

THE HIGH COURT

Record Number: 2006 No. 32 Ext

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND

JUAN CARLOS GUZMAN BETANCOURT

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 20th day of December 2006

1. By European arrest warrant dated the 14th June 2004, the French judicial authority has requested the surrender of the respondent so that he can serve a sentence of imprisonment imposed in absentia in France on the 1st April 2004. This sentence was three years, but there are two years left to serve since a period of one year in pre-trial detention has to be taken into account according to the warrant.

2. This warrant was duly endorsed in this jurisdiction on the 27th March 2006 following its transmission here, and the respondent was arrested on foot of same on the 11th April 2006. He was brought before the High Court on that day, whereupon he was remanded in custody pending the hearing of this application for his surrender.

3. The offences for which he has been convicted in France are described in the translated French warrant as "swindle" and "forgery of administrative documents and trafficking therein". These are offences in which double criminality is not required to be verified under the Framework Decision, Article 2.2. thereof. Other offences are of theft, and I am satisfied that these offences correspond to the offence of robbery here under s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. While some issues were raised in Points of Objection regarding correspondence and the description of the offences, these, very properly, were not argued on this application. I am satisfied that the minimum gravity requirements of the offences are also met.

4. The offences to which the warrant relates were committed on various occasions set forth in the warrant when the respondent appears to have entered a number of hotels in Paris, and gained entry to guests' rooms by asking for the keys at reception, and stole property belonging to guests. In addition he appears to have stolen "administrative documents", and also forged documents.

5. Subject dealing with two principal issues argued on this application I am satisfied that there is no reason under sections 21A, 22, 23 or 24 of the European Arrest Warrant Act, 2003 to refuse to order surrender, and I am also satisfied that his surrender is not prohibited by Part III of the Act or the Framework Decision.

Identity

6. The person who was arrested and who is before the Court says that he is not the person to whom the warrant refers, namely a Venezuelan national by the name of Juan Carlos Guzman Betancourt born on the 26th June 1976, but rather that he is one Alejandro Cuenca, born in Cadiz, Spain on the 26th June 1980. He has sworn an affidavit stating this, and also that his father died in a car accident when he was three months old, that his mother died in 1982 of tuberculosis and pneumonia. He goes on to say that he has one brother born in 1975 and that they grew up in an orphanage in Seville, and that later his brother was sent to a foster family and that he "escaped" from the orphanage at the age of ten, lived on the streets, has no education and has never attended school. He proceeds to state that neither he nor his brother have birth certificates as their births were never registered, since according to gypsy tradition they were born in a house. He states that he grew up in a number of different places, travelled around Spain initially, and later Europe and other countries, that he tried to get I.D. from the Spanish authorities but was told that without a birth certificate this was not possible.

7. The person before this Court was arrested here on the 26th June 2005 on charges of theft, and his fingerprints were taken while in Garda custody following the necessary authorization being given by a Superintendent under s. 6 of the Criminal Justice Act, 1984. There is also a set of fingerprints attached to the European arrest warrant and which were previously taken in France from a man named on the fingerprint record as "David Soriano Martinez" (the name "Betancourt" is also on this form in another section). These prints have been compared by an expert here and it is confirmed that the prints taken in France are a match with those taken from the person arrested here and who is before the Court on this application.

8. Conor Devally SC has argued as ably as the facts permit that it has not been shown that the fingerprints taken in France to which I have referred and those taken here are those of the person who was convicted in absentia for the offences set forth in the European arrest warrant. He refers to matters such as that the fact that the name on the French print form is Martinez and that the date of birth of that person is given as 5th August 1981, that some of the other entries on that form are not clearly legible, that some of the description of that person do not match the person before the Court such as the colour of his hair and his size. He refers also to the fact that there is no photograph attached to the warrant in respect of the person whose surrender is sought.

9. Aileen Donnelly SC for the applicant, on the other hand, submits that this Court can be satisfied for the purpose of this application, and as required by s. 16(1)(a) of the Act that *the person before it is the person in respect of whom the European arrest warrant was issued*. She refers to the evidence of the fingerprint expert who has compared the prints taken here with the prints of the person who the French authority say are those of the person who they are seeking, and that this evidence has not been contested by any similar controverting evidence from any expert.

10. I am satisfied that the person before the Court is the person who is sought under the European arrest warrant, and I am so satisfied by the expert fingerprint evidence referred to. The person before the Court is quite clearly a person who travels freely and easily between jurisdictions and within jurisdictions under a number of flags of convenience. He has no difficulty assuming a variety of names as required, and it is safe to presume as a matter of probability, given the nature of the offences for which he has been convicted already, that he is capable of changing his identity, availing of forged passports and other forms of identification in order to disguise his identity and travel around Europe. It is not surprising in these circumstances that he feels it possible to put up the sort of smoke-screen attempted in this case in order to try and cast doubt on his identity as the person whose surrender is sought by the French authorities. I am left in no doubt whatsoever about the matter of identity, and by whatever name he chooses to be known at any particular time and for any particular purpose, the fingerprints of the man before the court are those of the man whose surrender is sought and that is sufficient for the purpose of the present application.

Section 45 undertaking:

11. The warrant makes it clear that it is accepted by the requesting authority that the respondent was not aware of the date of the

trial which resulted in his conviction and sentence passed in absentia. The warrant goes on and states that "the respondent has the "guarantee" of "new trial with investigation of the merits", should that be requested by him.

12. Section 45 of the Act provides:

"45. -- A person shall not be surrendered under this Act if—

(a) he or she was not present when he or she was tried for and convicted of the offence specified in the European arrest warrant, and

(a) (i) he or she was not notified of the time when, and place at which, he or she would be tried for the offence,

or

(ii) he or she was not permitted to attend the trial in respect of the offence concerned, unless the issuing judicial authority gives an undertaking in writing that the person will, upon being surrendered—

(i) be retried for that offence or be given the opportunity of a retrial in respect of that offence,

(ii) be notified of the time when, and place at which any retrial in respect of the offence concerned will take place, and

(iii) be permitted to be present when any such retrial takes place.

13. That section was enacted for the purpose of Article 5 of the Framework decision which provides:

"Article 5 Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;

2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State."

14. In my view what has been stated in the warrant by way of "guarantee" of a retrial should that be requested by the respondent, is sufficient to come within section 45 of the Act. The purpose of Article 5 is achieved by the provisions of section 45 of the Act.

15. I am satisfied that the order for surrender should be made, and I order accordingly.