Neutral Citation No: [2022] NIQB 62 ***Judgment: approved by the Court for handing down (subject to editorial corrections)****	***Ref:*** **McC11920** ***ICOS No:*** **22/61276** ***Delivered: ex tempore 28/07/22***

QUEEN'S BENCH DIVISION (DIVISIONAL COURT)

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LOUISE PATRICIA MCGOWAN
ANTONIO MARIA MUREDDU

v

DISTRICT JUDGE (MAGISTRATES' COURTS) MCELHOLM

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BEFORE: McCloskey LJ and Humphreys J

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Appearances

Ms McGowan (the First Applicant) appeared in Person
Mr Fee of counsel appeared on behalf of the Office of the Lady Chief Justice of Northern Ireland (Crown's Solicitor's Office)
Mr Thompson of counsel appeared for the Public Prosecution Service

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McCLOSKEY LJ

[1] This is the unanimous judgment of the court. The application before the court is described as a petition for the writ of habeas corpus filed on behalf of Antonio Maria, seeking relief to remedy his allegedly unlawful detention. The persons who are described as the applicants are, respectively, Louise Patricia McGowan and Antonio Maria. The person identified as the respondent is District Judge McElholm. According to the application, the respondent has ordered the detention of Antonio Mureddu, which "… is not the living, breathing man who has been taken away unlawfully against his will".

[2] The application continues:

> "Antonio Maria has made two special appearances, only for clarification purposes, and to challenge the

> jurisdiction of the court. To date, the respondent has failed in his efforts to gain jurisdiction of any kind. Antonio Maria is not a flight risk or a danger to the community. His detention is not justified under the Common Law, Statutory Law, and/or the United Nations Charter on Human Rights 1948."

[3] The foregoing may be described as the substance of the application which has been lodged before the court. It is followed by a series of sections, all of which the court has considered in full. These are entitled the Clearfield Doctrine; second, governments have descended to the level of mere private corporations; and third, a decision of the US Supreme Court in *Penhallow v Doane's Administrators*. The application is supported by an affidavit, sworn by the first named applicant Louise Patricia McGowan. The court has considered this affidavit and the documents exhibited thereto.

[4] From these sources one deduces that Antonio Maria is a national of a foreign country, who, it would seem, has been domiciled in Hedford, County Galway. The remainder of the affidavit elaborates on the thrust of the application which it grounds. The exhibits are, first of all, a document entitled "National Treasury Management Agency." This is a document clearly emanating from the jurisdiction of the Republic of Ireland. It identifies Antonio Maria Mureddu as the beneficiary of the legal entity and provides other details.

[5] Next, there is a passport, which is described as "a Common Law Court Passport " and this discloses inter alia that Mr Mureddu is a national of Italy who was born in 1977 (and is therefore aged 45 years). We have also considered two further card sized documents. One is described as the international Common Law court, and the next is described as the Common Law Court of Great Britain. This is followed by a general Power of Attorney, which again the court has considered on its face. This was executed by Antonio Maria Mureddu, who is described as a beneficiary, witnessed by certain other persons, and the dates that are apparent on the face of the document are all a single one, namely the 8th of June 2022, followed by other documents which, again, are described as Common Law Court documents, all of which the court has considered.

[6] We shall, at this stage, deal briefly with procedural matters. Under the rules of court which govern proceedings of this kind, namely Order 54 of The Rules of the Court of Judicature, we are treating this as an application for a writ of habeas corpus in a criminal cause or matter and as a result the application is being determined by a panel of two judges, convened as a Divisional Court. The papers came to the attention of the court yesterday morning (27 July) as a result of which the court made an order. The order directed that the application be listed in this court this morning and, secondly, that the application be transmitted to, firstly, the Northern Ireland Courts and Tribunals Service and, secondly, the Public Prosecution Service of Northern Ireland.

[7] As a result of the execution of that order, the Public Prosecution Service is represented by counsel before this court and the respondent district judge is similarly represented by counsel. The court has considered the oral submissions of Miss Louise Patricia McGowan, the first-named applicant and, having done so, has not found it necessary to receive any submission, oral or written, from either of the agencies mentioned.

[8] The most important consequence of the order made by the court yesterday is that certain material papers have been provided by the Public Prosecution Service. The court took steps this morning to ensure that these papers were provided to the first named applicant and, further, to ensure that she had a reasonable opportunity to consider them prior to the deferred commencement of the hearing.

[9] As this is an application for a writ of habeas corpus ad subjiciendum, made ex parte under rule 1 of Order 54 of the Rules of the Court of Judicature (NI) 1980 (the 1980 Rules), the rules provide that an application of this kind should normally be supported by an affidavit sworn by the detained person. However, there is power to relax that requirement and we hereby do so and confirm that the affidavit sworn by the first named applicant is sufficient to comply with rule 1(4). That means that we are assuming that the person detained (the second applicant) is unable, for whatever reason, to make the affidavit required by rule 1(3), in the language of that paragraph of the rule.

[10] The court has certain powers under rule 2 of the 1980 Rules, one of which we have exercised by our order of yesterday, namely, we have directed that the application be made by originating motion in court. Rule 2(2) requires that the originating process be served on the person against whom the issue of the writ is sought and that requirement has also been observed by the order made yesterday and the execution of that order. Next, rule 2(2) empowers the court to direct that the application be served on other agencies. And we have exercised that power also, vis-a-vis the Public Prosecution Service.

[11] At this stage of the proceedings, it is necessary for reasonable cause to be shown by the applicants. That means that there must be prima facie evidence of the detention of the person concerned and prima facie evidence that such detention is unlawful. If that threshold is overcome, the court must issue the writ of habeas corpus. That was decided by this court in the case of *Quigley v the Chief Constable* [1983] NI 2308. So the question for this court is therefore that of whether there is prima facie evidence that the detention of Antonio Mureddu, who is undoubtedly detained, is unlawful.

[12] We reflect briefly on what is frequently described as the ancient writ of habeas corpus. It has its origins in the jealous protection which the common law has consistently afforded to the citizen against unlawful deprivation of liberty. This has given rise to a principle of fundamental importance namely that every detention of

any person is prima facie unlawful, with the result that the burden of proof transfers to the detaining agency to justify the detention, that is to establish its legality. There is a series of cases establishing this elementary principle. These include the landmark decision of the House of Lords in the case of *Khawaja* [1984] AC page 74. In modern practice, the procedure attendant upon the writ of habeas corpus has evolved. Historically, it provided very necessary protection to victims of arbitrary detention, in particular those in the custody of prison managers or prison governors and those in the custody of the managers or administrators of medical and mental health institutions.

[13] In its original incarnation, the habeas corpus procedure was designed to establish whether a named person was indeed in the custody of a person of that kind, hence the requirement that if the preliminary hurdle is overcome, the detaining agency had to produce the person, or the body as it was called, in court. That aspect of the procedure has developed somewhat. Habeas corpus further evolved to the point where a statute was enacted, namely the Habeas Corpus Act of 1679, and statutory intervention continued with the passage of time.

[14] The extent to which habeas corpus provides a remedy different from or greater than that enshrined in Article 5 of the European Convention on Human Rights and Fundamental Freedoms, via the Human Rights Act 1998, is a matter of some debate, but is something with which we need not concern ourselves in these proceedings. We are concerned to determine whether, at this stage of these proceedings, there are indications in all of the evidence assembled that the detention of Antonio Mureddu is unlawful. We bear in mind the framework of legal principle to which I have just referred, in making that determination.

[15] In deciding that question, the court has had regard to all of the material at its disposal. So, first of all, we have the materials relating to the prosecution of Mr Mureddu, which have been provided by the Public Prosecution Service. We note from these, in very brief compass, that the second named applicant, Mr Mureddu was the subject of a prosecution for three offences, culminating in his conviction in respect of two of those offences, one of the charges having been withdrawn.

[16] The first of the two charges which were ultimately preferred against him was that of driving a vehicle without insurance. And the second was that of driving a vehicle on which there was a fixed and incorrect form of registration mark. It is clear from all of the papers that Mr Mureddu appeared before Londonderry Magistrates' Court on several dates, the most recent being the 26th July 2022. The materials available to this court include the formal record of the court orders made on that date. These disclose that Mr Mureddu was present in court, that this was the fourth listing before the court and that he was self-representing. These materials disclose further that he had pleaded not guilty on the 26th of May 2022 and that he was convicted of both offences on the 26th of July 2022. The materials before this court further confirms that the two convictions were based upon the court's consideration of all of the evidence tendered, that is served with the summonses in question.

[17] In respect of the no insurance offence, the court punished the second named applicant by a fine of £400, the payment terms being payment forthwith or in default 10 days' imprisonment. It also imposed an offender levy of £15, to be paid by the 22nd of August 2022. The court further ordered disqualification for driving for a period of six months and, finally, the endorsement of Mr Mureddu's licence. In respect of the second of the two live charges, the court convicted the second named applicant, fined him £150 and ordered that the fine be paid forthwith in default whereof he would be imprisoned for seven days. The net result is a total financial penalty of £550 of fines and £15 of offender levy, with a default term of imprisonment, which in effective or commensurate terms was 10 days. Finally, the order at Londonderry Magistrates' Court records that the third of the initial three charges, that of fraudulently using a vehicle registration mark, was formally withdrawn.

[18] The first clear indication that there is no legal irregularity of any kind in the prosecutions, convictions and resulting imprisonment of Mr Mureddu is provided by the orders of Londonderry Magistrates' Court. The second such indication is provided by the two warrants for the detention of Mr Mureddu, which have also been furnished to this court. These are the warrants which issued on account of his failure to pay the fines forthwith. By the terms of each warrant addressed to the Chief Constable, the Police Service for Northern Ireland was not simply empowered but was, rather, commanded to execute the order of the court against the second named applicant in the following way: by lodging him in prison at Maghaberry for the period in question, which in net effective terms is 10 days, adding "that such period would be reduced in accordance with the law relating to the making of part payments in the area in which the custodial establishment is situated, unless the total amount be sooner paid." Those are the warrants which, upon execution, gave rise to the detention of the second named applicant at Maghaberry prison.

[19] Finally, this court has considered the materials served with the summonses, namely a statement of Police Constable Sharpe and certain other materials which were considered by the Magistrates' Court in satisfying itself that the prosecution had discharged its burden, namely the burden of establishing that the second name applicant was guilty beyond reasonable doubt of the two charges in question.

[20] We bear in mind that the onus of establishing the legality of the detention of the second named applicant lies on the detaining agency, namely the Northern Ireland Prison Service. The other agencies concerned, being the Magistrates' Court and the Public Prosecution Service, are not the detaining agencies, but through them the court has received the materials which I have identified.

[21] As a matter of both procedural and substantive law, the Northern Ireland Prison Service is capable of discharging its burden of establishing the legality of the detention of Mr Mureddu in a number of ways, including via these materials. We ask ourselves the question: "Is there prima facie evidence that the detention of Mr

Mureddu is unlawful? " The unhesitating answer to that question must be no. All of the evidence before this court points irresistibly to the conclusion that the second named applicant is lawfully detained. Everything which has occurred has unfolded in accordance with due process. Both the jurisdiction of the Magistrates' Court to make the orders in question and the exercise of that jurisdiction are established beyond peradventure. The lawful entitlement of the Prison Service to detain the second named applicant is clearly established by the warrants which were executed, giving rise to his detention in Maghaberry Prison. There is not a scintilla of evidence that there has been any legal invalidity of irregularity, whether procedural or substantive.

[22] It follows that there is no basis for proceeding to a second stage in these habeas corpus proceedings. The application is devoid of merit. This gives rise to the following outcome, namely the court orders that the application be dismissed. No further order is required. The court is not proposing to take any other course.