

**THE HIGH COURT**

[2020] IEHC 582

**RECORD NUMBER 2015/110 EXT**

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**TOMASZ FEŃSKI**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 16th day of November, 2020**

1. By an application pursuant to the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), the applicant seeks an order for the surrender of the respondent to the Republic of Poland ("Poland") on foot of a European arrest warrant dated 27th May, 2008 ("the EAW") issued by Judge Tomasz Adamski of the Regional Court in Gdańsk, as the issuing judicial authority. The surrender of the respondent is sought to enforce a sentence of 6 months' imprisonment imposed upon the respondent in respect of road traffic matters. The file reference of the EAW is IV Kop 26/08. It is noted that surrender of the respondent was also sought on foot of another European arrest warrant concerning separate matters, but that this other warrant has been withdrawn.
2. The EAW was endorsed by the High Court on 16th June, 2015. The respondent was arrested and brought before the High Court on 22nd September, 2015. The respondent was initially admitted to bail by the High Court but failed to appear at the scheduled hearing and a bench warrant was issued on 24th November, 2015. The bench warrant was executed on 9th July, 2020, and the respondent has been in custody since that date.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued and no issue was taken in respect of this.
4. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the Act of 2003 arise and that the surrender of the respondent is not prohibited for the reasons set forth therein. No issue was taken in respect of those sections.
5. I am satisfied that the minimum gravity requirements as set out in the Act of 2003 are met as the sentence in question is one of 6 months' imprisonment, all of which remains to be served.
6. The respondent delivered points of objection to surrender dated 5th October, 2015 which can be summarised as follows:-
  - (i) the EAW did not contain sufficient details as required by s. 11 of the Act of 2003;
  - (ii) there was no corresponding offence under the law of the State; and
  - (iii) The sentence was imposed *in absentia* and the requirements of s. 45 of the Act of 2003 had not been met.

7. Following receipt of additional information from the issuing judicial authority, counsel for the respondent conceded that sufficient details were before the Court to comply with s. 11 of the Act of 2003 and to cure any initial ambiguity or lack of clarity in the EAW. I therefore dismiss the respondent's objections as regards a lack of clear details.
8. At part E of the EAW, it is indicated that the EAW relates to one offence, the circumstances of which are set out as follows:-

*"On 10 May 2003 in Skarszewy, while being intoxicated with alcohol (1.35 per mille of alcohol in exhaled air) he drove a 'Fiat 126p' car, registration plates GDA L776, thus breaking the injunction which prohibited him from driving automobiles in road traffic for the period of two years, imposed on him in the valid judgement issued by the District Court in Gdańsk [sąd Rejonowy w Gdańsku], Branch of the Magistrate Division in Pruszcz Gdanski, on 14 March 2002 in the case filed under number XVK 1/02."*

On considering the EAW and all of the additional information furnished, I am satisfied that correspondence has been made out between the offence referred to in the EAW and an offence under the law of the State, viz. driving a mechanically propelled vehicle in a public place without holding a driving licence for the time being having effect and licensing him to drive the vehicle, contrary to s. 38 of the Road Traffic Act, 1961, as amended ("the Act of 1961"). I am also satisfied that correspondence has been made out with the offence of drink driving contrary to s. 4 of the Act of 1961. While the impermissible limit of alcohol in breath may vary between the two jurisdictions or be expressed differently, I am satisfied that bearing in mind the reasoning of the Supreme Court in *Minister for Justice and Equality v. Szall* [2013] IESC 7, [2013] 1 IR 470, the offence in question consists of the breach of a regulatory regime in respect of which there is an equivalent regime in this jurisdiction. I dismiss the respondent's objections as regards a lack of correspondence.

9. The respondent swore an affidavit dated 5th October, 2015 in which he accepted being stopped by the police on 10th May, 2003 in respect of the offence in question, undergoing a breath test having admitted his guilt and being told by the police that he would get a suspended sentence. He denied ever receiving any notification of a court date, attending any court hearing or appointing any lawyer in respect of same. He swore the first he knew of the 6 months' sentence was when he received notice in the post in Ireland in June 2015.
10. The EAW did not contain a completed part D, but by way of additional information dated 29th April, 2015, a completed table D was furnished indicating that:-

*"Yes, the requested person appeared in person at the trial during which the judgement was pronounced."*

Following upon the affidavit sworn by the respondent, additional information was sought from the issuing judicial authority and by way of reply dated 16th November, 2015, it was confirmed that the respondent had appeared in person and that his appearance was noted

in the trial record. On the basis of the information contained within the documentation before me, and having due regard to the mutual trust and confidence as between member states and the issuing judicial authorities thereof, I am satisfied that the respondent did indeed appear in court for trial on 5th March, 2004 when the sentence was imposed and that the requirements of s. 45 of the Act of 2003 have been complied with. I dismiss the respondent's objections as regards s. 45 of the Act of 2003.

11. I am satisfied that the surrender of the respondent is not prohibited under part 3 of the Act of 2003.
12. Having dismissed the respondent's objections, it follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to Poland.