Unapproved
No redaction required

THE COURT OF APPEAL

Record No 2021/8

Neutral Citation: [2023] IECA 142

Birmingham P

Collins J

Edwards J

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT 2003

(AS AMENDED)

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

Applicant/Respondent

AND

ZSOLT SIKLÓSI

Respondent/Appellant

JUDGMENT of Mr Justice Maurice Collins delivered on 9 June 2023

(Reasons for the Order made by the Court on 24 May 2023)

BACKGROUND

1. The relevant factual background is set out in detail in my earlier judgment in this appeal, given on 21 July 2021 ([2021] IECA 210). The issues in this appeal overlap to a significant degree with the issues arising in another appeal in which this Court also gave judgment on 21 July 2021, *Minister for Justice and Equality v Szamota* [2021] IECA 209. This judgment should be read with that judgment as well as this Court's further judgment in *Szamota* also given today (to which, for ease of reference, I shall refer as "*Szamota (No 2)*").

2. The Hungarian authorities seek Mr Siklosi's surrender for the purpose of his serving the remaining 11 months of a one year term of imprisonment imposed on him following his conviction for a number of offences committed in August 2005 (the "*2005 Offences*"). As a result of these convictions, Mr Siklosi was sentenced to one year's imprisonment. However, execution of that sentence was suspended for a two year probation period which was due to expire in April 2009. He spent a month in custody in April/May 2006, leaving a maximum of 11 months to be served (that balance being suspended as explained above). Mr Siklosi was subsequently convicted of a further offence (the "*Child Support Offence*") during that probation period. That offence was alleged to have been committed in 2008. As a result, an order was made for the enforcement of his suspended sentence in respect of the 2005 Offences. The effective sentence for the Second Offence – which included the order enforcing the suspended sentence for the 2005 Offences – was imposed on Mr Siklosi *in absentia* by the Miskolc Court of Appeal in June 2012.

3. In September 2012 a European Arrest Warrant was issued by Hungary seeking Mr Siklosi's surrender for the purpose of serving the sentences imposed on him in respect of both the 2005 Offences and the Child Support Offence. He opposed his surrender and, for the reasons set out in the judgment of the High Court (Donnelly J) of 19 May 2015 (*sub nom Minister for Justice and Equality v AB* [2015] IEHC 338), the High Court refused to order his surrender.

4. The European Arrest Warrant at issue in these proceedings issued on 27 July 2017. It seeks Mr Siklosi's surrender in respect of the 2005 Offences only. Again Mr Siklosi opposed surrender but the High Court (Binchy J) rejected his objections and made an order for his surrender: [2020] IEHC 682. The High Court did, however, give leave to appeal to this Court.

5. In my judgment for the Court of 21 July 2021, I considered and rejected a number of grounds of appeal advanced by Mr Siklosi. Other grounds advanced by Mr Siklosi, relating to Article 4a of Council Framework Decision 2002/584/JHA ("*the Framework Decision*"), raised issues which the Court considered appropriate to refer to the CJEU pursuant to Article 267 TFEU. That reference mirrored a reference made by this Court in *Szamota* and the two references were dealt with together. The references were heard by the CJEU (Fourth Chamber) on 13 July 2022. The Opinion of Advocate General Ćapeta was delivered on 27 October 2022 and the CJEU gave its judgment on 23 March 2023 (Joined Cases C-514/21 and C-515/21, *sub nom LU* (Case 514/21) & *PH* (Case C-515/21) EU:C:2023:235).

6. The CJEU judgment is discussed in *Szamota (No 2)*. It is evident from it that Mr Szamota's trial and conviction for the Child Support Offence (which includes the imposition of sentence) is properly to be regarded as (part of) "*the trial resulting in the decision*" for the purposes of Article 4a of the Framework Decision.

7. As in *Szamota*, the Minister responded to the CJEU judgment by inviting the Court to make a detailed section 20 request for additional information, directed at establishing whether, in respect of the Child Support Offence, one or other of the conditions set out in Article 4a(1) is satisfied and/or whether, in all the circumstances, surrender of Mr Siklosi would not, in any event, involve any breach of his rights of defence. That was opposed by Mr Siklosi, who urged the Court to allow the appeal and discharge the order for surrender *simpliciter*.

8. Shortly after the conclusion of the hearing, the Court informed the parties that it had reached the view that the appropriate order to make in the particular circumstances presented here was to allow the appeal and discharge the order for surrender made by the High Court. This judgment sets out the Court's reasons for making that order.

9. The Minister did not contend that the material before the Court established compliance with any of the conditions in Article 4a(1) nor did she suggest that, on the basis of such material, the Court could properly conclude that Mr Siklosi's surrender would not entail a breach of his rights of defence. What, in essence, the Minister said was that the IJA should be afforded a further opportunity to address these matters in light of the judgment of the CJEU on the reference. Counsel for the Minister accepted – correctly

in my view - that the Court was not obliged to adopt that course and that we were entitled to take the view that the request for surrender failed on the basis of the material before us and, on that basis, we could properly decide simply to allow the appeal, discharge the order for surrender made by Binchy J in the High Court and dismiss the proceedings. To that extent, the Minister is asking the Court to exercise a discretion in her favour (or, more correctly, in favour of the IJA).

10. There are, in my view, a number of factors that, individually and cumulatively, weigh decisively against acceding to the Minister's request here:

- First, it appears from the European Arrest Warrant itself that Mr Siklosi's sentence became prescribed (i.e. statute-barred) as of *27 July 2022*. Ms Williams accepted that, if that is indeed the case, Mr Siklosi is not liable to be surrendered. She suggested, however, that the IJA should be requested to confirm that the position remains as set out in the Warrant. However, absent any suggestion that the Warrant does not state the position correctly – and there is none – there is, in my view, no good reason to go behind what is stated in the Warrant.

- Secondly, and in any event, it is common case that, by reason of time spent in custody in the course of these proceedings, Mr Siklosi has effectively served

virtually all of his prison sentence.[1] Mr Carroll SC estimated that he had approximately 10 days left to serve. Ms Williams did not take any serious issue with that estimate, though she suggested that the period left to serve (assuming that the sentence is not now prescribed) may be as much as four weeks. Either way, the bulk of his sentence has effectively been served.

- Thirdly, there are a number of additional factors which, while perhaps not decisive in themselves, suggest that it is appropriate to bring these proceedings to an end at this stage:

    - The offences here date back to 2005 and the sentence sought to be enforced was imposed in June 2012, some 11 years ago.

    - This is the second European Arrest Warrant issued in respect of the 2005 Offences.

    - In terms of the material before the Court, any suggestion that Mr Siklosi may have waived his right to attend the hearing before the Miskolc Court of Appeal in June 2012 appears speculative.

    - There has already been a prolonged series of requests for additional information and responses here. Seven such requests were made in

[1] Article 26 of the Framework Decision provides that the issuing Member State must deduct all periods of detention arising from the execution of a European arrest warrant from the period of detention to be served in the issuing State as a result of a custodial sentence.

total. I commented adversely on that in my earlier judgment (at para 11). As the Minister says, allowances must be made for language (and legal) differences. Even so, there must come a point when the executing court (or, here, an appellate court) has to say that enough is enough.

11. Having regard to these factors, I was not persuaded either that this Court should issue a section 20 request (assuming that it is entitled to do so) or that it should remit these proceedings to the High Court for that purpose. Giving full weight to the principle that the rule is that European arrest warrants should be executed and that any exception from that general rule must be narrowly construed, in the particular circumstances here the only appropriate order to be made was, in my view, one allowing the appeal, discharging the order for surrender made by the High Court and dismissing the proceedings. As explained earlier in this judgment, the Court has already given its decision on this appeal and has made an order in those terms. This judgment has set out the reasons for making that order.

Birmingham P and Edwards J have indicated their agreement with this judgment