Neutral Citation Number: [2007] IEHC 209

THE HIGH COURT

Record Number: 2006 No. 104Ext.

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
JASON BRADY

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 20th day of June 2007

1. In this application the applicant seeks the surrender of the respondent to the United Kingdom on foot of a European arrest warrant ("the warrant") dated 13th July 2006, so that he can face prosecution on charges of murder, unlawful killing, dangerous driving causing death, grievous bodily harm, theft of a lap-top computer, theft of a motor car, and dishonestly receiving stolen goods, namely the same motor car.

2. All these charges arise out of a single event alleged to have occurred on the 10th December 2001 at Birmingham, West Midlands, England when the respondent is said to have entered a premises as a burglar, stolen the lap-top, and when making his escape in a stolen car killed one man by driving the car over him, as well as injuring another man. These men are alleged to have chased the respondent from the premises, and had attempted to prevent him making his escape from the premises.

3. The warrant was endorsed for execution here by the High Court on the 9th August 2006, and the respondent was duly arrested and brought before the High Court as required by s. 13 of the European Arrest Warrant Act, 2003 as amended ("the Act") on the 23rd October 2006. He was granted bail pending the hearing of this application, and has complied with the terms thereof.

4. I am satisfied that the person before the Court is the person in respect of whom the warrant has been issued. No issue has been raised in that regard or in relation to the manner in which the arrest was carried out.

5. As far as correspondence is concerned, the offences of murder and causing grievous bodily are tow of the offences referred to in Article 2.2 of the Framework Decision and as such are offences in respect of which it is unnecessary to verify double criminality. No issue is raised as to correspondence in relation to the remaining offences charged, and I am satisfied that the acts giving rise to those offences as set forth in the warrant, would, if committed here give rise to offences here also. There is no need to elaborate further on what particular offences would be committed here, since the offences are well known to the law, namely dangerous driving causing death, theft and receiving stolen goods.

6. I am satisfied that there is no reason why surrender should be refused under sections 21A, 22, 23 or 24 of the Act, and subject to dealing with the issues raised by the respondent in Points of Objection filed, I am satisfied that his surrender is not prohibited by either Part III of the Act or by the Framework Decision.

The Points of Objection

Delay

7. The offences are alleged to have occurred on the 10th December 2001, yet the warrant has not been issued until the 13th July 2006. The domestic warrants on foot of which this warrant was issued are dated respectively 31st March 2006 and 2nd June 2006. The respondent submits that this lapse of time, as it is described in the Points of Objection has either not been explained or has been explained in a way which is inadequate and even misleading, and that it is prejudicial to the respondent and in breach of his constitutional rights, including his right to an expeditious trial. The delay is said also to be "breach of the applicant's right to respect for his dignity as a human being".

8. In paragraph (f) of the warrant, the requesting authority has stated:

> "The European Arrest Warrant for Jason Brady has only now been issued as he has been the subject of proceedings in the Republic of Irelands since fleeing this jurisdiction. The offences that are the subject of this warrant were committed on 10th December 2001. On the 19th December 2001 Brady was arrested in Dublin on outstanding warrants for robbery.
>
> On 20th December 2001, when Brady had been identified as a suspect in the killing of Mr Tandy, the first of a number of requests for mutual assistance was made to Dublin. Brady refused all requests for co-operation, and matters were the subject of lengthy litigation. In June 2005 Brady was released from custody. On the 29th July 2005, the Irish Supreme Court ruled on the numerous points of contention, allowing the requests to be fulfilled. It is in light of these rulings and as a result of corroborative evidence arising out of them that the surrender of Mr Brady is now requested."

9. Giollaíosa Ó Lideadha SC for the respondent submits that any judicial review proceedings which the respondent launched to challenge the order of the District Judge made in relation to mutual assistance is not something which should justify the delay by the requesting authority in seeking the surrender of the respondent. Mr Ó Lideadha submits that the application for surrender could easily have been dealt with during that time. He submits also that it is disingenuous of the authority to claim that it was only following the availability of corroborative evidence which came about as a result of the mutual assistance request that they were in a position to seek the surrender of the respondent. He submits that the facts clearly disclose that there was more than enough forensic evidence, including DNA evidence obtained from the scene of the alleged crimes, available to the prosecuting authority without the need to await corroborating evidence.

10. Accordingly it is submitted that the delay has not been justified by anything put forward, and that what has occurred breaches the requirement that a requesting authority acts expeditiously in relation to applications for surrender.

11. It is submitted also that even allowing for the fact that the judicial review proceedings brought by the respondent concluded only in July 2005, there is still a further unexplained delay of one year before the warrant was issued in this case.

12. Mr Ó Lideadha referred to the fact that the respondent has not alleged any particular prejudice which has flowed from the delay complained of. He submits however that it is not essential that specific prejudice be established. In answer to the point that since the judgment of the learned Chief Justice in *H v. DPP* [2007] 1 I.L.R.M. 401, the question to be decided in cases of delay is whether the delay has resulted in prejudice to an accused so as to give rise to a risk of an unfair trial, he submits that the door has not been

closed by this decision and other recent decisions on certain delays giving rise to presumed prejudice, and submits also that in any event the judgment in H v. DPP and others which have been referred to, relate to what are commonly known as 'sex delay cases' and as such are in a special category, and that they should not bear upon the Court's determination of the present objection on the ground of delay.

13. Mr Ó Lideadha submits that the respondent's right to an expeditious trial is a free-standing right, and that even without specific prejudice being established, the delayed trial is a breach of the constitutional and Convention right to an expeditious trial, such as prohibits surrender of the respondent under Part III of the Act.

14. In my view, it is not for this Court to criticise in the present case how the prosecution went about mounting its case against the respondent by seeking material evidence through a mutual assistance request. The United Kingdom is a sovereign state, and a prosecution authority there is independent, as it is here, in the pursuit of its functions. If that authority considered it appropriate to make such a request for mutual assistance, it was entitled to do so. Equally, the respondent against whom such a request was made was perfectly entitled to avail of his right of access to the Courts here in order to challenge the order of the District Court which was made. That process took whatever time it took, and the delay which it has caused in the seeking of the surrender of the respondent is in my view irrelevant to the issue of an expeditious trial being had. It is not as if the respondent was unaware that the authority in the United Kingdom was pursuing the matter of these offences. He was well aware of that fact and contested the steps being taken here in that regard, as he was entitled to do. One unfortunate fact is that if he had not so pursued his right of access to the Court to challenge the order made in the District Court, his surrender may well have taken place at a stage much earlier and he would not in all probability have suffered the appalling injuries in the motor accident in May 2006 which have left him in a paraplegic state. However, that fact, no matter how tragic, is also irrelevant to the Court's consideration.

15. The additional delay of one year between the date of the Supreme Court's decision in the judicial review application and the issuing of the warrant seeking surrender cannot be seen as excessive in my view. Any requesting authority must be entitled to consider the result of the judgment, and act upon it and a reasonable margin of appreciation must be allowed for necessary steps opt be taken in order to seek the surrender of the wanted person. In my view no culpable delay has occurred.

16. In addition, no specific prejudice has been alleged to have been suffered by the respondent. He has made no attempt to establish any specific prejudice. I do not wish to express any concluded view on whether what is stated in *H v. DPP* as to the new test to be applied should apply only to sex delay cases. I do not need to express such a view, and refrain from so doing. But one way or another, the absence of any stated prejudice in the present case weakens further any attempt b y the respondent to assert that the time which ahs passed since the date of these alleged offences is such as breaches his right to an expeditious hearing. In my view, it is impossible to conclude in the present case that any right to a fair trial or a trial with reasonable expedition has been breached. This point of objection must fail.

Applicant's state of health

17. After the respondent's return to this country from England subsequent to the date of these alleged offences, it is a fact, unrelated to the said alleged offences, that on the 12th December 2006 the respondent was involved in a motor cycle accident which resulted in very serious injuries which have left him in a permanent paraplegic state. He is paralysed from the waist down, and confined to a wheel-chair for the remainder of his life. He is currently just twenty six years of age. In this regard, it is submitted that there have been no assurances received from the issuing state regarding the conditions under which the respondent would be detained, or what medical facilities will be available to him, either pending his trial or during any period of imprisonment following any conviction on these charges. The respondent's solicitor has averred in his affidavit sworn on the 12th December 2006 that according to exhibited medical reports the respondent will be in need of ongoing physiotherapy and close monitoring given his state of health, and that he has made enquiries of the Prison Service in the United Kingdom by letter dated 11th December 2001, and that to surrender the respondent in the absence of response to same would breach the respondent's constitutional rights. It must be pointed out that this affidavit was sworn only on the day following the letter written by him seeking information in that regard. In fact an affidavit has been sworn by Mr David Perry QC of the Crown Prosecution Service and he deals in his affidavit with the position of prisoners in the position of the respondent. He states that such prisoners whether on remand or serving a sentence are provided with access to the same range and quality of medical services as the general public receives from the National Health Service. He goes on to set out the legal framework in this regard by reference to the Prison Rules 1999, and he exhibits these. He describes the assessment process upon reception of a prisoner, so that any individual's mobility and daily living skills are taken into account in the allocation of accommodation. He refers also to the protections afforded under the Human Rights Act 1998, whereby it is unlawful for a public authority such as the Prison Service to act other than compatibly with the European Convention on Human Rights and Fundamental Freedoms, including by the imposition of inhuman or degrading treatment under Article 3 thereof. He then states that in the case of the respondent the position is that upon his return to the United Kingdom he would be provided with medical treatment suitable to his needs, he would have access to the same range of services as would any member of the general public, and would enjoy the protections afforded by Article 3 of the Convention.

18. Mr Ó Lideadha for the respondent submits that the Court cannot be sufficiently reassured by the general statement contained in Mr Perry's affidavit, and that there is nothing in that evidence which addresses the particular needs of this respondent. He refers also to a judgment of this Court in *Minister for Justice, Equality and Law Reform v. SR* [2005] IEHC 377 where this Court referred to the judgment of Walsh J. in the Supreme Court in *Finucane v. McMahon* [1990] 1 I.R. 165, and stated:

> "… the Courts were vigilant to ensure that in any case in which rendition was being considered, of paramount importance was a consideration of whether by such rendition the constitutional rights, whatever those may be in any particular case, would be put to the hazard, and whether in order to properly protect and vindicate those rights the Court ought to refuse to surrender the person sought".

19. Mr Ó Lideadha urges that in adopting a similar approach in the present case, this Court should not be easily satisfied that the respondent's rights will be protected if detained upon surrender, lest they be put to the hazard.

20. He refers to the medical reports exhibited by the respondent's solicitor. In fact the report from his rehabilitation consultant, Dr Jacinta McElligott in the main describes a high degree of functional independence enjoyed by the respondent, in spite of his obvious severe difficulties resulting from his paraplegia. His prognosis in this regard is stated as being good, and that the respondent is very focussed on maintaining independence. She does on the other hand refer to "significant problems related to spasticity management at this time", and states that this can be managed as an outpatient through physiotherapy and outpatient clinical services. She anticipates the need for further physiotherapy and close monitoring through the rehabilitation clinic for a period of "at least six months" or maybe longer. In this regard, her report is dated 8th December 2006.

21. In my view, even though the respondent is entitled to every sympathy for the parlous condition in which he now finds himself as a

result of an unrelated road accident, the difficulties under which he labours for the remainder of his life are not of the same life threatening nature as the medical condition which afflicted SR in the case referred to, and which were regarded as constituting am uncontrovertible and serious risk to life if surrender was to be ordered. That case also contained very specific features in relation to the delay and the knowledge on the part of the requesting authority of the respondent's state of health. Those features are absent from the present case and it cannot really be relied upon as support for the respondent's submissions in the present case.

22. I am satisfied that there is no basis on the ground of the respondent's state of health for refusing to order his surrender. Not only has the Court received the evidence of Mr Perry, but the fact is that such an affidavit is not even required. It is almost trite law at this point to refer again to the expression of mutual trust and confidence between Member States which underpins the arrangements agreed upon for surrender between such states and which are set forth in the Framework Decision. The onus upon any respondent who seeks to establish that a requesting member state will not treat any surrendered person in a way, medical or otherwise, which does not meet generally acceptable standards, and in particular standards which are Convention compliant, is a very heavy one indeed. It would take a truly exceptional circumstance and a very high degree of proof in my view to dislodge what must be almost a presumption (though it is not expressed as a presumption in the Framework Decision or in the Act) that participating member states designated under s. 3 of the Act by the Minister for Foreign Affairs here observe fundamental rights, whether with regard to prison conditions or otherwise. Not surprisingly, no such evidence has been adduced in this case. This Court is entitled to operate on the basis that the requesting state will meet its obligations under the Convention and that the respondent's constitutional or Convention rights will be observed and protected.

23. I am therefore satisfied that this Court is required to make the order sought under s. 16 of the Act, and I will so order.