

THE HIGH COURT

Record No. 2014/244 EXT

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

-AND-

ROBERT DONOVAN

EX TEMPORE JUDGMENT of Ms. Justice Donnelly delivered this 14th day of October, 2016.

1. The surrender of the respondent is sought by the United Kingdom ("U.K.") pursuant to a European Arrest Warrant ("EAW") dated 10th November, 2014. A central issue in these proceedings was the recent referendum vote in the U.K. to leave the European Union ("E.U."). That was the only point pursued and it will be dealt with later. There are a number of issues to deal with first.

A Member State that has given effect to the Framework Decision

2. The surrender provisions of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003") apply to those Member States of the European Union 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 on the European arrest warrant and the surrender procedures between Member States ("the 2002 Framework Decision"). I am satisfied that by S.I. No. 4 of 2004, the Minister for Foreign Affairs has designated the U.K. as a Member State for the purposes of the Act of 2003.

Section 16(1) of the Act of 2003

3. Under the provisions of s. 16(1) of the Act of 2003, the High Court may, make an order directing that the 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, or a true copy thereof, has been endorsed in accordance with s. 13 for execution,
- c) the EAW states, where appropriate, the matters required by s. 45,
- d) the High Court is not required, under sections 21A, 22, 23 or 24 of the Act of 2003, as amended, to refuse surrender,
- e) the surrender is not prohibited by Part 3 of the Act of 2003.

Identity

4. I am satisfied on the basis of the affidavit of Garda Steve Allen, member of An Garda Síochána, the affidavit of the respondent, and the details set out in the EAW that the respondent, Robert Donovan, who appears before me is the person in respect of whom the EAW has issued.

Endorsement

5. I am satisfied that the EAW has been endorsed in accordance with s. 13 for execution.

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

6. Having scrutinised the documentation before me, I am satisfied that I am not required to refuse the respondent's surrender under the above provisions of the Act of 2003, as amended.

Part 3 of the Act of 2003, as amended

7. Subject to further consideration of s. 37, s. 38 and s. 45 of the Act of 2003, as amended, and having scrutinised the documentation before me, I am satisfied that I am not required to refuse the surrender of the respondent under any other section contained in Part 3 of the said Act.

The provisions of Section 38 of the Act of 2003

8. This EAW issued in respect of a life sentence that was passed on the respondent in 1974 in respect of the offence of murder. It appears that he was released from prison on licence but this licence was revoked. He continued serving his sentence but was temporarily released from custody and failed to return on 19th June, 2010. He has remained unlawfully at large since then. The issuing judicial authority has indicated that this is an offence to which Article 2 para. 2 of the 2002 Framework Decision applies. Clearly, it is an offence in excess of the minimum gravity. There is no need to establish correspondence as the box in respect of murder is clearly ticked and details of that offence are given, therefore the Court is quite satisfied that his surrender for this offence is not prohibited under s. 38 of the Act of 2003.

Section 45 of the Act of 2003

9. The EAW indicates that the respondent was present at his trial and his surrender is not prohibited by the provisions of s. 45 or s. 16 of the Act of 2003 in that respect.

Section 37 of the Act of 2003

10. Under the rubric of s. 37 and complaints about an apprehended breach of his fundamental rights, the respondent initially made an argument that the nature of the life sentence in the U.K., namely the requirement to serve a punitive tariff before being eligible for release unless he is a risk to the public, was a violation of his fundamental rights, in particular of his right to liberty. This case was adjourned from time to time to await the determination of the Supreme Court in the case of *Balmer v. Minister for Justice* [2016] IESC 25. That decision has recently been given and it is accepted that the decision means that, unless there are specific circumstances applicable to the respondent, this type of sentence is not a bar to surrender. It is accepted on behalf of the respondent that no such circumstances exist and that this point is now covered by the decision in *Balmer*. I have read the papers,

which include papers relating to the Generic Parole Process for Indeterminate and Determinate Sentenced Prisoners and specific items relating to the recall of this respondent. In particular, it is clear that his recall in June 2006 was based upon a risk assessment which put his risk of harm to the public and reoffending as high. Details of subsequent parole board hearings are in the papers and it is clear that the respondent accepted that his recall in June 2006 was justified. I am quite satisfied that, in this case, the surrender of the respondent is not prohibited under s. 37 of the Act of 2003 by virtue of the sentence he has received.

11. The respondent also put forward a claim that his personal rights under the Constitution and under Article 8 of the European Convention on Human Rights ("ECHR") would be violated by surrender. Quite properly, counsel for the respondent has not sought to argue this point at the hearing of the case. I am quite satisfied, in light of the specific facts in the case, that there is no question of a disproportionate interference with his rights.

12. Finally, this respondent was given leave to file the following amended point of objection:

"The proposed surrender of the respondent to the requesting state is prohibited by section 37 of the Act in circumstances where the Requesting State has indicated its intention to withdraw from the European Union;

- i. The Requesting State will no longer be a designated Member State pursuant to S.I. No. 4 of 2004;
- ii. Pursuant to Article 50 of the Treaty on European Union the Treaties will no longer be effective;
- iii. The rights of the Respondent cannot be presumed to be protected pursuant to section 4A of the Act."

13. I have today given a judgment in the case of *Minister for Justice v. A.M.* in which a similar point was raised and comprehensively rejected. The points that were made here were made with a slightly different emphasis and while the judgment is sufficient to cover these points, I will also address each of the respondent's specific points.

14. The statutory instrument applies as of now. It caters for the situation at present where an EAW is issued in the U.K. for the arrest of a person in this jurisdiction so that he or she can be surrendered for prosecution or for sentence. The Court has to operate the law as it is and not on the basis of speculation as to the future. The question, therefore, is whether there are any grounds now for refusing surrender. Similarly, the Treaties apply now and the 2002 Framework Decision and the Act of 2003 made thereunder apply now. To hold otherwise would be to jettison the rule of law and permit the rule of speculation.

15. The real issue as indeed identified by this respondent is whether his rights under s. 37 of the Act of 2003 are fully vindicated in surrender. The issue of the presumption is clearly addressed in *A.M.*, there is simply no basis for believing that there is a risk that any of his rights will be violated. In respect of his fundamental rights, the respondent has to provide an evidential basis for the belief that he is at risk of these being violated in the requesting country. This respondent referred to a risk of lack of protection of ECHR rights as a result of the U.K. leaving the European Union. There is simply no evidence of any such threat. That is truly wild speculation. There is also no specific threat that this respondent's specific rights relating to the execution of this sentence are in any way at risk in the United Kingdom. I therefore reject this point of objection.

16. I therefore may make an Order under s. 16 of the Act of 2003 for the surrender of the respondent to such other person as is duly authorised by the issuing state to receive him.