

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

NOEL PATRICK CORCORAN

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered on the 31st day of January, 2018

1. This is an application pursuant to a European Arrest Warrant ("EAW") issued by a judicial authority of the United Kingdom of Great Britain and Northern Ireland ("the UK") for the surrender of the respondent for the purpose of criminal prosecution in respect of two alleged offences concerning the fraudulent evasion or attempted evasion of duty chargeable on certain goods. The EAW sets out the details of the allegations against the respondent. It alleges that in July 2012, the respondent was the driver of a van which was stopped on the M2 outside Belfast in which 200,000 cigarettes were found. It is alleged that these were contained in counterfeit packaging and that the appropriate revenue had not been paid on the cigarettes. The respondent had been bailed to appear at a Police Service of Northern Ireland station in October 2012 but failed to do so.

2. The main issue in the case arose out of the respondent's ongoing medical condition and the conditions in the prisons in Northern Ireland. Prior to addressing those I will deal with the other matters of which I must be satisfied before surrender can be ordered.

A Member State that has given effect to the 2002 Framework Decision

3. The surrender provisions of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003") apply to member states of the European Union ("E.U.") that the Minister for Foreign Affairs has designated as having, under their national law, given effect to the Council (EC) Framework Decision of 13th June, 2002 (2002/584/JHA) on the European Arrest Warrant and the surrender procedures between member states ("the 2002 Framework Decision"). By the European Arrest Warrant Act, 2003 (Designated Member States) (No. 3) Order, 2004 (S.I. 206 of 2004), the Minister for Foreign Affairs designated the UK as a member state for the purposes of the Act of 2003.

Section 16 (1) of the Act of 2003

4. Under the provisions of s. 16(1) of the Act of 2003, the High Court may make an order directing that a requested person be surrendered to the issuing state provided that;

- (a) The High Court is satisfied that the person before it is the person in respect of whom the EAW was issued,
- (b) The EAW has been endorsed in accordance with s. 13 for execution of the warrant,
- (c) The EAW states, where appropriate, the matters required by s. 45 of the Act of 2003,
- (d) The High Court is not required under ss. 21A, 22, 23 or 24 of the 2003 Act as amended to refuse surrender,
- (e) The surrender is not prohibited by Part 3 of the 2003 Act.

Identity

5. The Court is satisfied on the basis of the information contained in the EAW and the affidavit of Don Healy, member of An Garda Síochána, that Noel Corcoran, who is before the Court, is the person in respect of whom the EAW has issued.

Endorsement

6. I am satisfied that the EAW was endorsed in accordance with s. 13 of the Act of 2003 for execution in this jurisdiction.

Sections 21A, 22, 23 and 24 of the Act of 2003

7. The Court is satisfied that it is not required to refuse to surrender the respondent under any of the above sections in relation to the European arrest warrant.

Part 3 of the Act of 2003

8. Subject to further consideration of s. 37, s. 38 and s. 45 of the Act of 2003, the Court is satisfied that it is not required to refuse the surrender of the respondent under any other section contained in Part 3 of the 2003 Act.

Section 45 of the Act of 2003

9. The EAW seeks the respondent's surrender for prosecution and therefore point (d) of the EAW was not completed by the issuing judicial authority. In these circumstances, the Court is satisfied that his surrender is not prohibited under s. 45 of the Act of 2003 which deals with trials in absentia.

Section 38 of the Act of 2003

10. I am satisfied that the ticking of the box marked 'fraud' by the issuing judicial authority indicating reliance on Article 2(2) of the 2002 Framework Decision of the 13th June, 2002 on the European arrest warrant and the surrender procedures between Member States ("the Framework Decision") is not manifestly incorrect. I am also satisfied that the provisions of minimum gravity have been met. Therefore his surrender is not prohibited by s. 38 of the Act of 2003.

The Points of Objection**Section 37 of the Act of 2003**

11. The respondent objected to his surrender as he maintained that his surrender would be a violation of s. 37 of the Act of 2003.

The respondent submitted that his surrender was prohibited because his rights under the Constitution and under the Convention would be violated on two grounds. The first was by reason of the inhuman and degrading treatment that he may be subjected to on his surrender to Northern Ireland. He also submitted that his family and personal rights would be violated as a result of the surrender.

12. The respondent is a 57 year old man who has resided in Cork his entire life. He resides in assisted living accommodation provided by the Housing Association. He has been on disability allowance for about 30 years in circumstances where he contracted polio as a baby. This has caused him significant difficulty since his youth and he has had a number of operations on his legs. His mobility is impaired. He has three sisters, two of whom reside in Cork. He also has four children, three of whom reside in Cork. He says that, owing to his illness, he receives a significant level of support from his sisters and children, particularly when his mobility is affected by his illness. He also said the proceedings were causing him significant anxiety and stress over the fear that he might be separated from his sisters and children.

13. He relied on a GP's report which confirmed that he had polio, significantly affecting his left lower leg causing weakness and pain. He has been left with a pronounced limp, and in 2011 a hospital clinician had stated that he was significantly negatively affected by his polio and this was likely to worsen as time progresses. The GP also stated that he had chronic anxiety and had been taking an anxiolytic drug namely diazepam for years. He did not appear to have received any other non-therapeutic help for that condition. He has high cholesterol for which he takes a statin drug. He also has a diagnosis of peripheral arterial disease which causes him pain in his lower legs even when walking short distances, and may require invasive surgical intervention in the near future if he redevelops loss of blood supply to his toes.

Article 8 of the European Convention on Human Rights ("ECHR")

14. The respondent objected to his surrender on the grounds that it would be a disproportionate interference with his family life to surrender him. In my view this is an argument that can be dismissed in a summary manner in accordance with the decision of the Supreme Court in *Minister for Justice and Equality v. J.A.T. (No 2)* (2016) IESC 17 where O'Donnell J stated:

"In any future case, where all or any of the above factors [*repeat application, lapse of time, delay, impact on the appellant's son, and knowledge on the part of the requesting and executing authorities of those factors*] may be relied on, it would not, in my view, be necessary to carry out any elaborate factual analysis or weighing of matters unless it is clear that the facts come at least close to a case which can be said to be truly exceptional in its features. Even in such cases, which must be rare, it is important that the considerations raised are scrutinised rigorously."

15. Although the EAW does not concern allegations of violence, the offences are relatively serious, carrying penalties of seven years each. Any delay since the date of the alleged offences can only have been contributed to by the failure of the respondent to appear at the PSNI station as required under his bail. The fact that he failed to appear adds to the public interest in ensuring that he is surrendered. Overall there is a relatively high public interest in his surrender.

16. On his family side, his private family interests as set out above are no more difficult or different from the expected disruption of a person's life by virtue of the extradition process. A similar situation arises with respect to his disability. There is nothing particularly harmful, injurious or oppressive in surrendering him. Overall this is not a case which comes even remotely close to being of the type of the exceptional case where surrender must be prohibited. The public interest in his surrender outweighs his private interest and it would not be disproportionate to surrender him. I therefore reject this ground of objection.

Article 3 of the ECHR

17. I gave judgment in two previous cases concerning conditions in Maghaberry Prison, namely *Minister for Justice and Equality v. McLoughlin* [2017] IEHC 598 and *Minister for Justice and Equality v. R.O.* [2017] IEHC 663, with my preliminary conclusions in respect of the very particular issues that had been raised in those cases. In the present case, I did not make any formal finding as to the prison conditions in Maghaberry. At an earlier hearing I stated that, in light of the information I had received in those other cases, I had certain concerns which should be addressed by the receipt of further information from the issuing state. These concerns related to the fact that this respondent was vulnerable in the sense of being a first time offender entering prison, a person with disability arising out of his childhood polio, and that he had chronic anxiety. Also raised in the course of that hearing was whether this respondent was even to be considered at real risk of being sent to Maghaberry Prison. It was apparent that a second prison, namely Magilligan Prison, operated in Northern Ireland and there was, at least, a possibility that this respondent would be held there.

Additional Information

18. It was in those circumstances that a letter of request was sent to the central authority in the UK by the central authority in this jurisdiction. This letter sought "additional information" and the questions asked were as follows:-

(1) Please confirm whether or not assurances can be given that, if surrendered, the respondent will not be detained in HMP Maghaberry.

(2) If no such assurance can be given, please indicate precisely what guarantees and/or assurances may be given to the executing judicial authority by the issuing judicial authority that if surrendered and detained in HMP Maghaberry, the respondent's Article 3 rights will not be violated.

(3) The particular vulnerabilities giving rise to the Court's concern to ensure that the respondent's rights will not be violated relate to the following:

(i) that he is a person who is a first time prisoner;

(ii) that he suffers from a particular physical disability caused by childhood polio and from chronic anxiety details of which are set out in the report of Dr. Jeremy Given (enclosed):

"We ask you to furnish any additional evidence you wish to rely on before the court in advance of the court's final judgment with particular reference to measures to safeguard the rights of:-

(a) first time prisoners;

(b) prisoners with medical conditions such as the respondent's."

19. Although the words "assurances/guarantees" had been used in the course of the letter, this usage has to be understood in the

context of the letter being a request for additional information. This is particularly relevant in the circumstances where no findings had been made by this Court at the earlier hearing. Therefore, this had not been a request for information of the type referred to in the *Aranyosi and Caldaru* (Joined Cases C-404/15 and C-659/15) [2016] E.C.L.I. 198 decision of the Court of Justice of the European Union (CJEU) where a court has already made a determination as to a potential breach of Article 3 of the European Convention on Human Rights.

20. The letter requesting the additional information was transmitted to the Central Authority in the UK, namely the Serious Crimes Agency. The reply came from the Crown Solicitors Office in Belfast which enclosed a letter from the head of the Northern Ireland Prison Service ("NIPS") with an address at the Department of Justice, addressing the request for specific information. Although there had been a reference to the issuing judicial authority in the initial request for information, I am satisfied that in the circumstances of this particular case (including where no issue had been made of the reply emanating from the state authorities in the issuing state) that I am entitled to receive this information. In that regard, I note that the specific provisions of s. 20 of the Act of 2003 allows for information to be requested of the issuing state. In circumstances where this was not a request of the type set out in *Aranyosi and Caldaru*, the question of whether it was necessary to involve the issuing judicial authority does not arise.

21. In his reply, Mr. Ronnie Armour, the head of NIPS, stated that NIPS has only two adult male establishments. Maghaberry Prison is the only adult male committal prison and all new committals will be initially held there. He confirmed that progression to the lower security category, Magilligan Prison, is possible for sentenced prisoners deemed suitable. Counsel on behalf of the respondent criticised this response in submitting that it would have been open to them to say that he would not go to Maghaberry. In my view, the answer is simply a statement of law in Northern Ireland, which is that NIPS cannot give that guarantee. Maghaberry is the committal prison and all prisoners will start there and only progress to Magilligan under certain circumstances. There is no basis for complaining about this "failure" to give assurance when such an assurance cannot be given. Instead, this places the Court in the position where it must consider the real risk to this respondent based on the fact that he will be going to Maghaberry Prison should he be surrendered.

22. The response of NIPS dealt with the second and third questions together. On the other hand, the response split the issue of healthcare from the issue of his presentation as a first time offender. The response set out that all prisoners are assessed immediately on committal both by specialised reception officers and healthcare professionals. A variety of factors are taken into account, including mental or physical health issues, threats, type of offence, notoriety etc. It was stated that the fact that a person is in custody for the first time will be made known to all staff. This fact will also be apparent by the prison serial number which allows for an awareness amongst staff that the prisoner is a first time prisoner and, therefore, that he may be more sensitive during the transitional period of adapting to his most recent incarnation and the particular challenges that he may have. There is also a buddy system in place which ensures that first time prisoners who self identify, or whose staff identify as vulnerable, may accept peer support to make their transition period less stressful and ensure they have someone to talk to and learn about prison life from.

23. The issuing state referred to the report of the unannounced visit to Maghaberry Prison in April 2017, published in August 2017. That report had stated that:-

"Reception and first night arrangements were reasonably good. Reception remained a decent environment, and privacy had improved. The 'buddy' system of peer support for new committals was well established and working well. The first night/induction information had been revised and updated. First night cells we reviewed looked well prepared, and prisoners we spoke to were content with their treatment."

24. The NIPS response also gave further information about the new committals and stated that they were held in a specific unit for one week to allow assessment to take place. That allowed the identification and planning for specific needs and vulnerabilities while simultaneously enabling the prisoner to adapt to prison life and routine. There were specially trained members of staff to deal with these areas. It was also confirmed that anyone presenting as anxious or self-isolating will be actively engaged with. Trained staff members refer cases to relevant professionals working in partnership in the prison when necessary. There was a full range of interventions available and, after assessment, an appropriate longer term location will be selected based on the expressed and identified needs of the prisoner and the category allocation while in prison.

Analysis and Determination

25. From the response of NIPS, it is clear that the information about first time offenders goes much further than the information provided in the reports that the Court had access to at the time it asked for the additional information. The information sets out that a very well developed, careful system of assessment and protection for first time prisoners is in place in Maghaberry. Indeed, that system is available for all those suffering from vulnerabilities such as anxiety or self-isolation. I have no hesitation in saying that based on the information presented to the Court, there is no ground for believing that this particular respondent will be at risk of being exposed to inhuman and degrading treatment by reason of the fact that he is liable to be committed to Maghaberry Prison as a first time committed prisoner.

26. I also repeat what I have said in the case of *R.O.* about the improvements that were clearly made to Maghaberry as recorded in the 2017 reports, which show that, in general, the prison conditions have improved. In the wider sense of prisoner safety generally, there is no basis for believing that he would be subject to inhuman and degrading conditions should he be surrendered. The one remaining issue is to address concerns about his disability and health issues.

27. In his response on the issue of the respondent's disability arising from childhood polio and his chronic anxiety, Mr. Armour made reference to the locations in which persons may be held. In the first place, he referred to a unit holding those seen as vulnerable due to their crime/alleged crime, but that does not apply in the case of this respondent. Mr. Armour also referred to an area which was previously the healthcare ward which now houses a small number of prisoners who have high public profile or have specific healthcare demands, but no person seen as a risk of harm to others would be considered suitable for that unit. Those persons held in that unit include those with mobility issues. These prisoners have ongoing support from healthcare support such as occupational therapy and they are provided with aids that assist with mobility. If such a prisoner was seen to be at risk from negative comments due to their disability, they will be escorted to appointments by a member of staff. The unit is supervised by staff members who have been trained to enable them to provide effective support and to identify problems before they become concerning issues.

28. Mr. Armour stated that the provision of healthcare in the prison is a responsibility of the South Eastern Health and Social Care Trust. He said that joint working between the two organisations leads to effective medical care being provided. He said the prisoners with a range of conditions receive medically prescribed care, both in the prison and at hospital while being escorted by staff. Care provided within the prison has ranged from care with those with mobility issues, life long disabilities and up to palliative end of life care.

29. The report made reference to the April 2017 Criminal Justice Inspection Report and quoted from certain sections therein. In particular, they refer to the fact that healthcare was an improving picture overall and that leadership had improved and partnership work was now stronger. A new GP clinical lead had been appointed and missed appointments were down from 50% to 13%. Some support for long term conditions had also been developed. They referred to a recommendation for a review to be carried out by the healthcare ward into the service model at the prison to ensure the needs of prisoners with complex health issues were met. This had now been superseded by a joint review of vulnerable prisoners by the Department of Health and Department of Justice.

30. Mr. Armour also referred to "prisoner safety and support team" which take on the cases of vulnerable prisoners, and when appropriate, a multidisciplinary approach tailored to each case is taken forward. The prison also has in place an anti-bullying process that allows staff to closely monitor such matters. There is also a "keep apart" policy operated whereby appointments of those seen as vulnerable cannot be booked at the same time and place as someone they have issues with.

31. The response of Mr. Armour also referred to the specific mental health support and pathway services provided in Maghaberry as referred to in the 2017 report. That stated that overall mental health support was meeting the considerable needs of men at Maghaberry reasonably well, although staffing shortages were impeding the further development of the service. The wellbeing centre was providing excellent support and this provision had improved markedly since the last review visit. Finally, he referred to a "new core day" which refocuses the prison on maximising attendance at constructive activity with clear responsibilities for prisoners and staff and support and sanctions combined to encourage prisoners to engage in activities.

32. Counsel for the respondent submitted that the response of NIPS had failed to engage with the complaints that were still raised by the Criminal Justice Inspection Report – published August 2017. In particular, there were continuing concerns that important lessons about deaths in custody and serious self-harm had not been learnt. The prison did not provide the therapeutic environment that is required for prisoners with complex needs and it was submitted that the Court should be aware of these limitations when committing people to prison for mental health assessments. Two particular issues were raised by counsel for the respondent, the first being that there were significant concerns about the management and care for vulnerable men, particularly those who self-harm. While levels of self-harm and the number of men self-harming had decreased, both had remained high in relative terms. There were issues around the quality of some of the supporting prisoners at risk reports, and some of those still remained poor and did not provide assurance that the men concerned had been adequately cared for. The staff seemed more concerned meeting the letter of the process rather than its spirit and the response to self-harm or its threat. There were issues with how long some men stayed in observation cells.

33. The final issue that was raised was the fact that there were some concerns about gaps in provision for long term conditions. The main point was that significant concerns remain about several aspects of medicines management, particularly the fact that medicines prescribed to be administered to prisoners as 'supervised swallow' continued to be administered in possession for evening doses which was contrary to professional guidance on medicines administration and created additional opportunities for misuse, overdose, diversion and bullying. It was submitted that the Court should still have significant concerns about the conditions to which this respondent would be exposed.

34. In my view, the concerns expressed in the 2017 report about the use of Maghaberry for a safe place while mental health assessments took place are not relevant to this particular respondent. There is no indication that he has any significant mental health concern other than the chronic anxiety for which he has been prescribed diazepam as required for many years. This does not seem to be the type of person who could be described as "potentially high risk" in the way indicated in the 2017 report. No mental health assessment was deemed necessary to be carried out on this respondent in the context of these proceedings and there is nothing before the Court to indicate that there is a risk that such a mental health assessment would be required to be carried out should he be surrendered. Therefore, the Court is not required to consider that matter further and rejects this submission.

35. In respect of the issues about the provision of care for those who are presenting as self-harming, similarly there is no suggestion that this person is at such risk. The mere fact that he may have chronic anxiety does not translate into a situation where he can be seen to be at risk of self-harm, and this Court would require cogent evidence to be satisfied that he comes within this category. Therefore, this too is not a matter that the Court has to address and I reject this submission also.

36. The Court must however assess that aspect of the 2017 report which deals with the manner in which medicines are dealt with in the prison. This respondent, being a person who may be in receipt of diazepam, would potentially come within the class of prisoners who might be subject to some kind of pressure to handover that tablet. I do not believe however, that there is any issue about overdosing on the tablet as there is no evidence of any such risk of accidental or deliberate overdosing.

37. However, the Court has to look at the issue of whether this person is at real risk based on reasonable or substantial grounds that he will be subject to Article 3 violations. The Court has to look at that in the context of the provision that is being made for prisoners as a whole. In particular, the Court also has to act on the basis that there is a presumption that the issuing state will comply with its obligation under the 2002 Framework Decision, which include obligations to respect fundamental human rights and freedoms.

38. In the present case, NIPS have given information of the operation of the procedures in Maghaberry to deal with vulnerable prisoners including those who are vulnerable by way of being first time offenders and those who have any healthcare issues. It is clear from the totality of the information before the Court, which includes evidence from the national preventative mechanism (i.e. the Criminal Justice Inspectorate reports) as well as the specific information given by the NIPS, that a great deal of care is taken to address issues of vulnerability in the prison. It is also the case that the Court can see that there has been a progression of significant improvement in conditions in Maghaberry Prison over the course of the subsequent reviews arising directly from the concerns raised in the 2015 inspection report.

39. While the Court cannot surrender a person where there exists a real risk he will face conditions which are not Article 3 compliant, the Court is entitled to take into account the progression of improvements in combination with the existing protections in order to assess whether this particular respondent is at real risk of experiencing inhuman and degrading treatment on his particular surrender. Furthermore, the Court must assess all the factors in the case as regards the treatment that may be experienced by a surrendered prisoner. It is well established that:

"[i]n so far as article 3 ECHR is concerned, it is well established that for this provision to be engaged a person has to be subjected to ill-treatment. Moreover, the ill-treatment must attain a minimum level of severity if it is to fall within the scope of article 3 ECHR. The assessment of this minimum level is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Vilvarajah* etc....). The European Court of Human Rights has consistently stressed that the suffering and humiliation must in any event go beyond that which is inevitably connected with a given form of legitimate treatment or punishment. As regards prisoners or detainees, the Court has repeatedly

noted that measures depriving a person of his liberty may often involve such an element. However, under article 3 ECHR the state must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured." (As *per* Edwards J in *Minister for Justice, Equality and Law Reform v. Machaczka* [2012] IEHC 434)

40. In the view of the Court, the reference in the August 2017 report to concerns about the manner in which medicines are dispensed with in the prison does not amount to a substantial or reasonable ground for believing that this particular individual will be at real risk should he be transferred to Maghaberry Prison. In the first place, in my view, it is simply too remote a possibility to consider that this prisoner might suffer bullying over the fact that he is being prescribed diazepam (or equivalent anxiolytic) – it has not been established on cogent evidence that he is at real risk of this. Furthermore, there is no indication that this bullying or the fear of the bullying will reach the intensity of ill-treatment that could make his detention in the prison amount to detention in inhuman and degrading conditions. Moreover, the level of protection provided for vulnerable prisoners is such that in combination with the improvements that have already occurred in Maghaberry, it is too remote to believe that he will suffer from this situation.

41. In all the circumstances, the Court is not satisfied that the conditions in Maghaberry and, in particular, those that might apply to this particular respondent amount to inhuman and degrading treatment.

42. I would also comment that although this respondent has been prescribed diazepam for some considerable time, the evidence before the Court is not particularly strong to demonstrate that he will inevitably be prescribed diazepam in Maghaberry Prison. In particular, the GP notes that no other non-therapeutic health for this condition has been received by him. The Court understands the concept of non-therapeutic help as referring to other assistance in respect of dealing with chronic anxiety. It could be that doctors in Maghaberry take a view that talk therapies or other strategies might assist in his treatment. That is clearly not a matter for this Court but is a matter for the doctors in Maghaberry. The Court has not decided the case on this basis but has simply observed that the evidence does not establish that it is inevitable he will receive diazepam in Maghaberry. The test, of course, would not be one of inevitability, but a question of assessing whether there are substantial grounds to believe that this respondent would be at real risk. I have considered and determined the case on the basis that he will be receiving diazepam in the prison but that fact does not give rise to a real risk that he will be subjected to inhuman and degrading treatment.

Conclusion

43. For the reasons set out above, I am satisfied that there is no reason to prohibit the surrender of this respondent to the issuing state under this European arrest warrant. I therefore may make an Order for the surrender of this respondent to such person as is duly authorised by the UK to receive him.