Neutral Citation: [2016] IEHC 240

THE HIGH COURT

[2015 No. 153 EXT]

BETWEEN

THE MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

SIMEON COSMO LANGFORD

RESPONDENT

JUDGMENT of Ms. Justice Donnelly delivered the 10th day of May, 2016.

1. This is an application for surrender to the United Kingdom of Great Britain and Northern Ireland ("the UK") of the above named respondent pursuant to a European arrest warrant ("EAW") issued on 4th August, 2015. This EAW was duly endorsed by the High Court on 13th August, 2015 and the respondent was arrested later that day. He has been remanded in custody since that date. The main issue raised in the course of the application for surrender is whether his surrender to the UK would breach s. 37 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003") in that if he is surrendered, there is a real risk he will be subjected to inhuman and degrading treatment in the prison system.

2. Prior to adjudicating on that issue, the court will consider the other matters, required by s. 16(1) of the Act of 2003 to be addressed, before surrender can be ordered. I am satisfied from the EAW, the affidavit of Garda Michael Kelly dealing with his arrest, and indeed from his own affidavit, that the respondent who appears before me is the person in respect of whom the EAW was issued.

3. This is an EAW in which the respondent is sought for execution of a sentence already imposed in respect of one offence and for prosecution in respect of four other offences. In respect of the offence for which he has been tried, convicted and sentenced, point (d) of the EAW indicates: "Yes, the person appeared in person at the trial resulting in the decision". I am therefore satisfied that the EAW states the matter required to be stated by s. 45 in respect of the conviction matter.

4. In respect of all the matters on the EAW, I am satisfied that I am not required under s. 21A, s. 22, s. 23 or s. 24 to refuse surrender under the Act. Subject to further consideration of s. 38 and s. 37 of the Act of 2003, I am satisfied that surrender is not prohibited by any other section within Part 3 of the Act of 2003.

5. Dealing with s. 38 matters, the warrant relates to five offences. These five offences cover three separate incidences. In relation to the matter for which he has been convicted, the respondent was sentenced to two years imprisonment. This was for an offence of causing grievous bodily harm with intent. The EAW indicates that on conviction he would have been liable to imprisonment for life, but that he received a two year sentence in respect of that matter. He was released on licence but failed to comply with the terms of the licence and was recalled. Under point E.1 of the EAW, the issuing judicial authority has ticked the box "murder, grievous bodily injury ("GBH")". I am satisfied that this is not manifestly incorrect and that the offence of GBH carried a minimum sentence of three years imprisonment. He has also been sentenced to a term in excess of four months imprisonment. For the sake of completeness, I should say that the offence of GBH as outlined in the warrant also corresponds with the offences of assault contrary to s. 2, assault causing harm contrary to s. 3 and intentionally or recklessly inflicting serious harm contrary to s. 4 (all sections referable to the Non-Fatal Offences against the Person Act, 1997) in this jurisdiction. In all the circumstances, his surrender is not prohibited in respect of that offence.

6. In respect of the first incident covering the accusation offences, it is alleged that the respondent committed an offence of causing grievous bodily harm with intent and also an offence of theft. The offence of theft carries with it a seven year sentence of imprisonment. Again, the GBH offence brings with it a liability to a sentence of life imprisonment, and again for the avoidance of doubt, the facts set out in the EAW also correspond with varying offences of statutory assault in this jurisdiction. Similarly, the offence of theft corresponds with the offence of theft under the Criminal Justice (Theft and Fraud Offences) Act, 2001, in this jurisdiction. In the circumstances his surrender is not prohibited under the provisions of s. 38 of the Act of 2003 in respect of both these offences.

7. In relation to the second set of alleged offences, namely attempted murder and assault, the offence of attempted murder carries with it a penalty of a maximum of life imprisonment. It is a ticked offence under E.I and this designation is not manifestly incorrect. Although not necessary to resolve, it can also be stated that from the facts set out in the EAW, the alleged offence also corresponds to a number of offences in this jurisdiction, in particular assault contrary to s. 2, assault causing harm contrary to s. 3, and intentionally or recklessly inflicting serious harm contrary to s. 4 (all sections contrary to the Non-Fatal Offences Against the Person Act, 1997). In all the circumstances, his surrender on that offence is not prohibited by the provisions of s. 38 of the Act of 2003.

8. In relation to the offence of alleged assault this carries a maximum sentence of six months in the requesting state. This does not meet the minimum gravity terms under s. 38 either in respect of list offences or in respect of corresponding offences. For those reasons, I refuse his surrender for this offence of assault.

9. With respect to his claim regarding prison conditions, an appropriate starting point is the respondent's submission that, as a result of the manner in which he has been kept in custody in the UK, he has been subjected to extraordinary security measures including armed garda escorts when being transferred to the High Court for the purpose of these extradition proceedings. The respondent also pointed to the manner in which he had been produced to the court for hearing on 4th May, 2016. This included at least 5 prison officers in full riot gear, one holding a riot shield, and being held in handcuffs to a prison officer during the entire hearing. After enquiry by the Court, the Court was informed that this was being done as a result of certain intelligence with respect to a possible escape in light of the nearness of the final decision in his case. The Court was asked, unnecessarily, to take no adverse inference from it. Counsel for the respondent, relied upon the restraint measures as indicative of the type of regime that he will be subjected to in the UK and submitted that it validated his concerns regarding return to the UK.

10. The respondent throughout the course of the proceedings had sought documentation from the United Kingdom regarding his detention in prisons in the United Kingdom. He said that he had been in a number of prisons and that his memory for dates was poor but that the documentation would show evidence of the inhuman and degrading treatment he will receive if surrendered.

11. There was an interlocutory application, asking the Court to request that such documentation be made available to him from the UK. That was the subject of an earlier ruling by the court, in which it was held that there was nothing to indicate that such a request was appropriate to make at that particular time. The respondent made a "Subject Access Request" in the UK, similar to a freedom of information request in this jurisdiction, for his prison records. At the time of the hearing of the s. 16 application, it appears that he had received around 1000 pages of records. His solicitor and counsel exhibited what they said were the most relevant of those pages.

The respondent has continued concerns that the outstanding 1500 pages approximately would further validate his concerns about inhuman and degrading treatment.

12. It is important at the outset to understand the particular complaints that the respondent makes. He makes a general complaint that because he is of mixed race, he has been and will be subjected to racism up to and including acts of violence. He also complains of lack of medical treatment for his mental health issues. In his first affidavit, he says that there is a risk of inter-prisoner violence in respect of which the prison authorities will not be in a position to protect him – this is a general complaint and does not appear to be race specific. He complains in particular about the management of Rye Hill Prison being very poor. He says there was a lot of inter-prisoner violence and violation of prison rules by prisoners. He believed that the prison officers were turning a blind eye to a lot of attacks on prisoners and on occasion were facilitating some of the gang attacks by isolating victims before attacks. The respondent does not address the fact that it was at Rye Hill Prison that he committed the offence of causing GBH and for which his surrender is sought to serve the remainder of his sentence.

13. The respondent says that he had been the victim of at least ten serious violent attacks in prison which he says were actively facilitated by prison guards and/or governors of prisons. In his view, this will happen again if he is surrendered. His affidavit only details two specific instances which he says occurred in Bristol Prison. On the first occasion, he says he was attacked with a makeshift knife or shiv in the shower room. He says that while defending himself, he punched the attacker in the face who dropped the shiv. When he went to report this to the office, he says his attacker was already there in the company of prison officers. He says his attacker was not punished even though he identified him and made known his complaint. He says there are inescapable inferences that the prison officers were complicit in the attack. The second incident, when he says he was badly beaten, was when he was told to prepare for a cavity search. He complains that he was unfairly selected for this search because of an improper indication by a prison officer to the sniffer dog. He says that he felt that the search of his anal cavity appeared a lot like rape and he was punched several times in the head and beaten by several officers. He said that the governor of the prison had told him to "shut up you wog" when he asked him to direct his staff to stop beating him. He says that particular governor was racist in his treatment of him.

14. The respondent also says that from time to time in the prison, he would be stripped naked and left in a punishment cell and the beatings were fairly normal procedure. He complains on occasion that there would be a sexual element in the beatings he received while naked, such as his testicles being aggressively grabbed. He complained about being put in a punishment cell with no out of cell activities but he says that he believes he was in the cell for weeks at a time but he lost track of time.

15. He also makes complaints that at Bristol Prison, his food was interfered with by means of spitting in it or pouring bleach/floor cleaner on the food and that he would have to eat around the contaminated food.

16. He complains that on occasion at Rye Hill in or around the year 2012, the prison failed to bring him to court and that the next time he appeared with access to court via video link, he was told it was for sentence. He says he did not have professional legal representation and he is afraid that his access to courts and lawyers will be frustrated if he is surrendered, because it has happened in the past.

17. He also complains about his property being taken from him in prisons regularly. He says he believes some of it was stolen. He complains that in Rye Hill Prison, a computer went missing and his computer games were given to other prisoners.

18. He said he had difficulties in communicating as he suffers from dyslexia. He said he also had been depressed from time to time and the treatment he got in the UK prisons did not help and he was concerned that he would not get adequate medical attention. He says the best service he got was in Dorchester Prison. He found it difficult to get information about his security status even when in prison in the UK but he guessed it was category A or B. It now appears from the documentation that his category is category B.

19. He has, through his solicitor, exhibited two particular documents received pursuant to the Subject Access Request. The first is what is called OASys report. That is a report containing input from the police and probation services. The OAS stands for Offender Assessment System. They assess the risks and needs of an offender. Apart from assessing how likely an offender is to re-offend, the OASys report identifies and classifies offending-related needs. It assesses the risk of serious harm, risks to the individual and other risks. It also informs the development of a plan to manage the risk of harm presented by the offender and it links the assessment to the supervision or sentence plan. It indicates the need for further specialist assessments and it measures change during the period of supervision/sentence.

20. In this case, the respondent refers in particular to a report that says he has attempted suicide in prison. It appears on one occasion in the report. It also says that he has been recorded as complaining about suffering from anxiety and depression. There is also a reference to an unexplained lack of detail in relation to the recording of convictions when the trial took place during a period of time when the respondent was in custody. The report actually records that the reason there may have been little detail was that it was dealt with by an external judge brought into the prison. If that is indeed the case, it is not accurate to say that he was not present at his trial, it simply records that the judge was brought into the prison. It also records that he had made complaints that prison officers were provoking him through the cell door, whispering and indicating that he was going to get a good kicking. He had also described that he had received kicking from officers in prison. It also appears that the author of the report had said that the majority of his violent offending was committed in prison.

21. The respondent also says that the records show that he complained of racial discrimination in specific prisons. The respondent claims that there is a recommendation that the respondent not be returned to Bristol or Exeter Prison. In relation to those matters, it can be said that he is recorded in the OASys report as describing experiencing racial discrimination and prejudice in specific prisons of which Bristol is one. There are another three, in which it is said to be Wood Hill and Channings Wood. It said that the respondent discussed making formal complaints through a body called SARI. The author noted that "He presents as a man where his experiences, fears and anxieties about prison staff and authority will contribute to considerable difficulty coping and that whilst this is most frequently manifested itself in aggression this could also lead to self-harm." The reference to not being returned to the particular prisons is as follows: "Mr. Langford should not be returned to Bristol Prison or Exeter Prison (I believe due to previous attempted absconscion from there) wherever possible." In the view of the Court, this is a reference to the fact that it is recorded in the reports placed before the Court that he has made attempts to escape from prison. It does not appear to be a recommendation that he should not go to those prisons for any other reason.

22. The OASys Assessment records that assistance was given to the respondent to assist in his rehabilitation, in particular while he was out on licence. It records "there were referrals to SARI and Nilarri in place to help manage his feelings of anger and discrimination by police/probation. He presented as motivated to access these although this did not in fact transpire to much, there were a couple of missed appointments I believe due to both parties missing appointments. He initially presented with some openness to a personality disorder assessment albeit with some uncertainty about it due to his lack of trust in professionals. However when this was set up he

did not agree to meet with the psychologist."

23. The respondent also relies upon what is called a Mercury Intelligence System report. This is apparently a prisoner profile. The respondent relies upon it to show that he is recorded as making complaints about racism. However, when one examines closely what is being referred to, these state that the respondent "became abusive after visits due to the length of time his visit lasted and shouted I am only a nigger in the system and the system favoured whites he referred to the staff as nazis who do their job just like them." It is debatable whether that can truly be termed a complaint or whether it is simply an abusive comment. He also says that photos of his baby daughter were taken but that has to be seen in the context that he states that he wants photos of his baby girl returned and has threatened to do harm to someone (staff) if not returned, he is recorded as saying "I will fight you lot I don't care I will do more time if needed".

24. There is a further reference to the fact that he has had difficulties as a child but has worked before and feels he could do this on release. He has also worked in various prisons and gained a level two certificate as a gym instructor. He is involved in various courses in prison including education and has also worked as a race relations representative. On another page, it is recorded that he called a particular officer a dirty racist con killer, the respondent says this was a reference to the fact that this prison officer killed a fellow inmate of his in Dartmoor and then put the body in an oven to conceal the crime. He relies upon a reference to the recording of an accusation he made that a prison officer had touched his genitals when searching him. It is also the fact that he refers to a particular governor as racist, but it is to be noted that in the records, this is referred to him as being verbally abusive towards her. He was placed on report for this.

25. He has particular complaint that in the OASys assessment, the probation officer records details regarding the pending charges for which his surrender is sought as if they had been offences for which he was convicted. He says this shows that his presumption of innocence is not being protected. The respondent also says that this demonstrates the lack of independence of the probation service.

26. The respondent also stated that photographs which had been furnished as part of the Subject Access Request showed black lines across his face. In his submission, these black lines were deliberately put there to mask injuries he had received from beatings.

27. The respondent also relies upon two reports from HM Chief Inspector of Prisons in the UK. These are reports of unannounced inspection of HMP Bristol, 6-17 May, 2013 and of HMP Pentonville, 2-13 February, 2015. In relation to HMP Bristol, a specific finding relied upon is that "[t]oo few prisoners said that staff treated them with respect. We saw some delinquent staff behaviour. Engagement with prisoners was variable but too much of it was distant and dismissive. The quality and quantity of electronic case notes were inadequate." The other finding was that "[p]risoners expressed little confidence in the formal complaints system. The quality of responses was often poor and replies did not address the subject at hand. Some complaints about staff misconduct had not been investigated at all."

28. The Court was quite properly informed by counsel for the respondent that a later report concerning an Action Plan 2016 stated that there had been an improvement in HMP Bristol.

29. The Pentonville prison report, a prison in which the respondent apparently spent no time, and being located in London, is far from his residence in Bristol, is a somewhat more concerning report. There is a reference that "…too little was being done to understand and meet the needs of the large black and minority ethnic population, disabled prisoners and older prisoners." The respondent submits that as a mixed race, Muslim prisoner with health issues, he is therefore particularly vulnerable. The report shows that a high percentage of prisoners felt unsafe at the prison. Levels of violence were high and prisoners reported high levels of victimisation from staff and other prisoners. However, that section of the report said that a wide range of information about violent incidents was collated and analysed and various violence reduction measures were in place but these were not yet effective in making the prison safer.

30. All of the above must be considered in the light of the law in this area. The law is well trodden and there was no disagreement in relation to it in this case. Under the provisions of s. 37(1)(c)(iii)(II) of the Act of 2003, a person shall not be surrendered if there are reasonable grounds for believing that "he or she would be tortured or subjected to other inhuman or degrading treatment." The Court must proceed on an assumption that the issuing member state will respect human rights and fundamental freedoms. That assumption is capable of being rebutted. The Supreme Court in *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] 3 I.R. 783 set out the applicable legal principles when considering a claim of apprehended prohibited treatment. For surrender to be prohibited, it is not necessary to establish that there will be a probability of ill-treatment, a real risk is sufficient. A mere possibility of ill-treatment is, however, insufficient. There is an evidential burden on a respondent to adduce cogent evidence capable of proving that there were substantial/reasonable grounds for believing that he or she would be exposed to a real risk of being subjected to treatment prohibited by Article 3 of the European Convention on Human Rights ("ECHR").

31. As stated by Denham J. (as she then was) in Rettinger, the court may attach importance to reports of independent international human rights organisations, such as Amnesty International and to governmental sources, such as the State Department of the United States of America. In surrender cases, there is often reliance placed upon decisions of the European Court of Human Rights ("ECtHR") and on reports from the Committee for the Prevention of Torture ("CPT") in respect of prison conditions in the issuing state. It is striking in this case that, other than the HMP Chief Inspector reports referred to above, no reliance has been placed upon any of these types of reports.

32. The prison reports in themselves add very little, if anything, to the respondent's case. The issues in Bristol have largely been addressed it seems and it is therefore unnecessary to consider if, of themselves, they would amount to cogent evidence establishing reasonable grounds for believing that he is at real risk of inhuman and degrading treatment. In relation to Pentonville Prison, this is a single report on one prison, in which the respondent has not been incarcerated and there is no evidence that he is at real risk of being sent there. More importantly, the main reliance is on a feeling of insecurity amongst the prisoners in that prison about lack of safety. The levels of violence were excessive but they are being addressed. Furthermore, the fact that such analysis takes place and that unannounced Inspectorate visits take place shows an overall level concern about the welfare of prisoners. That concern may well be the reason that no reliance is being placed upon any CPT reports or on ECtHR decisions – there are simply no findings placed before the Court from any international bodies that show a real concern about inhuman and degrading treatment of prisoners in UK prisons. Furthermore, the situation at Pentonville Prison as described in the report, at its highest, raises the possibility of a prisoner who is sent there being subjected to inter-prisoner violence and victimisation. It does not amount to evidence capable of proving that there are substantial grounds that this respondent will be subjected to inhuman and degrading treatment.

33. In relation to the respondent's own affidavit, his complaints about prison life must be viewed in the context of the very reports that he himself has relied upon. Unfortunately for him and for the victims of his behaviour, he has demonstrated "difficulty coping with

feelings of anger, his previous experiences of discrimination and his recalls (to prison)". As a result, he behaves "in mainly aggressive ways to those in authority." "He has a considerable history of using aggression and violence to sort problems." The OASys Assessment shows that he has difficulty coping with being in custody and that there is a risk of serious harm to others. He has also attempted to escape from custody and the Assessment had concerns about escape and absconding.

34. The respondent has sought to say that the OASys and the Mercury Intelligence Report validate the concerns he has had. The respondent submits that, in so far as there are adverse facts against him, these should not be believed. This Court has made extensive reference to both his complaints, his partial reliance on the records and to other parts of the records which were placed before the Court. The matters he has brought up to support his complaints do not show that he is a victim of discrimination and abuse in the past, on the contrary they show a continuous pattern of confrontation by him with recourse to abuse and sometimes violence to settle any dispute. He himself has been convicted of an assault which took place in the prison. He has chosen not to address his conviction for violent assault in the prison.

35. The Court is of the view that the respondent's assertions about being subjected to unacceptable treatment do not withstand the scrutiny of the very reports upon which he relies and the evidence before the Court in terms of the conviction in the EAW. Furthermore, the Court rejects his contention that the black lines across the photographs were designed to cover marks. In particular, the Court notes that he made no complaints in his earlier affidavit that he had been photographed while injured. In the view of the Court, this is an opportunistic attempt to draw in aid those photographs having received them in the condition they were sent. Furthermore, the Court is quite satisfied that he has not shown that he is not likely to be brought before court, or to be convicted in his absence. The reference to the external judge coming to the prison contradicts his version of events in relation to that matter. There is also no violation of his presumption of innocence in the manner in which the report has been written.

36. The Court notes that he has filed a further affidavit today in which three further allegations have been made. The first is an allegation that his head was placed and held in a bowl of water, he says on two occasions, that there has been a failure to furnish CCTV to authorities which would show serious assaults on him and also that there has been mind games played on him by prison officers, in particular in respect of his family and daughter. He appears to blame his lawyers for the failure to include this at an earlier stage. These are matters which it is highly unlikely would have been forgotten or deliberately omitted by his lawyers and I reject that contention in the circumstances of this case. It is apparent that he is being represented conscientiously by his lawyers throughout these proceedings. His lawyers have sought to place, and have placed, all his concerns before the Court. Even more importantly, there is no corroboration of these allegations at all and I view them as nothing more than a last minute attempt to persuade this Court to stop or delay his extradition.

37. The Court notes that the respondent does not indicate in his affidavits that he made any real attempt to complain about his treatment. His only reference to seeking to make a complaint is where he says his attacker was in the presence of the prison officers when he went to complain about his treatment. The Court views his own affidavit as entirely self serving on this matter and must be viewed in the light of his deep rooted suspicions about the prison authorities generally. Furthermore, he does not explain why he did not seek to make a complaint through any outside agency or through the courts. That opportunity appears never to have been availed of by him. Indeed, when he was apparently given an opportunity to pursue his complaints with the help of agencies such as SARI, he chose not to do so. Most importantly, however, this Court accepts that, being forward looking in its approach and in accordance with the presumption that the UK will act in accordance with the 2002 Framework Decision, he would not be subjected to a regime of inhuman and degrading treatment. Should there be any individual breaches of his right to security of the person, it is also accepted that the UK will accord to him his rights, which would include a right to a valid system of complaint and redress should his rights be violated.

38. The Court is satisfied that nothing has been produced in evidence, which gives any cause for concern about his future treatment in the UK prisons should he be returned. There is no need to make any further inquiry in this case. The Court is entirely satisfied that there is no necessity to await his further records. In reality, the complaints of this respondent have been limited. His records show that he is a prisoner with behavioural problems. He does not accept that categorisation, but he does insist that the prison authorities have it in for him. All the evidence before the Court points to the opposite conclusion and the Court rejects his evidence that he is being mistreated on account of race, minority status or any other reason.

39. In light of all of the above, the Court is not satisfied that there are reasonable grounds for believing that this respondent is at real risk of being subjected to inhuman and degrading treatment.

40. Therefore, there being no ground to prohibit his surrender on the four remaining offences, the Court may make an Order for his surrender to the person duly authorised to receive him in the UK.