

THE HIGH COURT**Record Number: 2010 118 EXT****Between:****Minister for Justice, Equality and Law Reform****Applicant****And****Aiden Hooper****Respondent****Judgment of Mr Justice Michael Peart delivered on the 17th day of November 2010:**

The surrender of the respondent is sought by a judicial authority in the United Kingdom on foot of a European arrest warrant which issued there on the 27th January 2010. That warrant was endorsed for execution here on the 18th March 2010 and the respondent was duly arrested on foot of same on the 19th May 2010 and brought before the High Court, as required by the provisions of section 13 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"). He has been in custody awaiting the conclusion of this application for his surrender since the date of his arrest.

No issue arises in relation to the identity of the respondent, and I am satisfied that the respondent is the person in respect of which this warrant has been issued.

His surrender is sought so that he can serve what remains of three sentences imposed upon him following his conviction in respect of three offences committed by him while he was on holidays in the United Kingdom in June 2007. He was seventeen years of age at the time that these offences were committed. He was ordered to serve the sentence at a Young Offenders Institute in view of his age at the time.

The offences comprised one of robbery and two of theft. On the robbery offence he received an eighteen month sentence, and he received a twelve month sentence and a nine month sentence for the two theft offences, these to run concurrently with the eighteen month sentence. He served part of the sentences, before being released on licence on the 2nd April 2008 until the expiry of the sentences. This licence was subject to a number of conditions which are set forth in the warrant. The respondent was upon release to report without delay to a certain duty officer specified, place himself under the supervision of a nominated Probation Officer, be well-behaved, keep in touch with the Supervising Officer, receive visits from that Supervising Officer, permanently reside at an address approved by that Supervising Officer and notify him of any proposed change of residence, undertake only such work as is approved by the Supervising Officer, and finally, not to travel outside the United Kingdom unless otherwise directed by the Supervising Officer.

Having breached at least some of these conditions, inter alia, by returning to this jurisdiction where he lives, and where his family reside, his licence was revoked on the 10th April 2008, so that he is now required to serve the balance of 236 days remaining.

At the date of delivering this judgment, the respondent will have been in custody on this warrant for 182 days since 19th May 2010. He will be entitled to have that period deducted from the time remaining to be served. On that basis, the respondent when surrendered will be required to serve a balance of 54 days in prison, less of course whatever further time (up to 25 days perhaps) may pass before his surrender is actually effected under the order for surrender. By the time these periods of detention are deducted from the sentence remaining to be served, the respondent will be required to serve less than one month. This feature of the case is relevant to submissions made on this application on behalf of the respondent.

The offences correspond to offences in this State, namely robbery contrary to section 12 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, and theft contrary to section 4 of the same Act.

Minimum gravity is satisfied by reference to the length of sentence imposed.

No reason exists to refuse to order surrender under sections 21A, 22, 23 or 24 of the Act.

The question remains whether his surrender is prohibited by Part III of the Act or the Framework Decision.

The objection to surrender pursued by John Fitzgerald BL for the respondent is the proportionality of making an order for surrender in this case given the fact that the period which the respondent has spent in custody on this warrant will have to be deducted from any time remaining to be served, and according to the calculations already set forth above, the period to be served will work out to be less than one month.

Mr Fitzgerald has pointed to what the respondent has stated in his grounding affidavit. The respondent has referred to the fact that he was 17 years of age at the time of these offences, having travelled over to Wales with a few friends for a holiday, and that he has stated that the reason for the robberies was that they had run out of money and needed to get home. He refers to the fact that he pleaded guilty to the offences in question and that nonetheless he received the penalty as set forth. He also sets forth some difficulties which he says he encountered in contacting the correct social services upon release on licence, and he states also that as he knew nobody in the issuing state at the time of his release he had nowhere to live and was waiting for social services to provide him with an address where he could live. Not having been provided with anywhere to live, the respondent states that he decided to return home to this jurisdiction, rather than remain homeless in the United Kingdom. It is in these circumstances that the respondent breached the terms of his licence.

Whatever about the reasons for breaching the terms of his licence and returning to this jurisdiction, the submission made by way of objection to surrender is that an order for surrender would be a disproportionate measure against the respondent, not in view of the

young age and the circumstances of the offences, but rather on the basis of the very small number of days still to be served in custody if he is surrendered.

If I was deciding this issue at or near the date on which the respondent was arrested so that if surrendered he would have to serve most of the 236 days remaining, there could not in my view be room for suggesting that by reason of the principle of proportionality the respondent should not be surrendered. Clearly the judicial authority in the United Kingdom are entitled to punish offences committed in its jurisdiction and to require that those so punished are returned, if necessary, in order to serve the sentence imposed. There are arrangements in place where, in some cases, sentenced persons can be transferred to their home jurisdiction in order to be near their family members while in person, but that is not something which is relevant to the question of surrender. The right and entitlement of the issuing judicial authority to have persons surrendered to serve their sentences, must trump the adverse effect that sentence will have on the family and private life of the respondent absent some very exceptional circumstances, and in that regard each case will have to be determined on its own facts. But clearly, that right to have persons surrendered can be affected by the length of sentence remaining to be served. Where a very few weeks or even days remain to be served, that factor can be balanced against the removal of the respondent in custody from his home jurisdiction.

But in the present case one must have regard to the fact that the only reason why there is so little left of this sentence to serve is that the respondent has been in prison here awaiting the determination of this application for his surrender. He has been absent from his family life in any event, albeit that his family presumably have been able to visit him. The only effect that surrender will have on his family rights is that for the short time remaining to be served upon surrender, his family will not be able to visit him as conveniently. For him, I suppose, one could add that to spend time in a prison in another jurisdiction would be somewhat more difficult than to do so in his home country. But the time concerned is very short, and in all probability will be less than one month.

Balancing all the competing interests, I feel that because of the very short time left to be served, the balance falls in favour of ordering surrender. The Framework Decision defines minimum gravity in sentenced cases by reference not to how much of a sentence remains to be served, but rather by what length of sentence was imposed in the first place. That minimum gravity is four months – itself a short period. It is clearly intended therefore that persons facing even small periods remaining to be served can be the subject of a surrender order. One must have regard to that feature of the arrangements when considering the entitlement of the requesting state to seek the surrender of a person even for the purpose of completing relatively short sentences.

There is nothing of particular significance in the family circumstances of the respondent which would render this case in some way exceptional. Nothing in that regard has been identified.

In the circumstances, despite the short time left to be served, surrender is not prohibited by Part III of the Act or the Framework Decision, and the Court is required to make the order for surrender which is sought.