

THE HIGH COURT

Record No 2013/112 EXT

IN THE MATTER OF THE EUROPEAN ARREST WARRANT ACT, 2003 AS AMENDED

BETWEEN/

THE MINISTER FOR JUSTICE AND EQUALITY

Applicant

- AND -

P. G.

Respondent

JUDGMENT of Mr Justice Edwards delivered on the 22nd day of October 2013

This is a case in which the High Court made an order on the 18th of October 2013 under section 16 of the European Arrest Warrant Act 2003, as amended, surrendering P.G. to the United Kingdom of Great Britain and Northern Ireland on foot of a European arrest warrant dated the 29th of April 2013.

A further application has now been made to this Court under section 18(1)(a) of the European Arrest Warrant Act 2003 as amended seeking a postponement of G.'s surrender on humanitarian grounds until the outcome of care proceedings currently pending before the District Court in XXX in respect of G.'s son, P. (L.) who was born on the 4th of October 2008. The Court has been informed that the child, P., is the natural son of G. and his partner Y.L.. The child's mother and G. never married and in those circumstances G. did not have automatic guardianship rights in respect of the child P. However, the Court has been informed that G. successfully applied to the District Court some time ago to be appointed a guardian in respect of P.

G., who is self represented in the care proceedings involving his son P., requests a postponement of his surrender to the United Kingdom until after the District Court has dealt with the care proceedings in relation to his son. He has argued strenuously that he wishes to be participate in the said care proceedings, and to be heard at the hearing, and that unless this Court is prepared to postpone his surrender he will be deprived of the opportunity to do so.

I have been informed that the chronology of the said Care proceedings is that the H.S.E applied for, and was successful in obtaining, an Emergency Care Order was on the 28th May 2012. An Interim Care Order was subsequently granted on the 5th June 2012 and was extended on the following dates, 2nd July 2012, 24th July 2012, 23rd October 2012, 10th December 2012, 14th February 2013, 26th March 2013, 25th July 2013 and most recently on the 24th September 2013 until the 11th of November 2013 when the case is listed for mention at XXX District Court to fix a hearing date for the full Care proceedings, which I am further told is likely to be in December 2013.

The Court has been informed that Ms L. is being legally represented in the care proceedings. Due to the *in camera* rule this Court has been told nothing concerning the reason for P. being taken into emergency care or concerning why the application currently pending before the District Court is being made. I am satisfied, however, that the application currently before me is motivated by a genuine desire on the respondent's part to participate in the said care proceedings and that it is not a strategic and cynical move designed to seek to put off his surrender for as long as possible.

It seems to this Court that it is very desirable that the respondents wish to participate in the said care proceedings should, within reason, be facilitated. It is desirable that he should do so, not just in his own interests but also in the interests of P. in respect of whom he enjoys guardianship rights (admittedly abrogated at the present time by virtue of the interim care order and other circumstances including the fact that he is remanded in custody awaiting surrender).

The respondent is wanted for trial in the United Kingdom on alternate counts of assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act, 1861 and unlawful wounding contrary to section 20 of the Offences Against the Person Act, 1861, arising out of an alleged domestic violence incident on the 19th August 2006 in which the alleged victim was the respondent's former partner. He had been committed for trial to the Crown Court at Doncaster, having previously been admitted to bail, and his trial was due to take place on the 14th of February 2007. It is alleged that he failed to answer his bail and did not turn up for his trial. As a consequence he now faces further two charges that have been preferred against him under s.6(1) and s. 6(2), respectively, of the (UK) Bail Act 1976. The respondent is presumed innocent of these offences, but if he is convicted he is at risk of receiving a substantial custodial sentence or sentences.

Even if G. is convicted upon his return to the UK of all or some of the offences to which the warrant relates, and has to serve a prison sentence, he would be entitled to expect that once he had served his sentence he could become fully involved again in P.'s life, barring the existence of any circumstance necessitating State intervention to prevent that. Moreover, there is in principle no reason why a person in prison cannot remain involved in a limited way in making decisions concerning his child's welfare while serving his sentence. Going to prison necessarily involves the temporary abrogation of many rights, but it does not necessarily involve the loss of a prisoner's guardianship rights in respect of his or her child or children, though it may involve a significant temporary curtailment on the ability to exercise aspects of those rights. Accordingly, it would be wrong for this Court to stand in the way of G.'s participation in, and right to be heard in relation to, the currently pending care proceedings in respect of P., if that can be reasonably accommodated.

At the same time the Court has to have regard to the imperatives of the Council Framework Decision 2002/584/JHA of the 13th June, 2002, on the European Arrest Warrant and the Surrender Procedures between Member States, O.J. L190/1 18.7.2002. The entire *raison d'être* for the creation of the European arrest warrant system was the substitution of a simpler and faster mechanism for securing the rendition of fugitives from justice among member states. It requires surrenders to be effected as quickly as possible, and

in the case of undue delay (more than 60 days, alternatively 90 days) Eurojust must be informed as to the reasons for such delay.

The Framework Decision requires that G. be surrendered promptly following the making of a surrender order. However, the Court has the right under section 18 of the European Arrest Warrant Act 2003, as amended, to postpone his surrender on humanitarian grounds and this is not a power which should be exercised lightly. Moreover, as this Court has held in previous cases, any postponement granted must be for the shortest possible duration.

I am satisfied that in the circumstances of this case it is appropriate to exercise my power to postpone G.'s surrender until the conclusion of the current care proceedings pending in respect of the respondent's child P. before XXX District Court. Having said that, the Court wishes the postponement to be for the shortest possible time. Moreover, having regard to the respondent's fugitive status, and the heightened risk of flight that now exists in circumstances where the Court has made an s. 16 Order, I am not disposed to admit him to bail. He must remain in custody in this country until the postponement of his surrender is terminated under s. 18(4) of the Act of 2003. He will be entitled, however, to the benefit of a Production Order requiring his production before the District Court on whatever date is fixed for the hearing under s. 18 of the Child Care Act 1991, and will be brought to the District Court in custody to facilitate his participation in those proceedings. In the event that he is convicted he will, by virtue of the provisions of Article 26 of the Framework Decision, be entitled to credit for time served in this jurisdiction while awaiting his surrender against whatever sentence is imposed upon him in the issuing state.

There is a need for expedition in this matter having regard to this State's treaty obligations under the Framework Decision, and the fact that the respondent remains in custody awaiting surrender. Though it is entirely a matter for the relevant District Judge who must run his or her Court and list as he or she sees fit, the High Court would request that the District Court might show this Court curial deference and on an exceptional basis facilitate the earliest possible hearing of the said care proceedings if that can be accommodated.

In conclusion, I will make an order under section 18(1)(a) postponing the surrender of G. on humanitarian grounds to the 12th of November 2013 in the first instance, on which date the Court should be informed of whatever date has by then been fixed by the District Court Judge for the hearing of the said care proceedings. I will direct that the matter be listed for mention before me again on that date for the purpose of further postponing it if required, and the making of any further orders (including a production order for the hearing in the care proceedings), or the giving of any further directions, that might be required (e.g. an Order under s. 18(4) of the Act of 2003 terminating the postponement).