC 599 (“**Ennis**”) was the law applicable to the inquiry before this court, albeit that other judgments of the superior courts were opened to the court. The agreement to the applicability of *Ennis* to the inquiry is also evidenced in the written submissions provided by all of the parties. Other judgments that were opened and relied upon in written and / or oral submissions, included *McDonagh v. Governor of Cloverhill Prison* [2026] IEHC 595 (“**McDonagh 2026**”), *Nevin and Others v. Governor of Castlerea Prison and Others* [2026] IEHC 601 (“**Nevin**”), *O’Hanlon v. Governor of Cloverhill Prison* [2026] IEHC 592, *Kiely v. Governor of Cloverhill Prison* [2026] IEHC 603 (“**Kiely**”), *Kinane v. Governor of Cloverhill Prison* [2026] IEHC 604 (“**Kinane**”), *McDonagh v. Governor of Cloverhill Prison* [2005] 1 IR 394 (“**McDonagh 2005**”) and *Doros v. The Governor of Cloverhill Prison* [2026] IEHC 610 (“**Doros**”).

18. While the written submissions delivered on behalf of the applicant and the DPP include submissions as to how both contend that the law should be applied to the established facts in this case, the written submissions on behalf of the Governor (and the Minister) were confined to submissions on the law itself. Indeed, the latter written submissions appear to be made not only in relation to the applicant herein, but name three other persons as “*applicants*” who are not parties to the inquiry. That aside, I have considered all of the written and oral submissions made on behalf of the parties.

19. In the course of the inquiry, counsel on behalf of the applicant appropriately accepted that the absence of legal representation at a bail hearing does not, of itself, render a bail hearing fundamentally flawed. However, in the applicant’s circumstances, he relied heavily on

paragraphs 80-84 of the judgment in *Ennis* (and lays emphasis on paragraph 81). Counsel for the applicant submitted that the applicant's case is one in which the complexity of the objection (including the section 2 objection raised of the District Court judge's own motion), the volume of written material, the need to test the disputed evidence and the personal circumstances of the accused (including his "*difficulty reading*" which is accepted) are such that he could not realistically meaningfully engage in the hearing without legal assistance and that "*effective legal representation [was] itself necessary to secure the fundamental opportunity to understand, test and answer the case for detention*" (paragraph 81 of the judgment in *Ennis*, emphasis added).

20. Counsel for the applicant also submitted that each of the following were fundamental flaws in the bail hearing:

(a) the failure to offer an adjournment to the applicant in order that he might avail of (or endeavour to avail of) legal advice and / or representation and, in particular given that the applicant indicated that he tried to contact his solicitor and that he was not available. It is submitted that, on the contrary, the District Court judge told the applicant that the charge was serious and that he needed to get legal advice and representation "*but we have to deal with the issue of bail today. Right*";

(b) the failure to inform the applicant that he had a right to cross-examine the prosecuting garda;

(c) the failure to inform the applicant that he could give evidence himself and advise him of the privilege against self-incrimination;

(d) while the prosecuting garda's objection to bail was based on *O'Callaghan* principles, namely that the applicant's history of bench warrants was such that he was unlikely to attend court if admitted to bail, the District Court judge ultimately refused bail on the basis of section 2 of the Bail Act 1997 i.e. that there was "*a risk of reoffence*" if the applicant

was admitted to bail. In respect of the foregoing, counsel for the applicant accepted that the District Court judge was not barred from raising section 2 of the Bail Act 1997 himself. However, he submitted that a fundamental flaw in the hearing was that the substance of section 2(2) was not considered by the District Court judge despite its consideration being mandatory. Further, he submitted that the applicant was denied the natural and constitutional justice of being made aware that an objection to bail of so serious a nature was being considered and was denied a proper opportunity, either by means of evidence or through submissions, to challenge such an objection. Counsel for the applicant maintained that bail was refused solely on section 2 grounds and, in the alternative, submitted that, at a minimum, the risk of reoffending was one of the reasons for refusing bail.

21. In respect of paragraph 20(a) above, counsel for the applicant also relied on *The State (Healy) v. Donoghue* [1976] IR 325 and also relied upon it and *McDonagh 2005* (including paragraphs 27 to 30 thereof) in respect of paragraph 20(d) above.

22. Counsel for the DPP laid emphasis on various portions of the transcript. He accepted that the prosecuting garda's sole objection to bail was based on the *O'Callaghan* principles. He submitted that, while there was no "*express invitation*" to the applicant to cross-examine the prosecuting garda, the transcript "*as a whole*" demonstrated that the applicant *was* given an opportunity to engage with the hearing, in the form of responding to questions asked of him by the District Court judge. Counsel for the DPP further accepted that the applicant was not expressly informed of his right to give evidence (nor, in that context, informed of the privilege against self-incrimination). However, he submitted that the requirement to inform him of the right to give evidence was effectively satisfied when the District Court judge said to the applicant (shortly after the commencement of the hearing) that "*I won't make up my mind until I hear what the guard says and until I hear what your response is and what case you're going to make*" (page 2 of the transcript). Counsel for the DPP ultimately accepted that this did not

inform the applicant of his right to give evidence. However, he submitted that this was an “*express invitation*” to deal with the substance of matters by way of submission. Counsel submitted that paragraph 92 of the judgment in *Ennis*, insofar as it mandates that an accused be afforded a proper opportunity to “*answer the objection [to bail], whether by evidence, oral submissions or both*” may be satisfied by inviting submissions only. Counsel for the DPP submitted that the applicant was informed of the privilege against self-incrimination when the District Court judge told him at the outset of the hearing that he was “*not dealing with the substance of the charge*”, and when he subsequently told him “*again we’re not dealing with the actual charge that’s against you or what actually happened on Gardiner Street but what [the prosecuting garda] is saying, and it’s relevant in that the allegation against you is a serious one, it relates to something that happened in the middle of the day effectively and that there’s a risk that something similar could happen again if you were granted bail*”. He submitted that the foregoing satisfied the requirement to caution the applicant in relation to the privilege against self-incrimination (within the “*third aspect*” so described at paragraph 92-94 of the judgment in *Ennis*) and relied on *Nevin* (and in particular paragraphs 55-57 thereof) in this regard. He brought this court’s attention to the fact, while one of the applicants in *Nevin* was giving evidence, the District Court judge advised “*Mr. Kelly, you mightn’t want to go down that road too far*” and this was found to be a satisfactory explanation of the privilege against self-incrimination. Counsel for the DPP submitted that the explanation of the privilege in the present case was “*better than*” that given in *Nevin*. In relation to the applicant being invited to participate in the proceedings, counsel for the DPP relied on the fact that (while accepting that the applicant was not informed of his own right to give evidence), before ruling on the matter, the District Court judge asked him “*is there any witness you’d like to call or any body else you’d like to call to give evidence on your behalf?*”. When pressed, counsel for the DPP accepted that the applicant was not expressly invited to cross-examine the prosecuting

garda or give evidence himself. However, it was contended that his rights were afforded to him insofar as he was expressly invited to deal with the objection by means of submission. He submitted that it was a “*constitutionally conducted bail hearing*” in the circumstances and in consequence relief under Article 40.4.2° did not arise.

23. With respect to the issue concerning legal representation, counsel for the DPP submitted that this was answered by the first line of paragraph 80 of the judgment in *Ennis*, namely “[t]he absence of legal representation does not, of itself, render a bail hearing fundamentally flawed”. He also relied on paragraph 31 of *Doros*, wherein a similar statement was made. With respect to the applicant’s reliance on *McDonagh 2005*, counsel for the DPP sought to distinguish it on the basis that it was a very unusual case and fundamentally different to the present one because, in *McDonagh 2005*, the District Court judge did not rule upon the garda objections based on *O’Callaghan* and, of his own motion, refused bail on grounds for which there was no evidence. He submitted that, if the District Court judge erred in respect of section 2 of the Bail Act 1997 in the present case, this error was severable and if there was an error in the formulation of refusal of bail, it was an error within jurisdiction. He cited paragraph 95 of the judgment in *Ennis* in support of this submission. This details the “*fourth aspect*” of the fundamental requirements (namely the adjudication aspect). Counsel for the DPP submitted that the District Court judge was not required to go through the statutory terms of section 2 of the Bail Act 1997, that the objection on *O’Callaghan* principles was not ignored and that, if there was an error, it was one within jurisdiction. When asked by this court to address the fact that in the present case, it was clear from the transcript that the applicant was not expressly informed of his right to cross-examine the prosecuting garda nor informed of the right to give evidence (and in that context of the privilege against self-incrimination), counsel for the DPP maintained that an individual error does not render Article 40.4.2° a remedy and that “*procedural deficiencies*” can exist without destroying the essential character of a bail

hearing. At this point counsel for the DPP relied on paragraph 116 of the judgment in *Ennis* by way of an example of why this was so. This recorded that Mr. Irwin (one of the applicants in *Ennis*) was asked by the judge if he had a solicitor. Mr. Irwin identified that he had one but said that he had not spoken to him and no further enquiry was conducted about the solicitor prior to the decision being made to refuse bail. There was no recorded attempt to contact the solicitor nor was Mr. Irwin expressly offered an adjournment to allow the possibility of legal representation to be explored. *Ennis* held that Mr. Irwin's detention was in accordance with law. This court will deal with this submission here rather than under the heading of "*Discussion*". It appears to this court, and as raised with counsel for both respondents and the Minister during the inquiry, paragraph 118 of the judgment in *Ennis* makes clear that (unlike in the present case), Mr. Irwin's lawyers did not make the case that the absence of legal representation deprived the proceedings of the character of a bail hearing cognisable in law but submitted that the particular circumstances of Mr. Irwin's hearing had prevented him from participating in the process in a meaningful way. Counsel for the DPP was asked to address the fact that, in *McDonagh 2026* (which judgment was elaborated upon in *Nevin*), the High Court held that the failure to offer an adjournment in the particular circumstances was a fundamental flaw. In the present case, counsel for the DPP submitted that the question was not whether there was a requirement to expressly offer a solicitor when one was not present and that the question was whether or not fair procedures were applied in the absence of a solicitor (relying on *Ennis* and *Doros* as referred to previously). In light of the decision in *McDonagh 2026* and indeed the *ratio decidendi* in *Ennis* (including at paragraphs 81-83), this court cannot and does not accept this submission.

24. With respect to the applicant's difficulty reading, counsel for the DPP maintained that there was no requirement to give the applicant the bail pack at all, that fair procedures were afforded by the prosecuting garda reading out the objection and that the manner in which this

was done did not give rise to a fundamental flaw.

25. Counsel for the Governor (and the Minister) placed great emphasis on the fact that the capacity to direct the release of a detained person notwithstanding the existence of a court order that is valid on its face applies to exceptional cases. He submitted that when one considered the transcript, and identified matters that could have been done better, then the appropriate course of action was for the applicant to apply for High Court bail. In response to a question from this court as to whether counsel was making the case for the “*alternative remedy*” of a conventional High Court bail application, counsel submitted that a remedy under Article 40.4.2° arises only if there has been a default of fundamental requirements and that, by reference to paragraphs 40-41 of the judgment in *Ennis*, a detention pursuant to a remand order will generally be regarded as being in accordance with law notwithstanding that the order may have resulted from an *intra vires* error. Reliance was placed on *AB v. The Chief International Protection Officer* [2025] IESC 23 [2025] 2 ILRM 305 and in particular paragraphs 90-95 concerning the “*narrow jurisdiction*” in terms of the availability of judicial review where there are adequate alternative remedies which address the relevant issues. The submission was made that relief is not available under Article 40.4.2° by virtue of the absence of *one* aspect of the fundamental requirement that an accused be afforded a meaningful opportunity to understand, test and answer the grounds upon which pre-trial detention is sought (in terms of paragraphs 80-96 of the judgment in *Ennis*). However, counsel was unwilling to identify any particular *number* of aspects of this fundamental requirement that would have to be breached before such relief should be available. He submitted that “*the hearing must be considered as a whole*” and relied on paragraph 127 of the judgment in *Ennis*. However, it is this court’s view that Simons J. stated the foregoing in the context of his considering whether there was a breach of *one* particular aspect of the fundamental requirement (there, the opportunity to cross-examine the prosecuting garda). Counsel for the Governor and the Minister further relied on Simons J.

stating “[i]t is necessary to assess the proceedings as a whole” at paragraph 115 of the judgment in *Ennis*. However, the foregoing must be considered in the context of the full paragraph in which this statement appeared. At paragraph 115, Simons J. was considering the fact that the District Court bail application was considered in two parts. There were two transcripts, and the legal submissions filed on behalf of the relevant applicant (Mr. Irwin) were filed before the second transcript was available. Of this, Simons J. said “[i]t is necessary to assess the proceedings as a whole by reference to both transcripts”. Counsel for the Governor (and the Minister) made the same argument as counsel for the DPP in respect of paragraph 116 of the judgment in *Ennis*, referred to at paragraph 23 above. He further submitted that the principle that the absence of legal representation was not coterminous with an unfair hearing disposed of the applicant’s submission concerning *The State (Healy) v. Donoghue* [1976] IR 325 and sought to distinguish *McDonagh 2026* on the basis that the applicant in that case had requested a solicitor whereas the present applicant did not. In an exchange with this court concerning the fact that having indicated that his solicitor was not available, the District Court judge told the applicant “*we have to deal with the issue of bail today. Right*”, counsel for the Governor (and the Minister) considered that this was an unfortunate remark but submitted that this court must consider the transcript of the hearing as a whole.

26. Further, counsel for the Governor (and the Minister) relied on *Nevin*, including paragraph 35, and submitted that the hearing retained the essential character of a contested bail hearing, that any deficiencies or errors concerned the conduct or outcome of that hearing rather than the absence of a fundamental requirement and that any errors were errors within jurisdiction.

27. Counsel for the Governor (and the Minister) further relied upon the decision in *Roche (Dumbrell) v. Governor of Cloverhill Prison* [2014] IESC 53 but again accepted that the applicable law was that as set out in *Ennis*. Finally, counsel sought to distinguish *McDonagh*

2005 on the basis that bail was refused in that case on grounds that had not been raised by the prosecuting garda and that the District Court judge in the present case explained the substance of the objections to bail to the applicant.

Applicable Principles

28. The applicant is detained pursuant to an order of a court of competent jurisdiction which is valid on its face. Accordingly, this inquiry is not concerned with whether or not the District Court judge was correct to refuse bail.

29. In *Ryan v. Governor of Midlands Prison* [2014] IESC 54, the Supreme Court reaffirmed the principle that not every error, illegality or procedural defect occurring within jurisdiction renders a detention unlawful. A distinction must be maintained between errors made in the exercise of jurisdiction and defects which destroy jurisdiction altogether.

30. The issue is whether there has been a default of fundamental requirements such that the detention is wanting in due process of law. Similar formulations are apparent throughout the authorities, including references to a "*fundamental flaw*" or a "*fundamental denial of justice*". The Superior Courts have repeatedly emphasised that these expressions are not merely descriptions of serious unfairness, rather, they refer to rare and exceptional situations where the proceedings may not properly be regarded as a hearing at all: see *SMcG v. Child and Family Agency* [2017] IESC 9 [2017] 1 IR 1 and *AB v. Chief International Protection Officer* [2026] IESC 23 [2025] 2 ILRM 305. These principles are discussed and applied in *Ennis*. The principles applicable to the present case are now well settled and in particular by virtue of *Ennis* and other similar judgments delivered by Simons J. in August 2026.

31. In *Ennis*, Simons J. held that, in the bail context, Article 40.4.2° relief is available only where the defect is of such gravity that the proceedings cannot properly be characterised as a bail hearing. At paragraphs 80 and 85 of the judgment in *Ennis*, Simons J. identified the essential enquiry as to whether the accused was afforded a meaningful opportunity to "*understand, test and answer*" the grounds upon which detention was sought.

32. The same approach was adopted in *Nevin* and more recently in *Kiely*, *Kinane* and *Doros*.

33. The authorities draw a clear distinction between deficiencies affecting the conduct of an otherwise functioning hearing and the omission of essential procedural stages such that no real hearing was conducted.

34. In *Ennis*, Simons J. set out the applicable principles in respect of the absence of legal representation (paragraphs 80-84). Thereafter (at paragraph 85), Simons J. stated “*the fundamental requirement is that the accused person be afforded a meaningful opportunity to understand, test and answer the grounds upon which pre-trial detention is sought*”. He identified four aspects of the fundamental requirement under the headings of: (1) notice; (2) the opportunity to test any evidence given in opposition to bail; (3) the requirement that an accused be afforded a proper opportunity to answer the objection; and (4) the District Court judge must adjudicate upon the objection actually advanced and give sufficient reasons to identify the basis upon which bail has been refused or existing bail has been revoked. The respondents and the notice party submitted that one cannot look at one “*aspect*” of the fundamental requirement in isolation, conclude that there was a fundamental flaw in respect of that aspect and then grant relief under Article 40.4.2°. This court fundamentally disagrees and is satisfied that this court is required to examine each one of the aspects individually. Indeed, to do otherwise would ignore the entire basis of *Nevin* and also the fact that Simons J. said that the “*various aspects*” were “*not intended as an exhaustive checklist*” and the ultimate question was whether the accused was afforded a meaningful opportunity to understand, test and answer the case for detention, or whether a fundamental requirement was wholly or effectively denied, such that the proceeding could not properly be regarded as a bail hearing at all.

Discussion

35. This case is quite straightforward in the following sense: it is agreed that the applicant was not expressly informed (let alone informed in intelligible terms) that he was entitled to cross-examine the prosecuting garda. It is further agreed that the applicant was not expressly informed of his right to give evidence (or within that advised of the privilege against self-incrimination). Thus, the District Court judge completely failed the applicant on two aspects (i.e. the second and third) of the fundamental requirement that the applicant be afforded a meaningful opportunity to understand, test and answer the grounds upon which the prosecuting garda objected to bail.

36. It is this court's opinion that the judgment of *Ennis* is lucid on this point and I reject any submissions made by the respondents and notice party to the effect that either failure or both failures can be ignored in favour of considering the proceedings as a whole. Likewise I reject the submission that one or other failure of this nature does not render Article 40.4.2° a remedy and that they are "*procedural deficiencies*" that exist without destroying the essential character of a bail hearing. In my view, submissions of this nature fly in the face of the *ratio decidendi* in *Ennis*. Similarly, there is no basis in law for suggesting that the requirement to advise the applicant of his right to cross-examine a witness or to give evidence himself may be satisfied by inviting the applicant to make submissions to the District Court judge. These failures are distinct failures. Each distinct failure is a fundamental flaw and cannot be rectified by anything recorded on the transcript. For these reasons alone, the hearing in the District Court cannot properly be regarded as a bail hearing in its entirety. This court is of the opinion that the applicant's case comes within the exceptional category of cases in which relief is available under Article 40.4.2°. Thus the applicant's detention is not in accordance with law.

37. This being the case, it is probably unnecessary for the court to consider the issues further. However, for the sake of completeness I have considered the other issues. It is my view that the applicant should have been offered an adjournment in order that he might

have endeavoured to avail of legal advice and / or representation. While the applicant did not request such an adjournment, his not making such a request must be considered in the context of the statement made by the District Court judge at the outset of the hearing. The applicant told the District Court judge that he had a solicitor, and that he had “*tried to speak*” to him that day and that he was not available. Thereafter, the District Court judge assigned legal aid. The substantive proceedings began with the District Court judge announcing that this is a serious charge, telling the applicant that he needed to have legal advice and legal representation but immediately stating thereafter “*we have to deal with the issue of bail today. Right*”. There was no compulsion to decide the issue of bail on the applicant’s first appearance on the charge before the court. The District Court judge’s statement could only convey the message that there could never be an adjournment before bail was determined. As stated at paragraph 23 above, I reject the DPP’s submission in the context of this case that “*the question is not whether there is a requirement to expressly offer a solicitor when one is not present and that the question was whether or not fair procedures were applied in the absence of a solicitor*”. In the particular circumstances of this case, and by analogy with *McDonagh* 2026, it is my view that the applicant should have been offered an adjournment and having regard to *McDonagh* 2026 and the *ratio decidendi* in *Ennis* (including at paragraphs 81-83). This failure was a fundamental flaw. If I am incorrect in my view that it was a fundamental flaw at the commencement of the hearing, I am also of the view that the failure to offer an adjournment most certainly became a fundamental flaw at the point in time at which the applicant’s reading difficulties became apparent. This was compounded by the fact that that the District Court judge embarked upon a consideration of refusing bail on section 2 grounds, albeit that neither “*section 2*” or “*the Bail Act 1997*” appear anywhere on the transcript. In the words of Simons J., the applicant “*was required to deal with a complex bail objection on the hoof*” (*McDonagh* 2026 paragraph 13 and *Nevin* paragraph 13) and in circumstances where it was agreed that the

applicant had “*difficulty reading*” and the bail pack that was provided to him during the currency of the hearing. In this regard, while an unrepresented accused person may, depending on the circumstances, be afforded a meaningful opportunity to understand, test and answer the case for detention, in my view, this was a case in which, certainly by the time that the applicant’s reading difficulties were apparent, the personal circumstances of the applicant were such that the applicant should have been offered an adjournment in anticipation that he might have the opportunity to endeavour to avail of legal assistance that would have allowed him to meaningfully engage with the objections to bail (see paragraphs 80-83 of the *Ennis* judgment). This fundamental flaw was exacerbated when section 2 of the Bail Act 1997 became a live issue in the case, at which time matters had most certainly reached a level at which he could not be expected to respond, without time to prepare, to a complex bail objection.

38. Somewhat intertwined with the above is the fact that the applicant was not given the bail pack in sufficient time to allow him to prepare a *meaningful* response. Basic fairness of procedures requires that the accused person be made aware in advance of the substance of the bail objection and be given sufficient time to understand it. In the present case, the bail pack was provided to the applicant after the commencement of the hearing and the applicant was invited to start reading and again invited to continue reading the bail pack while the prosecuting garda was giving his evidence. Be that as it may, the applicant had difficulty reading it and the prosecuting garda read out portions of it. However, the details of the warrants reproduced on pages 3-5 were not read out to him. Furthermore, and critically, the details of the offences for which the applicant was stated to have been on bail were not read out (nor indeed were the nature of the offences set out in the bail pack). The latter became critical in the context of the District Court judge’s consideration of the likelihood of the applicant committing a serious offence(s) in the event that he was admitted to bail. This was a fundamental flaw and breach of fair procedures in the view of this court. I reject the DPP’s submission that fair procedures

were achieved by the prosecuting garda reading out a portion of the bail pack.

39. Finally, the District Court judge was entitled to raise, of his own motion, the likelihood of the applicant committing a serious offence(s) if admitted to bail. However, having done so, and as indicated above, the appropriate course of action would have been to offer the applicant an adjournment in order that he might avail of legal advice and / or representation. While this does not affect my overall decision and, while the District Court judge could have made his ruling in clearer terms, in my view it is apparent from pages 7-8 of the transcript that the District Court judge refused bail on the dual basis of *O'Callaghan* and section 2 of the Bail Act 1997. With respect to the applicant's submission that the District Court judge did not consider the mandatory provisions of section 2(2) of the Bail Act 1997, it is my view that while he did not expressly refer to Section 2(2)(a) and (c), he considered those provisions in substance. Furthermore, in circumstances where I am satisfied that the District Court judge refused bail on the aforementioned dual basis, I am satisfied that the failure to conduct a formal consideration of Section 2(2) of the 1997, in terms of taking into account the various matters identified therein and / or receiving evidence or submissions concerning those matters, did not deprive the District Court judge of jurisdiction. In my view, it was an error within jurisdiction.

Conclusion

40. In summary, for the reasons set out above, the proceedings in the District Court on 26th August 2026 did not constitute a hearing and the applicant's case comes within the exceptional category in which relief is available under Article 40.4.2°. I therefore direct the immediate release of Mr. Cronin from prison.

41. I reserve the costs of Mr. Cronin's application and I will hear the parties in respect of any application for costs.

Appearances

Colman Fitzgerald SC and Kevin McCrave BL for the applicant instructed by Edward Bradbury Solicitor.

Davy Lalor BL for the Minister and the Governor instructed by the Chief State Solicitor's Office

Steven Dixon BL for the Director of Public Prosecutions, instructed by the Chief Prosecution Solicitor