

THE HIGH COURT

[2021] IEHC 95
[2020 No. 230 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

DELANO DEMETRIUS BRISSETT

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 10th day of February, 2021

1. By this application the applicant seeks an order for the surrender of the respondent to the United Kingdom of Great Britain and Northern Ireland ("the UK") pursuant to a European arrest warrant dated 7th May, 2020 ("the EAW") issued by Judge Richard Parkes of Winchester Crown Court, as the issuing judicial authority. The surrender of the respondent is sought in order to execute a custodial sentence of 6 years and 6 months' imprisonment imposed upon him on 19th March, 2018.
2. The EAW was endorsed by the High Court on 29th September, 2020 and the respondent was arrested and brought before this Court on 6th November, 2020.
3. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
4. I am satisfied that the minimum gravity requirements of the Act of 2003 are met. The term of imprisonment in respect of which the respondent's surrender is sought is in excess of 4 months.
5. As regards correspondence, by virtue of s. 38(1)(b) of the Act of 2003 it is not necessary for the applicant to show correspondence between an offence in the EAW and an offence under Irish law where the offence in the EAW is an offence to which article 2(2) of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States ("the Framework Decision") applies and, under the law of the issuing state, the offence is punishable with a maximum term of not less than 3 years' imprisonment. In this instance, the issuing judicial authority has certified that the offence is an offence to which article 2(2) of the Framework Decision applies, the offence is punishable by imprisonment for a maximum period of not less than 3 years and has indicated the relevant box at part E of the EAW for "*illicit trafficking in narcotic drugs and psychotropic substances*". There is nothing in the EAW that gives rise to any ambiguity or perceived manifest error, such as would justify this Court in looking behind the certification in the EAW. No issue was taken in respect of correspondence.
6. It is clear from the EAW that the respondent appeared at his trial up to the point of conviction and then absconded. Sentence was passed in his absence. In such circumstances, I am satisfied that the respondent waived his right to be present at the sentencing hearing. At hearing, counsel on behalf of the respondent indicated he was not pursuing any point of objection in that regard.

7. The respondent's objections to surrender can be summarised as follows:-
- (i) if surrendered, he would be prosecuted for a separate offence of breach of bail for which his extradition has not been sought, in breach of the rule of specialty as incorporated into article 27 of the Framework Decision and s. 22 of the Act of 2003;
 - (ii) if surrendered his right to life or personal safety would be at risk; and
 - (iii) if surrendered there was a risk that his fundamental rights would be breached in circumstances where the UK had withdrawn from the European Union ("the EU").
8. The solicitor for the respondent swore an affidavit dated 21st December, 2020 which the Court received in lieu of an affidavit sworn by the respondent due to current difficulties in obtaining sworn affidavits from persons in detention due to the current pandemic. He averred that the respondent had instructed him that in addition to failing to attend for sentence in respect of the offences, the subject matter of this EAW, the respondent had other breaches of bail. He averred that the respondent had instructed him that in the course of the prosecution, the subject matter of this EAW, the respondent had filed a defence statement, and ran a defence, to the effect that the phone central to the prosecution case belonged to a named individual who had left it in the respondent's car and that he had only attended the relevant locus in the company of that named individual. The defence statement was exhibited in the affidavit. It was indicated in the affidavit that the named individual had "*gang connections*", that the respondent would be regarded as an informant and he was concerned his life would be in danger.

Rule of Specialty

9. The EAW at part (b) sets out the decision on which it is based, and in that regard refers to the respondent's conviction on 12th January, 2018 and sentence *in absentia* on 19th March, 2018. In particular, in relation to the order made on 19th March, 2018, it states:-

"an Imprisonment Order was issued for 6 years and 6 months, he was also to be brought before the Court for breach of bail when detained".

10. By way of additional information dated 26th January, 2021, the issuing state confirmed that it would comply with its obligations pursuant to article 27 of the Framework Decision regarding the concept of specialty. It further indicated that breaching bail conditions is not a criminal offence in the UK. Counsel for the respondent queried the assertion that breach of bail is not an offence in the UK. I find it is not necessary for the Court to revert again to the issuing judicial authority on this issue. Regardless of whether or not breach of bail or failure to attend court may be prosecuted as an offence in the UK, I am satisfied that there is no cogent evidence of a real risk that the respondent, if surrendered, will be prosecuted and deprived of his liberty in breach of article 27 of the Framework decision, so as to render his surrender precluded under s. 22 of the Act of 2003. I accept the assurance of the issuing state that it will comply with the requirements of article 27 of the Framework Decision.

11. On the basis of the information received from the issuing state and bearing in mind the presumptions set out at s. 4A and s. 22(3) of the Act of 2003, I dismiss the respondent's objection to surrender based on a risk of breach of the rule of specialty as incorporated into article 27 of the Framework Decision and s. 22 of the Act of 2003.

Risk to Life/Safety

12. In essence, it was submitted on behalf of the respondent that by reason of the manner in which he had conducted his defence, and in particular his implication of his brother-in-law in the offences in question, he was at risk of being subjected to violent assault from organised criminals in detention. Reference was made to statistics concerning inter-prisoner assaults in the UK.
13. In the additional information dated 26th January, 2021, the issuing state furnished a comprehensive statement of Detective Constable Daniel William Lucas setting out that on reception at any prison, the respondent would be given the opportunity to identify any perceived risks to his security, including from named individuals, and if persons of concern are identified, measures will be taken to ensure that the respondent is not housed on the same wing as such persons or will be put into a wing for vulnerable prisoners, or possibly not even in the same prison. In any event, a thorough risk assessment would be completed. The statement also points out that the respondent's named brother-in-law had given evidence at the trial of the respondent as a defence witness, had implied it was he who was guilty and supported the defence of the respondent.
14. By affidavit dated, on its face, 5th January, 2021, but which clearly should be 5th February, 2021, Mr. Mark O'Sullivan, solicitor for the respondent, averred that he had been instructed by the respondent that a family dispute had arisen since the trial and that his brother-in-law had spread rumours that the respondent was an informant. This is a significantly different account as to how the alleged threat to his safety is said to arise than that initially given. In any event, for the reasons set out hereafter, I do not regard it as necessary to seek any further information in that regard.
15. On foot of the additional information received from the issuing state and bearing in mind the presumption under s. 4A of the Act of 2003, I am satisfied that if there is any risk to the respondent's safety in custody upon surrender, of which there appears to be very little, if any, evidence, same will be adequately assessed and addressed by the UK authorities. I dismiss the respondent's objection based on an alleged threat to his life or safety if surrendered.

UK Withdrawal from EU

16. Counsel on behalf of the respondent submitted that as the UK had withdrawn from the EU, the principle of mutual trust and confidence between Member States no longer applies to the UK and that the UK might in the future withdraw from the Council of Europe and/or change its domestic law so as to deprive persons surrendered of the rights currently enjoyed under the European Convention on Human Rights ("the ECHR").

17. Following the UK serving notice of its intention to leave the EU, an agreement was entered into between those parties, known as the EU - UK Withdrawal Agreement 2019, agreed on 17th October, 2019 ("the Withdrawal Agreement"). Article 62.1(b) of the Withdrawal Agreement provided that:-

"(b) Council Framework Decision 2002/584/JHA shall apply in respect of European arrest warrants where the requested person was arrested before the end of the transition period for the purposes of the execution of a European arrest warrant, irrespective of the decision of the executing judicial authority as to whether the requested person is to remain in detention or be provisionally released."

The "transition period" referred to ended at 11:00 p.m. on 31st December, 2020.

18. From the foregoing, it is clear that the EU and UK have agreed that the Framework Decision applies to European arrest warrants in respect of which the requested person was arrested prior to 11:00 p.m. on 31st December, 2020. The UK has thereby committed itself to comply with the Framework Decision where the requested person was arrested on foot of a European arrest warrant prior to 11:00 p.m. on 31st January, 2020. The Framework Decision incorporates respect for fundamental human rights (recital 12).
19. A statutory instrument has been signed which is designed to give domestic effect to such agreement, viz. the European Arrest Warrant Act, 2003 (Designated Member States) (Amendment) Order, 2020 (S.I. 719 of 2020). In simple terms, this designates the UK as a Member State for the purposes of the Act of 2003 provided the European arrest warrant was issued by a judicial authority in the UK and the requested person was arrested prior to 11:00 p.m. on 31st December, 2020 for the purpose of execution of the European arrest warrant.
20. In this instance, the EAW was issued by Judge Richard Parkes of Winchester Crown Court, a judicial authority, and the respondent was arrested on foot thereof on 6th November, 2020. Thus, the necessary conditions for the continued application of the Act of 2003 and the Framework Decision to these proceedings have been satisfied. As stated earlier, the Framework Decision incorporates respect for fundamental rights.
21. In *Minister for Justice and Equality v. O'Connor* [2018] IESC 47, the Supreme Court considered the decision of the Court of Justice of the European Union (2 the CJEU") in *RO* (Case C-327/18 PPU), in which the CJEU considered the effect of the UK serving notice of its intention to withdraw from the EU. In *O'Connor*, at para. 4.10 Clarke C.J. pointed out the effect of that decision to be as follows:-

"4.10. Therefore, a mere theoretical possibility of impairment of rights is not sufficient to override the obligation to surrender."

Clarke C.J. went on to state at para. 4.13:-

"4.13. The key question advanced to the CJEU was as to whether, in all the relevant circumstances, the effect of Brexit was to prevent surrender either in all cases, no

cases or in certain circumstances only. In essence, the answer of the CJEU was to say that it was possible that Brexit might prevent surrender but only where there were substantial grounds to believe that the person concerned was at risk of being deprived of rights recognised by the Charter and the Framework Decision.”

22. The essential question is whether this Court is satisfied that the respondent has established substantial grounds for believing that, if surrendered, there is a real risk that his fundamental rights under the Charter of Fundamental Rights of the European Union, the ECHR or the Constitution will be breached, or that the Framework Decision will not be applied. The speculative assertions made by the respondent fall far short of the cogent evidence required to establish that there are such substantial grounds. I dismiss the respondent’s objection in that regard.

Conclusion

23. 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.
24. I am satisfied that the surrender of the respondent is not precluded by s. 37 of the Act of 2003, any other provision of part 3 of the Act of 2003, or indeed any provision of that Act.
25. Having dismissed the respondent’s objections to surrender, 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 the UK.