

THE HIGH COURT

[2024] IEHC 513

BETWEEN

Record No 2020 EXT 388

2020 EXT 389

MINISTER FOR JUSTICE

APPLICANT

v.

PATRICK JOSEPH WARD

RESPONDENT

JUDGMENT of Mr. Justice Patrick McGrath delivered on the 21st of June 2024

1. In this application, the applicant seeks an order for the surrender of the respondent to the United Kingdom on two European Arrest Warrants ['EAWs'].
2. The first warrant was issued on the 3rd of November 2020 by District Judge Conner, Belfast Magistrates Court seeking his surrender for prosecution for 5 offences of Burglary, 1 offence of going equipped for stealing and 1 offence of Dangerous Driving.
3. The second warrant was also issued by District Judge Conner at Belfast Magistrates Court, but this time so that he might be prosecuted for 4 offences of Fraudulent Use of a Vehicle Registration Mark, 4 offences of Making off Without Payment and 1 offence of Handling Stolen Goods.

4. The warrants were endorsed for execution by this Court on the 14th of December 2020. The Respondent was arrested on the 19th of June 2023 and has been remanded in custody on these matters since that date.
5. No issue arises on either Warrant in relation to identity and I am satisfied that the Respondent is the person in respect of whom these EAWs are issued.
6. The warrant was issued by a District Judge sitting at Laganside Court, Belfast, a ‘judicial authority’ within the meaning of s.2 of the European Arrest Warrant Act 2003 [‘the 2003 Act’].
7. I am satisfied that none of the matters referred to in section 21A, 22, 23 and 24 of the 2003 Act, arise for consideration in respect of these EAWs and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.
8. The warrant is, so far as is practicable, set out in the form of the Annex to the Framework Decision and meets the requirements of section 11 of the 2003 Act.

Correspondence

9. The issuing state has not, in either of the EAWs, certified that the offences for which surrender is sought are ‘ticked box’ offences, namely offences within the categories of offence for which it is not required to demonstrate correspondence pursuant to Article 2.2 of the Framework Decision.

10. It is therefore an offence where it is necessary to show correspondence in accordance with s38 of the 2003 Act. Section 5 of the 2003 Act provides:-

'For the purposes of this Act, an offence specified in a European Arrest Warrant corresponds to an offence under the law of the state, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State'.

11. The relevant principles for showing correspondence are now well established. In assessing correspondence, the question is whether the acts or omissions that constitute the offence in the requesting state would, if carried out in this jurisdiction, amount to a criminal offence – *Minister for Justice v Dolny* [2009] IESC 48

12. No issue is taken by the Respondent on the issue of correspondence. I am in any event satisfied that correspondence is established in respect of the conduct described in each warrant with offences contrary to Irish Law and I agree with the domestic corresponding offences suggested by the Applicant in respect of both Warrants.

13. In respect of the first EAW therefore the corresponding offences are:-

- For the conduct at Offences 1 to 5: Burglary contrary to Section 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001;
- Offence 6: Possession of certain article contrary to Section 15 of the Criminal Justice (Theft and Fraud Offences) Act, 2001; and
- Offence 7: Dangerous Driving contrary to Section 53 of the Road Traffic Act, 1961 (as amended)

14. On the second EAW the following are corresponding offences under Irish law:
- Offence 1/3/5/7: Control of a false instrument contrary to section 29 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 or Possession of stolen property contrary to Section 18 of that Act or an offence contrary to Section 139 of the Finance Act, 1992;
 - Offence 2/4/6/8: Making off without Payment contrary to Section 8 of the Criminal Justice (Theft and Fraud Offences) Act, 2001;
 - Offence 9: Possession of stolen property contrary to Section 18 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 or Unauthorised Use of mechanically propelled vehicle contrary to section 112 of the Road Traffic Act, 1961, as amended

Points of Objection

15. The following are the Points of Objection filed by the Respondent in this matter:: -

‘(a) The Respondent does not consent to being surrendered to the issuing state and puts the Applicant on full proof as to whether the European Arrest Warrants (EAWs) relied upon are lawful with respect to:

- i. Whether the European Arrest Warrant executed in the case of the Respondent herein is lawful;*
- ii. Whether the information provided to the High Court of Ireland is defective and/or deficient;*
- iii. Whether the surrender of the Respondent would be in accordance with the European Arrest Warrant Act, 2003 as amended and / or the Framework Decision*

(b) The surrender of the Respondent in respect of the said offences to the issuing state is prohibited by s37 of the Act of 2003 (as amended), because it constitutes, inter alia, a disproportionate and impermissible interference with the respondents right to private and family life under Article 8 of the European Convention on Human Rights;

(c) The surrender of the Respondent in respect of the said offences to the issuing state would constitute a contravention of Article 40.3 of the Constitution and / or would be incompatible with the State's obligations under Articles 2 and / or 3 of the European Convention on Human Rights therefore is prohibited by Section 37(1) of the European Arrest Warrant Act 2003. This is in circumstances where the Respondent suffers from mental health issues, addiction, arthritis, asthma where the surrender itself and more particularly his incarceration in the issuing state would be likely to cause a deterioration in his health giving rise to a serious threat to his health and / or to his bodily integrity. This is particularly so in light of the situation of severe overcrowding, lack of appropriate and time medical care and the issue of substance abuse in Northern Irish Prisons

Article 8 of the Convention

16. The Respondent, having been born on the 10th of May 1979, is now 54 years of age. He lives in Dublin with his wife of 30 years at the family home. He has three daughters, the youngest of whom is nine years of age. This youngest daughter has disabilities that require added care from her parents, including the Respondent. She is in primary education and the Respondent brings her to and from school.

17. In his affidavit of the 18th of December 2023, the Respondent states as follows:-

- a. His daughter Margaret Rose, who is the mother of four young children aged between one and 10 , suffers from depression and he and his wife frequently care for those grandchildren. He says that prior to being remanded in custody on this matter, he would take them to school and they would regularly stay in he and his wife's house;
- b. His third daughter, Anna, has a number of medical issues including poor eyesight and hearing loss and he is responsible for taking her to and from school as his wife has mobility issues. Exhibited to the affidavit is an assessment report from Enable Ireland dated the 2nd of May 2018 which sets out a summary of Anna's medical history and her delayed language and motor skills. In that report a series of recommendations were made as to assistances and interventions to assist Anna (then aged 3 and ½);
- c. He has suffered from poor mental health issues and has been attending counselling sessions and a letter was provided by Exchange House Ireland, dated the 19th December 2023, indicating that the Respondent and his wife have used their services since 2018. This organisation is a Traveller Support Agency and they also referred Mr Ward to a support group in County Meath and indeed continue to be available to him whilst in custody;
- d. He was previously addicted to prescription medication, heroin and methadone but has rehabilitated, although he did relapse in December 2022 which he relates to his inability to attend treatment due to Covid;
- e. He suffers from arthritis and asthma, has fluid on his lungs and hepatitis C. He is treated for these conditions whilst on remand in both Cloverhill and, when

necessary, St James Hospital. Attached to the affidavit of his solicitor Ms Kate McGhee, dated the 21st March 2024, are his medical records from St James Hospital.

18. It is common case that most, if not all, extradition cases by their very nature involve an element of infringement of the right to family life. It is well settled that member states should execute any warrant on the basis of mutual recognition and that it is only in a truly exceptional case that Article 8 rights outweigh the requirement to surrender, on foot of an otherwise lawful EAW.
19. In *Minister for Justice v Ostrowski* [2012] IESC 57 the Supreme Court made it clear that to be successful in cases such as the present, a family/ private rights objection to surrender, the circumstances must be shown to be well outside the norm, that is truly exceptional and, in the words of S37 of the 2003 Act they must be such as to render surrender incompatible with the States obligations under A8(2) of Convention. Again in *Minister for Justice v Verstaras* [2020] IESC 12, that Court said that, when considering such objections to surrender, there must be cogent evidence to rebut the presumption in s4A of the Act, the circumstances must be shown to be well outside the norm, that is truly exceptional and, in the words of S37 of the 2003 Act they must be such as to render surrender incompatible with the States obligations under A8(2) of Convention.
20. In *Minister for Justice v D.E.* [2021] IECA 118, having comprehensively reviewed the earlier authorities, Donnelly J re-emphasised that exceptionality is not the taste in itself but instead the phrase 'exceptional' in the case law is a description of the rare cases in which an Article 8 analysis will be appropriate such that an order for surrender might

be refused pursuant to section 37 for incompatibility with the Convention or the Constitution.

21. Whilst it is natural that there will be human sympathy in any situation such as the present, given the family ties the Respondent has in this State and given his responsibilities for his children and particularly his youngest child and he and his wife's involvement in the lives of a number of their grandchildren, there is nothing exceptional on the facts that would require this court to carry out a proportionality analysis. The facts relied upon by the Respondent are not in any way so exceptional or so outside the norm of cases where a surrender is sought on foot of a lawfully issued EAW, such as to require an analysis as to whether the high public interest in the surrender of persons on foot of the State's obligations under the Framework Decision is overridden by the personal and family circumstances of Mr Ward.

22. This ground of objection is not therefore made out.

Prison Conditions

23. It is submitted that there is a real risk that, having regard to prison conditions in Northern Ireland, Mr Ward would suffer inhumane and degrading treatment and that his rights to privacy and bodily integrity would thereby be breached.

24. The Respondent has certain health difficulties which have been outlined in affidavits submitted on his behalf and which have been summarised at paragraph 17 above. He suffers from poor mental health, historical addiction, Hepatitis C, arthritis, asthma and as of more recently, more severe respiratory difficulties which led to admission to Tallaght Hospital.

25. It is claimed that surrender itself and, more particularly, incarceration in Northern Ireland would be likely to cause a deterioration in his health, giving rise to a serious threat to his health and / or bodily integrity. The Respondent in this regard refers in particular to severe overcrowding, lack of appropriate and timely medical care and the prevalence of substance misuse in Northern Irish prisons. He relies upon the *'Report on an unannounced inspection of Maghaberry Prison'* dated 20 September – 6 October 2022.

26. In *Minister for Justice v Rettinger* [2010] IESC 45, the Supreme Court accepted that prison conditions in the requesting state could give rise to a refusal to surrender under section 37 of the 2003 Act but stressed that where such an objection is raised:

'the burden rests upon the [respondent] to adduce evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention'

27. A summary of the principles which have emerged from the case law in this regard was provided by Burns J in *Minister for Justice v Angel* [2020] IEHC 699 where the court said as follows:

'(a) the cornerstone of the Framework Decision is that member states, save in exceptional circumstances, are required to execute any European arrest warrant on the basis of the principles of mutual recognition and trust;

(b) a refusal to execute a European arrest warrant is intended to be an exception;

- (c) one of the exceptions arises when there is a real or substantial risk of inhuman or degrading treatment contrary to Article 3 ECHR or Article 4 of the Charter of Fundamental Rights of the European Union ('the Charter');*
- (d) the prohibition on surrender where there is a real or substantial risk of inhuman or degrading treatment is mandatory. The objectives of the Framework Decision cannot defeat an established risk of ill-treatment;*
- (e) the burden rests upon a respondent to adduce evidence capable of proving that there are substantial / reasonable grounds for believing that if he or she were returned to the requesting country, he or she will be exposed to a real risk of being subjected to treatment contrary to article 3 ECHR;*
- (f) the threshold which a respondent must meet in order to prevent extradition is not a low one. There is a default presumption that the requesting country will act in good faith and will respect the requested person's fundamental rights;*
- (g) in examining whether there is a real risk, the Court should consider all of the material before it and if necessary, material obtained of its own motion;*
- (h) the Court may attach importance to reports of independent international human rights organisations or reports from government sources;*
- (i) the relevant time to consider the conditions in the requesting state is at the time of the hearing;*
- (j) ...*
- (k) a finding that there is a real risk of inhuman or degrading treatment by virtue of general conditions of confinement in the issuing member state cannot lead, in itself, to the refusal to execute a European arrest warrant. Whenever the existence of such a risk is identified, it is then necessary for the executing judicial authority to make a further*

assessment, specific and precise, of whether there are substantial grounds to believe that the individual concerned will be exposed to that risk;

(l) an assurance provided by the competent authorities of the issuing state that, irrespective of where he is detained, the person will not suffer inhumane degrading treatment is something which the executing state cannot disregard and the executing judicial authority, in view of the mutual trust which must exist between the members states on which the European arrest warrant is based, must rely on that assurance, at least in the absence of any specific indications that the detention conditions in a particular detention centre are in breach of article 3 ECHR or article 4 of the Charter; and

(m) It is only in exceptional circumstances, and on the basis of precise information, that the executing judicial authority can find that, notwithstanding such an assurance, there is a real risk of the person concerned being subjected to inhuman or degrading treatment because of the conditions of that person's detention in the issuing member state'

28. A number of specific matters from the said report have been referred to in the course of the Respondents submissions:-

- a. Difficulties were identified in the Report with the accommodation of prisoners who are considered to be at risk of self-harm and requiring additional care;
- b. Whilst it was accepted that urgent mental health referrals were addressed, the report found that there were lengthy delays for routine mental health assessments and patients who required transfer to an in-patient mental health facility waited too long;

- c. In the report it was said that Maghaberry had a serious drug problem and there was criticism of the absence of a strategy to address this. There was also criticism of long delays in accessing the clinical substance misuse programme. It also said that the authorities did not have a sufficiently robust response to the supply and sale of drugs in the prison. On the other it was acknowledged in that report that the prison itself had identified drug supply reduction as a priority in its self assessment report;
- d. There are also issues of concern relating to the healthcare available to the Respondent for the various conditions and ailments for which he is currently receiving treatment from the medical staff in Cloverhill and St James Hospital. It was said there that waiting times for primary care services was too long and that too many patients did not attend their appointments and similarly too many patients did not attend hospital appointments due the absence of escort staff. The Report did however state:
- 'Governance and oversight of prison health care was now effective in driving improvement. Prison healthcare leadership was strong, and the team was innovative and motivated'*

29. As already noted above, flowing from inter alia the principles of mutual recognition and trust that underlie the operation of the Framework Decision, there is a default presumption that a requesting state will act in good faith and the requested persons fundamental rights. Whilst that presumption can be rebutted, it will not be done lightly and where, as here, there is a claim that there is a real and substantial risk of inhuman or degrading treatment, the burden rests on the person making such as assertion to adduce cogent evidence capable of showing such substantial grounds.

30. The Respondent is a man with various medical needs which will continue if he is detained in custody in Northern Ireland either on remand of, if convicted, whilst serving a sentence of imprisonment. I must presume that, absent cogent evidence of a real and substantial risk to the contrary, he will receive a reasonable level of care whilst in custody in Northern Ireland.

31. The Respondent has produced one report which followed from one unannounced inspection of Maghaberry Prison in 2022. In that report the authors have identified shortcomings and failures on the part of the prison authorities in relation to certain aspects of medical and psychological / addiction care. The report has set these out and the Respondent has made detailed submissions on certain criticisms of the regime in Maghaberry which touch upon issues of concern to him, including treatments available for drug and other addiction and services available for those with mental health issues. The Applicant has pointed to the various steps taken and planned to be taken by the authorities in Maghaberry to address the concerns identified in the Report.

32. Although there are some ongoing difficulties in relation to the matters identified by the Respondent, there is no cogent evidence that this Respondent will not be provided with essential medical and psychiatric care if surrendered to Northern Ireland and detained in Maghaberry, and I note that there is no indication as to where he would be detained if not admitted to bail. It is also re-assuring that the 2022 Maghaberry Report demonstrates that the authorities in that prison were already addressing a number of the issues of concern identified and had plans to address other issues identified. Although certain deficiencies were identified in the report there is, in my view, no evidence to suggest that there is a real risk that, as a result of such deficiencies, this Respondent

would be exposed to a real risk of inhuman and degrading treatment if incarcerated in Northern Ireland. Nothing in that report gives rise to a concern such as to put me on inquiry as to whether such a risk exists and to seek some form of assurance from the Northern Ireland authorities. I therefore dismiss this ground of objection.

General

33. The Respondent only pursued the objections at (b) and (c) of the Points of Objection in his submissions and at the Section 16 hearing. I am in any event satisfied that the EAW produced is lawful, the information provided in the EAW complies with the requirements of the Framework Decision and the 2003 Act and that his surrender would otherwise be in accordance with the Framework Decision and the Act.

Conclusion

34. I will therefore accede to the application by the Minister and make an order pursuant to s.16 of the 2003 Act ordering the surrender of the Respondent to the issuing state on foot of both these warrants.