Neutral Citation Number: [2012] IEHC 302

THE HIGH COURT

Record Number: 2009 No. 62 EXT.

Between:

Attorney General

Applicant

And

Rory Doyle otherwise known as David West

Respondent

Judgment of Mr Justice Michael Peart delivered on the 20th day of July 2012:

1. The respondent failed to appear in the Supreme Court on the 7th February 2012 in order to prosecute his appeal against an order for his extradition to the United States of America. Before this Court for determination is an application by the Attorney General for the estreatment of a sum of €100,000 lodged by his mother with the Governor of Cloverhill Prison by way of independent surety when the respondent was granted bail for the purpose of his appeal. I will set out some background facts before addressing issues relevant to the present application.

2. On the 21st January 2010, I made an order under Part II of the Extradition Act, 1965, as amended, for the extradition of the respondent to the United States of America pursuant to a Request received from that jurisdiction. The respondent had been granted bail by order dated 30th March 2009 pending the hearing of that application for his surrender. His bail was subject to a number of conditions, and in particular that he surrender his passport, that he reside with his mother at her house in Donnybrook, Dublin 4, that he report and sign on each day except Sunday at Donnybrook Garda Station, and, of particular relevance to the present application that he enter into his own bond in the amount of €25,000 (none of which was required to be lodged), and that there be one independent surety in the sum of €100,000, all of which was to be lodged. The Court approved the respondent's mother, Maura Doyle as such independent surety, and the said amount of €100,000 was lodged in the form of a Banker's draft.

3. In the immediate aftermath of the making of the said extradition order, the respondent filed and served a Notice of Appeal, and applied for bail on the same terms pending the determination of that appeal. There being no objection to the respondent remaining on bail until his appeal was determined, the Court made another order for bail on the 21st January 2010, essentially on the same terms, and deeming the sum of €100,000 already lodged to be lodged for the benefit of the fresh bail order pending the determination of the appeal.

4. It appears that the respondent's appeal was listed for hearing in the Supreme Court on the ih February 2012. However, by letter dated 5th December 2011, the respondent's solicitors wrote to the Chief State Solicitor's Office stating that they had received a request from the respondent that he be allowed to travel to England for a period of one week over the Christmas period, as he and his mother had been invited to spend Christmas with the respondent's brother who resides there. That letter stated that his mother is 89 years of age, almost completely blind and unsteady on her feet, and would be unable to travel without the respondent's assistance.

5. In the light of the above, an application was made to Mr Justice Edwards to vary terms of bail in order to permit the respondent to travel to England on the 21st December 2011 and to return to this State on the 29th December 2011.There being no objection raised by the authorities here to the order sought, Mr Justice Edwards made an order on the 14th December 2011 which permitted the return of the respondent's passport to him on the 20th December 2011, its return to An Garda Siochana Extradition Section on the 29th December 2011, and suspended the reporting conditions for the period in question. It was not Sgt. Fallon himself who handed the passport back to Mr Doyle, but rather one of his colleagues.

6. It now appears of course that the respondent did not spend Christmas with his brother, and neither did his mother. She appears to have been prevailed upon to spend Christmas on her own in a hotel in Cork if that evidence is to be believed, and nobody knows what happened to the respondent or where he went. His mother stated on affidavit that on the 22nd December 2011 she left Dublin and travelled to Cork by train in order to spend Christmas there. She says that she stayed at the Imperial Hotel, and that during that time she met and visited a number of friends and distant relatives. She states that she came back to her home in Donnybrook on the 29th December 2011 to find that her son was not there. However, she explains that she was not particularly alarmed about that *"as he frequently went away overnight for one night at weekends when he was not required to sign on*".

7. She states that when on the 2nd January 2012 her son had still not returned home she contacted An Garda Siochana at Donnybrook by telephone, and inquired of a female member whether her son had signed on since the 29th December 2012. She says that she was told that he had not. She goes on to say that the member in question "allayed my fears and indicated she would follow up on the matter". Mrs Doyle states that having heard nothing further, she made another call to Donnybrook Garda Station and told them that she had not seen the respondent since she had returned to Dublin after Christmas, and again states that her concerns were allayed by the member to whom she spoke, and Mrs Doyle felt that she did not need to take any further action. There appears to be no record at the Garda Station of these telephone calls. The last date on which the respondent signed on at Donnybrook Garda Station was the 20th December 2011.

8. The next thing that happened was that on the 2ih January 2012, some ten days or so ahead of the hearing of the respondent's appeal in the Supreme Court, two Gardai from Garda Headquarters called to Mrs Doyle's home to make inquiries about the respondent. One of those members was Sgt. Sean Fallon of the Extradition Section. He has given evidence before me. It seems that he and his colleague called to Mrs Doyle's house to make inquiries about the respondent, but that she was unable to provide any. He says that she was co operative in as much as they were allowed go upstairs to the room which her son had used while living at the house. Nothing of use was found. Mrs Doyle was asked to telephone her other son in England and with whom the respondent was supposed to spend Christmas. She did so in the presence of Sgt. Fallon but had to leave a message. Sgt. Fallon stated in evidence that he had managed to speak to the respondent's brother later that same evening, but no information was forthcoming as to the whereabouts of the respondent or where he had spent Christmas. However, it is clear that the respondent did not spend Christmas with his brother,

and neither his brother nor his mother seems to have any information to assist as to his whereabouts.

9. On the 27th January 2012 an application was made by the applicant for an order for the issue of a warrant for the arrest of the respondent for being in breach of his bail conditions. That application was granted and a warrant issued. However the respondent has not been located. On the 2nd February 2012 the Supreme Court was notified that in the circumstances the appeal would not be proceedings on the 7th February 2012 and the matter remained on the list for mention only. On that date the Supreme Court indicated that the present application for estreatment of bail monies should be made to the High Court. According to her affidavit, Mrs Doyle attended in the Supreme Court on the 2nd February 2012. She had been contacted by her solicitor to tell her of the issue of a warrant for her son's arrest, and of the matter being mentioned in the Supreme Court on the 2nd February 2012.

10. On the 15th February 2012 Sgt. Fallon and another member of An Garda Siochana again called by prior arrangement to Mrs Doyle to talk to her about the respondent. According to Sgt. Doyle's evidence her solicitor was also present on this occasion. He agrees with her averment in her affidavit that she was co-operative, but nevertheless no further information was forthcoming from her. In her affidavit she says that she is as anxious as the Gardai are of finding out where her son is, and that she is concerned about him.

11. Mrs Doyle also makes the point that at no time was she ever informed that the respondent was making an application in December 2011 to vary his bail terms so that he could to travel to England for Christmas. While she does not make an averment that if so notified she would have objected to such a variation, she does say, in the context of the application for the estreatment of the €100,000 bail money lodged by her that "*this is of very great concern to me: the money in question represents a substantial portion of my life's savings and I simply cannot afford to lose it*". She states in that regard that she was, and still is, anxious to assist her son in any way she can, and agreed to act as surety "*in particular circumstances and on specific terms, and it now appears that these terms were changed without my knowledge and without reference to me*". She states that she is disappointed that nobody saw fit to inform her of those changes to the bail conditions, and says that she was "kept in the dark in respect of the relaxation of the respondent's conditions of bail, which relaxation directly facilitated his leaving the jurisdiction". She concludes her affidavit by stating that she has acted properly and conscientiously at all times, and considers that it would be unfair and unjust in all the circumstances for her savings to be taken from her, and asks that the present application be refused.

12. Kathleen Noctor BL for the applicant has referred to the lack of any detail in the averments of Mrs Doyle in her affidavit about her visit to Cork for Christmas. Indeed, given her age and frailty one might have expected some detail to be given as to whether she travelled by train alone, and how she managed to meet with and visit "a number of friends and distant relatives", particularly if she was not accompanied. Equally, if her averment is correct, it is surprising that one or more of those persons has not been asked to corroborate what she has stated. However, it does appear that she stayed at the Imperial Hotel, as some inquiries were made in that regard by Sgt. Fallon. But it is to say the least curious that in spite of the fact that she claims to have had no knowledge of the making of the order permitting the respondent to leave for England and suspending his reporting conditions between the 21st December 2011 and the 29th December 2011, those are the very dates on which she went to and returned from Cork. She gives no detail as to whether the respondent was in the house with her on the 21st December 2011 up to the time she left for Cork, and there is no detail given as to what if any conversation her son had with her before either his departure or hers, whichever occurred first. The lack of detail and substance to her story gave me some cause for concern when this application came before me, even making allowances for her frailty and great age. She was however able to attend court both before the Supreme Court as I have stated and before me on the present application, though she not attend on the 18th May 2012 to which I adjourned the application, as I shall explain.

13. Sgt. Fallon's evidence has been that even though the last date on which the respondent complied with his signing-on obligation at Donnybrook Garda Station was the 20th December 2011 (to resume again on the 29th December 2011 upon his return from England) he was not informed by Donnybrook Gardai either on the 29th December 2011 or any subsequent date that the respondent had not been signing on as required. It was not until he himself decided to make inquiries before the 2ih January 2012 that this fact emerged.

14. Even though the respondent did not return the passport on the 29th December 2011 this does not appear to have registered any concern on the part of Sgt. Fallon. I must say I am very surprised that he does not appear to have noted or realised on the 29th December 2011 or perhaps the 30th December 2011 that the respondent had failed to return his passport as required, or, if he did notice the failure, was not concerned enough to take any action or make some immediate and relevant inquiries. I suspect that for whatever reason it simply did not occur to Sgt. Fallon to inquire. Nothing was done until the end of January 2012.

15. I am constantly amazed and alarmed, and have on several occasions drawn attention to this aspect of bail, that there seems to be no system in place in Garda Stations, or even a practice or requirement on the part of those members in charge of Garda Stations whereby the relevant Garda in charge of the accused's case, or in the case of extradition the respondent's case, is immediately notified that the person has failed to attend the Garda Station to sign-on. It seems to me that requiring a person to sign on at a nominated Garda station of his/her choice as a condition of bail serves no useful purpose whatsoever if a failure to observe that requirement triggers no alarm of any kind. There may as well be no requirement to sign on imposed as a condition of the bail. Unless some system is in place, as I describe, it is simply a matter of choice on the part of the bailed person as to whether he/she signs on. The person can in effect choose not to sign on in the almost certain knowledge that it may be days, weeks or even months before anyone in authority will notice and/or do anything about it, by which time the person will may well have made his way out of the jurisdiction, or have otherwise gone to ground.

16. The above scenario makes a mockery of the process by which bail is applied for and granted. It brings the whole process into disrepute. In an extradition context, where bail is being considered by a judge upon the arrest of a person, or as in this case where bail is sought pending an appeal to the Supreme Court, it is important that bail be granted where sufficient safeguards can be put in place to ensure as far as reasonably possible that in due course if the person's extradition is ordered, the person will be available to be extradited. One of the safeguards offered by most respondents is by way of an offer to sign on at a local Garda station several days per week or indeed every day. Others are to reside at a particular address approved of by An Garda Siochana, and to provide some financial condition either by way of own bond or independent surety or both. In my view the last mentioned provides little comfort on its own. The residence requirement coupled with the signing-on condition are of far more importance given the opportunity which the failure to sign-on should provide to the authorities to know at the earliest moment that a person may have left home and be on the run. Without a failure to sign on raising any alarm bells to the relevant Garda officer, this early warning possibility evaporates. If it be the case that there is no system or even reliable practice in place in this regard, it calls into question whether a judge should attach any significance to an offer by an applicant for bail to sign on at his/her local Garda station. A person may willingly forfeit either his own or somebody else's money and may not attach any importance to the fact that he has surrendered his passport, when deciding to breach the conditions of his bail in order to flee in order to escape justice or an order for his surrender/extradition. Those conditions are of no significance in respect of a person intent on escape. The only condition remaining which is of any effect in inhibiting his escape is the reporting condition. In the present case, if Sgt. Fallon had reacted on the 30th December 2011 to the fact that this respondent had not returned his passport as required on the previous day, he could at least

have commenced inquiries and investigations straightaway, rather than as occurred, almost one month later. That if course was far too late for such inquiries to be of any use. The fugitive was well away by then.

17. What has happened in the present case points up a serious defect and weakness in the system. It also reflects badly on Ireland when a person whose surrender or extradition has been sought by another sovereign state because the person sought has already evaded justice in that state. Ireland has bilateral and multi-lateral international obligations in relation to extradition. It cannot properly fulfil those international obligations where a person is granted bail upon arrest but on conditions which are not effective in ensuring as far as practicable that the person will be available for extradition/surrender if so ordered. If a judge cannot be satisfied that the reporting condition is an effective mechanism, it will inevitably lead to a situation where persons who might otherwise be entitled to be allowed to remain at liberty pending their trial or the hearing of the extradition application will be kept in custody.

18. I would urge those in authority and with the ability to address this unsatisfactory situation to do so without delay in order to prevent a recurrence of what has occurred. There has been an enormous waste of scarce resources in this case both in terms of court time, judges' time, and legal fees, not to mention the time of relevant Gardai from time to time in relation to the initial arrest and also on all the dates on which this case appeared in court lists over a lengthy period of time. Following the respondent's arrest he was processed through the High Court in the normal way over many months before the extradition hearing took place. A lengthy judgment was prepared and delivered by me. Court staff were required to deal with this file, including the appeal, for two years or more. The Attorney General engaged senior and junior counsel to argue the application for extradition, and were no doubt briefed and ready to defend the appeal to the Supreme Court which had to be aborted at the last moment. All that time and effort has been totally wasted, and one could not blame the requesting state if it had a very poor opinion of the efficiency of this State in the matter of requests being made for the extradition of wanted persons. This should not be the case, and, I suggest, reflects badly upon the State.

19. I heard legal submissions and, as I have referred to, the evidence of Sgt. Fallon on the 2ih April 2012. Having heard that evidence and some submissions, I decided that it was important before deciding that the amount of €100,000 should be forfeited to the State, that the provenance of that money should be established with some certainty. In particular, I was concerned that while Mrs Doyle had lodged the money or appeared to have, and even though she stated the money to be a large part of her life's savings, the Court had only her unsupported assertion in that regard. I indicated to her Counsel that by the adjourned date I required, without any equivocation, clear evidence of the account from which she had withdrawn the sum, when those funds had come into that account and from where. In other words, I required to be satisfied by clear evidence that this money was in truth that of Mrs Doyle, and not simply a sum provided to her by the respondent for the purpose of fulfilling the independent surety condition of his bail. I felt that there were at least grounds for fearing that the latter was the case, because Mrs Doyle is a very elderly and frail lady, and of no apparent wealth. It seemed to me highly unlikely that she was a lady who could afford to lose this sum, or who could afford even to run the risk that she might lose it if it was forfeited. In these circumstances I was entitled to view sceptically her assertion that the funds were her own, and that they were her life's savings. I needed her to satisfy the Court in that regard given the lack of detail already provided. I therefore adjourned the matter so that she could provide a comprehensive affidavit establishing the provenance of the funds provided.

20. Mrs Doyle did not avail of the opportunity to provide any further evidence in relation to the funds lodged by her. No further affidavit has been sworn by her. Her Counsel has informed the Court that she was apparently upset about certain happenings following the previous court date. It appears that she was subjected to contact from journalists at her home about this case which she did not welcome, and thereafter wished to have nothing further to do with the present application. I am therefore unaware of the provenance of this money. I cannot accept her previous averment that these funds are hers without that fact being corroborated and verified. She has decided that she will not deal with the matter further. I am drawing an obvious and adverse inference from that fact.

21. Given the amount of money involved, and the lack of any further evidence from either Mrs Doyle herself, or even somebody on her behalf if she felt too frail and stressed to deal with the matter herself, I am entitled to, and do, draw an inference that the money is not in truth her own and has been provided for her by her son the respondent. I can readily understand that in the light of the Court's concerns expressed prior to the adjournment, it was clear that the source of the funds would be closely examined, and that any further affidavit by her could lead to obvious and serious consequences. As things stand, I am satisfied that she has been manipulated by her son, and I do not propose to take any further step in relation to the averments already made by her and of which I have reason to doubt the veracity.

22. The respondent appears to have been prepared to risk losing this sum of money by failing to comply with the terms of his bail and prosecuting his appeal. I am left with no doubt, I am afraid, that the respondent has manipulated and used his elderly mother by involving her as an independent surety on the false pretence to the court that she was putting up her own money, and leading to her swearing an affidavit on this application which is not only economic with the truth, but in some respects false. I refer in particular to her averment that this fund was a large part of her life's savings and that she was dependent upon it. I have no doubt that this averment was made by her so that if at all possible this sum would not be lost to her son. He could just as easily have entered into his own bond in the sum of€100,000 and lodged the sum himself, rather than manipulate his mother into a callous deception. It would however have deprived him of even the chance that an order for forfeiture would not be made upon his absconding in the event that the Court was satisfied that his mother was blameless in the matter of his absconding.

23. My finding of fact to the effect that the funds lodged by Mrs Doyle as independent surety are funds in fact provided by the respondent himself makes it unnecessary to consider the culpability of Mrs Doyle in the absconding of her son, and how the Court should exercise its undoubted discretion as to whether the whole or part of the sum should be forfeited. That finding of fact makes it unnecessary also to consider the otherwise potential difficulty on this application, namely that Mrs Doyle was not formally put on notice of the application by her son to vary the terms of bail in order to facilitate his travel out of the jurisdiction. If these monies were truly Mrs Doyle's, the fact that she was not put on notice of the bail variation application, and thereby deprived of any opportunity to express her view on the wisdom of making such a variation, and possibly objecting to same, would be a strong factor to be taken into account on this application for forfeiture of the sum lodged. In my view, an independent surety who has lodged monies or may be liable to pay over money where a person breaches the terms of his/her bail, is entitled to be informed of any intended application to vary the bail terms so that he or she can express a view. Clearly any relaxation of the terms of bail may affect the risk of a person's flight, and that in turn exposes the independent surety to a greater risk that he or she might be called upon to pay the amount in question or forfeit monies actually lodged.

24. However, that does not arise in the present case in my view, since I am satisfied that the monies in question are not Mrs Doyle's at all, and therefore she personally was not at risk in that regard. The fact that she was not notified in advance of the variation application should not therefore result in the respondent himself getting back money which, I am satisfied, he himself provided, and in circumstances where he has absconded.

25. I will make whatever order is appropriate for the forfeiture of the sum of €100,000, and interest thereon if any, to the State.