Neutral citation no.2005 IEHC 246

THE HIGH COURT

Record Number: 2004 No.424 Sp.

BETWEEN

WILLIAM O'KEEFFE

APPLICANT

AND

PATRICK O'TOOLE AND ASSISTANT COMMISSIONER OF AN GARDA SIOCHANA

RESPONDENTS

Judgment of Mr Justice Michael Peart delivered on the 12th day of July 2005

1. The applicant is a person against whom an order has been made by a District Judge under s.47 of the Extradition Act, 1965, as amended ("the Act") for his rendition to the relevant police authority in the United Kingdom.

2. He now, as he is entitled to do, makes an application for an order directing his release pursuant to the provisions of s.50(2)(bbb) of the Act which provides as follows:

> *"A direction under this section may be given by the High Court where the Court is of the opinion that -*
>
> *… (bbb) by reason of lapse of time since the commission of the offence specified in the Warrant…and other exceptional circumstances, it would, having regard to all the circumstances, be unjust, oppressive or invidious to deliver him up under section 47, or*
>
> *(c) the offence specified in the Warrant does not correspond with any offence under the law of the State which is an indictable offence or is punishable on summary conviction by imprisonment for a maximum period of at least six months."*

3. There is no need to set out the case law which sets forth the by now well accepted and known principles governing the onus upon the applicant in such applications.It can be summarised by stating that the applicant must first show there to have been a lapse of time since the date of commission of the offence for which his rendition is sought and the present date; secondly, and in addition to that lapse of time there must be shown to exist some other exceptional circumstance(s) in the case, so that these matters, when considered having regard to all the circumstances of the case, would render it *"unjust, oppressive or invidious to deliver him up under section 47"*.

4. In order to discharge the onus upon him the applicant has sworn an affidavit in which he has set out the relevant background to this application.He states that on the offence for which his rendition is sought was is an offence of burglary committed on the 3rd July 1995 and in respect of which he was convicted on the 11th July 1995.He was put back for sentencing, and released on bail until the 2nd August 1995, but failed to attend the sentencing hearing, and a warrant was issued.

5. By June 1996 it appears that the applicant was still in the United Kingdom, as it is said that he committed more offences there at that time, but thereafter he appears to have come to this jurisdiction.In July 1996 he committed an offence here in July 1996 and was taken into custody, and in March 1997 received a six year sentence with a review of sentence fixed for 16th July 1998.In anticipation of a possible release of the applicant as a result of that sentence review, the UK authorities set about seeking the extradition of the applicant in respect of four offences and obtained four warrants (A,B,C and D) in that regard which were forwarded to the Irish authorities in the usual way.

6. The applicant was duly arrested on the 16th July 1998 by a member of An Garda Siochana upon his release from prison following his sentence review, and was brought before a judge of the District Court as required by the Act.He avers that he was remanded until the 20th July 1998, and after that date was remanded on seven further occasions, and that eventually a date was fixed for the hearing of the application for his rendition, namely the 14th December 1998.But prior to that hearing date it appears that the applicant continued to be remanded on a number of occasions, including to the 25th November 1998 when the applicant was again before the District Court.

7. On that date an unusual thing occurred.The sitting judge of the District Court discharged the applicant and released him having, according to the applicant's affidavit, decided that his constitutional right to legal representation was being infringed by the absence of proper provision for payment of legal costs.

8. This unusual situation was sought to be addressed by the Attorney General when he applied to the then President of the High Court for leave to seek an order of certiorari quashing that decision of the District Judge.Leave was granted, and on the 16th October 2000 an order was made by Mr Justice Kelly, not of certiorari, but rather directing the District Judge to send forward for quashing "all entries and records" relating to the District Court order of the 25th November 1998.

9. It appears that the matter eventually was re-entered for hearing before the same District Judge on the 9th July 2001, but also that on that date the District Judge was not satisfied that his previous order discharging the applicant from the proceedings had been validly quashed.It appears that on three separate occasions thereafter, namely the 15th January 2003, 12th June 2003 and 24th June 2004, the Chief State Solicitor sought unsuccessfully to make application to the District Judge to have the matter re-entered so that the application for an order under s.47 of the Act might be made.Eventually, on the 28th July 2004 a further application was made to the High Court for a declaration that the Order of Mr Justice Kelly dated the 16th October 2000 had been complied with.This application was granted and it was ordered also that the matter be re-entered before the District Court.

10. The applicant avers that on the 10th September 2004 he attended voluntarily at Tallaght District Court when the application for his extradition was re-entered and he was remanded in custody until the 17th September 2004 so that a date for hearing could be fixed.A recommendation was made on that occasion that the applicant's legal costs be discharged under the Attorney General's Scheme.Almost one week later the applicant as granted bail in the High Court.

11. In due course on the 4th October 2004 the application under s.47 of the Act came before a different District Judge, and an order under that section was made only in respect of warrant D.Upon the making of that order, it was immediately indicated to the District Judge that an application under s.50 of the Act would be made, and indeed these proceedings seeking that relief were issued within a matter of days on the 7th October 2004.

12. The applicant states in his affidavit that in the period between July 1996 and November 1998 he was in custody here, and that prior to July 1998 no effort had been made by the UK authorities to seek his extradition.It will be recalled that it was in July 1998 that his sentence review was due to be heard.

13. The applicant has also stated that during the period 9th February 2000 and August 2004 he was in custody in this jurisdiction.In this regard there is an affidavit from Mr Frank McDermott of the Prison Service here which states, inter alia, that the applicant was returned to prison in February 1999 for an offence involving a motor vehicle, and remained in prison on foot of the sentence imposed on that charge until the 8th September 1999.He returned to prison on remand on another charge on the 10th December 1999 and remained for six days until the 16th December 1999.He spent a further 24 hours in custody in January 2000, but was subsequently recommitted to prison on the 11th February 2000 and he remained in prison for one reason or another until the 10th August 2004 when he was released again until he was taken into custody once more on the 7th October 2004 following the making of the order by the District Judge under s.47 of the Act.

14. The applicant states that it would be unjust, oppressive and invidious to extradite him in all the circumstances of this case for the following reasons, as appears from paragraph 16 of his grounding affidavit:

> (a) that a period of eight and a half years/nine and a half years has elapsed since the alleged commission of the offence and conviction therefor in July 1996;
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> (b) That there has been no effort on his part to evade justice or conceal his whereabouts;
>
> (c) That there has been undue and unreasonable delay occasioned by the failure of the requesting authorities to take any steps to commence the extradition process prior to June 1998;
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> (d) That there has been undue and unreasonable delay in prosecuting the matter of his extradition at all stages by the authorities in this State;
>
> (e) That any delay between July 1998 and the 7th October 2004 (the date of institution of these proceedings) which is not attributable to the failure of the Irish authorities to prosecute the matter with due expedition is attributable to the failure of the relevant systems, including the failure of the State to make express provision for the payment of the legal costs of impecunious defendants in extradition matters so as to vindicate their constitutional right to legal representation;
>
> (f) That the delay in this case is such that there is a real and serious risk of any trial at this remove being an unfair trial such as to deprive him of his right to fair procedures."

15. Mr Patrick McCarthy SC for the applicant has made submissions consistent with the facts as set forth by the applicant in his affidavit and has of course also referred the Court to the case law referable to the question of delay in extradition matters.As far as the appropriate period of time for consideration in the context of lapse of time and delay is concerned, Mr McCarthy submits that the reckonable period should be from the date on which the applicant failed to appear for sentencing in the UK, namely the 2nd August 1995 until the date on which this application under s.50 was heard, namely the 24th June 2005.That is a period of about 9 years and 10 months, and I propose to accept that as the period of time, being simply a matter of undisputed fact, as the period for the purpose of the "lapse of time" referred to in the section.

16. As far as "other exceptional circumstances is concerned, Mr McCarthy points to delay on the part of the UK authorities between the 2nd August 1995 and July 1998 when the extradition warrants were prepared and processed in anticipation of the applicant's release from prison here if, as happened, his sentence review resulted in his release.In particular the delay of one year approximately from the date he failed to appear for sentencing and June 1996 when he appears to have been seen on video footage in England committing other offences.It is submitted on behalf of the applicant that this is a period of time during which the applicant could have been apprehended by the UK authorities.However, I take the view in relation to that period of one year, and as submitted by Mr Kieran Kelly BL on behalf of the respondent, that the applicant cannot benefit from same, given the lack of any evidence put forward by him that, having failed to appear for sentencing on 2nd August 1995, he did not go to ground as it were in order to avoid his apprehension.It is not an exceptional circumstance.The onus is on the applicant to put forward some basis on which the Court could ignore the otherwise obvious inference that the reason why he was not apprehended was that he had taken steps to avoid that happening.

17. The next period of time relied upon by the applicant is from July 1996 when the applicant was in this State, until the 16th July 1998.During this period the applicant had committed an offence here for which he was sentenced to six years imprisonment with a sentence review built into the sentence for July 1998.The UK authorities became of the applicant's whereabouts at this time and applied for and obtained warrants for his extradition in anticipation of his release in July 1998.In my view there is no basis on which this period of time can be laid at the door of the authorities either in the UK or here.This period cannot be regarded as constituting an exceptional circumstance.

18. The next period of time is more complex.He had been arrested here on foot of the backed warrants upon his release from prison on the 16th July 1998 following his sentence review.He was taken into custody and brought before the District Court, where he was remanded in custody from time to time until the District Judge decided on the 25th November 1998 for the reasons already stated to discharge him.While no doubt the discharge of the applicant may have been seen by him at the time as a welcome development in one sense, the resulting procedures undertaken by the authorities here to have the District Judge order quashed and the matter re-entered were long drawn out and tortuous, and involved a number of applications to the High Court and the District Court, all presumably on notice to him and his legal advisers, if any.It was not until almost six years later in October 2004 that the matter was finally dealt with in the District Court.

19. This was a period of time during which the applicant spent a great deal of time in prison in respect of a number of offences committed during that time.For example, in February 1999 he was sentenced for the unlawful taking of a motor vehicle, and driving without insurance.He served a number of other sentences as deposed to by Mr Frank McDermott and to which I have already referred.Normally the person's incarceration is the cause of delay in achieving his extradition, that person cannot plead that delay for the purpose of his application under s.50, since he has caused that delay by his own misdeeds.

20. In this regard, Mr McCarthy on behalf of the applicant refers to a passage from the judgment of Herbert J.in *Martin v.Conroy* [2002] 1 ILRM 461, where that learned judge stated the following:

> *"However, I consider that there is a distinction to be drawn between a lapse of time entirely or substantially occasioned*

by the deliberate and voluntary actions of a person in seeking to evade discovery and a lapse of time referable to that person serving a term of imprisonment.In my judgment while the former should always be entirely discounted some regard may be had to the latter in looking at the overall lapse of time, provided always that there is in addition a specific and separate particular lapse of time to be taken into account for which the accused is in no manner to blame or which is due to some unnecessary or blameworthy delay on the part of the relevant authorities in the Requesting State or in this State."

21. Attention is also drawn by Mr McCarthy to the fact which has emerged from an affidavit sworn by Richard Glenister of the Crown Prosecution Service in London, that *"the West Midlands Police, the police force which investigated the matters for which the applicant's extradition was sought, are now unable to locate their file.As a result it is not possible to say what inquiries were made to locate the applicant after 2 August 1995."*

22. There is no evidence that the loss of the file in question could prejudice the applicant if returned to the UK especially in circumstances where he has pleaded guilty and it remains only to pass sentence upon him, but nevertheless it is a fact which ought at least to be part of the Court's consideration of whether it would be unjust, oppressive or invidious to return him to the UK.In this regard it is submitted on the applicant's behalf that a sentencing hearing is a separate fact-finding hearing so that the judge passing sentence can hear all relevant facts, and so that the person to be sentenced can adduce such evidence, and make whatever submissions may be deemed appropriate.The admitted loss of the file is submitted to be a prejudice to the applicant wit regard to his sentence hearing.

23. Mr McCarthy has also put some reliance on the fact that it was only three weeks before the hearing of this application that the applicant's legal team was notified that it was intended to proceed with the extradition of the applicant only on foot of Warrant D, and not on foot of Warrants A, B, and C.

24. Mr McCarthy also draws attention to the nature of the offence which is the subject of Warrant D, and the possible penalty capable or likely to be imposed in respect of same; and he submits that this is something to be weighed in the balance by the Court when considering "all the circumstances" as required by s.50 of the Act.In this regard, it appears from Warrant D that the applicant was convicted of having entered as a trespasser a chemist's shop, he stole therefrom a quantity of morphine tablets, methadone liquid and £120 in cash.The nature of this offence prompts me to refer to another matter which, while it has not been formally proven, and the Court has been handed only a photocopy of a medical report in respect of the applicant, it is not really open to contest that the applicant was abusing illegal drugs for some years - certainly that is a fair inference as far as 1995 is concerned, and it is fair also to infer that the reason he spent so much time since 1996 in prison in this jurisdiction is drug related also.I mention this feature of the case for the reason that this report which is dated 20th June 2005, and it confirms a long history of drug abuse over a period of twenty two years in fact, but goes on to state as follows:

"Since December 2004 the applicant has been attending this clinic for addiction treatment, that he has "stabilised well and has consistently provided us with at the clinic with opiate free samples since the beginning of January 2005.He does not have a history of misusing other illicit drugs or unprescribed medication.He has very occasionally dabbled with one or the other of these substances……also in view of his extremely good progress with us and his stability it would be of enormous benefit if he could remain in treatment at [the clinic]"

25. In relation to the period of time from July 1998 to 2004, Mr Kelly on behalf of the respondent submits that the applicant cannot avail of that period of time for the purpose of his s.50 application, because he was for most of that time in prison here in any event in relation to other matters and is thereby precluded from benefiting from his own misconduct.In support of this submission, Mr Kelly calls in aid the trenchant remarks of Kearns J.in *Kelly v.Minister for Justice, Equality and Law Reform, unreported, High Court, 23rd July 2004*, as follows:

" I can very quickly deal with the suggestion that there has been a lapse of time such as to render it unjust, or invidious to deliver him up.The plaintiff is serving, or was at all material times serving a sentence for rape and any lapse of time was entirely as a result of his own misconduct and behaviour which led to incarceration.It is ludicrous to my way of thinking to argue that there has been in some sense a blameworthy delay in lapse of time attributable to the prosecuting authorities in such circumstances.There is no dilatoriness whatsoever on the part of the prosecution authorities.In so far as that argument is made simpliciter, it is, to my way of thinking, utterly without merit or any worthwhile substance whatever."

26. Mr Kelly also submits that the applicant was in fact serving the same sentence in 2004 as that imposed in March 1997 (but backdated to 6th July 1996 being the date on which he was taken into custody) prior to the arrival of the warrants here in July 1998, since his re-offending had triggered the reactivation of that part of the sentence which had been suspended following his sentence review in July 1998.He refers in this regard to the judgment of Keane CJ.in *DPP v.Finn* [2001] 2 IR 25.

27. With regard to the difficulties encountered in relation to the re-entry of the application before the District Court, Mr Kelly submits that the applicant escape a portion of the blame since, when he was, as he had to be, put on notice of the applications from tome to time to re-enter the application, the applicant through his legal advisers objected to the re-entry of the application, even though he had indicated to the High Court that he had at all times regarded the District Court order discharging him as having been quashed.

28. By way of conclusion, Mr Kelly has submitted that in the present case, while there has been a passage of time since 1995, it is not such a period which should trigger the Court to consider whether there are any other exceptional circumstances, and he submits that in any event there are no exceptional circumstances which would justify, having regard to all the circumstances, the granting of relief under s.50 of the Act.He relies heavily on the fact that the applicant has caused the lapse of time through being imprisoned in this jurisdiction by virtue of his own misdeeds.He submits that the applicant has failed to establish or put forward any reason why it would be un just, oppressive or invidious to deliver him up to the UK authorities.

Conclusions:

Lapse of time:
29. I find it helpful to refer to the judgment of Hardiman J.in *Coleman v.O'Toole* [2003] 4 I.R.222 for clarification of how the concepts of "lapse of time" and "other exceptional circumstances" should be applied to the present case, and how the Court should then approach the question as to whether in the light of those considerations it would, "having regard to all the circumstances" be "unjust, oppressive or invidious" to return the applicant to the UK authorities so that he can be sentenced or otherwise dealt with by the Courts there in relation to the offence to which he pleaded guilty in July 1995.

30. Having pointed to the fact that "lapse of time" and "other exceptional circumstances" are disjunctively expressed in the section, the learned judge went on to consider the character of the lapse of time in that case and whether it was "unexplained dilatoriness" (a phrase borrowed from *Martin v.Conroy* [2002] 1 I.L.R.M.461.) on the part of the requesting authority.In Coleman he found that the time which had elapsed was not "unexplained dilatoriness" and that the delay could not be laid at the door of the UK authorities in circumstances where the evidence adduced on the application was more to the effect that the delay was due to the fact that in spite of the fact that the Mr Coleman was living openly in a small village in rural Ireland, and was "signing on" members of An Garda Siochana had not become aware of his presence there over a period of over ten years.There was also evidence that the UK police in Leeds had made contact with Garda Headquarters here within eight days of his non-attendance at Leeds Crown Court, and that such response on the part of the authorities could not be regarded as dilatory.Nevertheless the learned judge went on to consider the "other exceptional circumstances" urged by the applicant and concluded his judgment by stating at p.234:

> *"…Assuming the lapse of time to be exceptional, he has in my view failed to demonstrate any other exceptional circumstance and wholly failed to show that it would be unjust, oppressive or invidious to render him for trial in Leeds."*

31. This seems to indicate that in the learned judge's view, the fact that the authorities in the UK may not be to blame for the lapse of time does not of itself prevent that lapse of time from being regarded as exceptional, since he proceeded on the assumption that the lapse of time in that case was exceptional.On the other hand, Hardiman J.at p.229 of the same judgment considered what Hamilton CJ had stated in Kwok Ming Wan v.Conroy [1998] 3 I.R.527 about the meaning of "lapse of time".He stated at p.229:

> *"In Kwok Ming Wan v.Conroy [1998] 3 I.R.527, the meaning of the phrase "lapse of time" is explored.Hamilton C.J.at pp.535 to 536 cited with approval the words of Lord Edmund-Davies in Kakis v.Republic of Cyprus [1978] 1 W.L.R.779 at p.785:-*
>
> *'The answer to the question of where responsibility lies for the delay may well have a direct bearing on the issues of injustice and oppression.Thus, the fact that the requesting government is shown to have been inexcusably dilatory in taking steps to bring the fugitive to justice may serve to establish both the injustice and oppressiveness of making an order for his return, whereas the issue may be left in some doubt if the only known fact related to the extent of the passage of time.'*
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> *Hamilton C.J.went on to hold that the court is entitled to have regard to where the responsibility for the lapse of time lies since that factor may affect the court's conclusion as to whether it would be un just, oppressive or invidious to deliver up the person whose extradition is sought."*

32. There is no doubt in my mind that there has been a lapse of time worthy of consideration as to whether it is itself exceptional in character.Ten years' delay in the context of extradition proceedings is a long length of time.It is intended, on the contrary, to be a speedy procedure.No doubt where the applicant has caused or even significantly contributed to the lapse of time, he cannot rely on that lapse of time, and thereafter it is not necessary to go on and consider anything else put forward as "other exceptional circumstances".

33. In the present case the applicant, I am satisfied, has not sufficiently contributed to the delay, contrary to what is urged by Mr Kelly, other than of course for the period from July 1995 to July 1998.

34. Even in relation to the six years from that time, it is of course true that he has spent a good deal of that time in prison due to his own misconduct, but in the peculiar circumstances of this case, that is not what caused or even contributed to the delay.To test that proposition, one only has to consider whether, if the applicant had been of impeccable behaviour and had remained a good citizen in all respects, would the District Judge's order made under Section 47 of the Act in October 2004 have been made any earlier.

35. I can find no basis for thinking that it would, given, as I have said, the most extraordinary turn of events in the District Court on the 25th November 1998 when the applicant was released, and the delay encountered thereafter in trying to deal with that turn of events.

36. Now, Mr Kelly has submitted that the applicant contributed to this delay since he objected to the matter being re-entered in the District Court.That to my way of thinking is unreasonable.It would be unfair to expect that any applicant faced with that state of affairs would not, being on notice of the application to re-enter, would consent to re-entry.Notwithstanding that, in the present case it does not appear to me that any consent which might otherwise have been given by the applicant would have altered the mindset of the District Judge who was not enthusiastic about having the matter re-entered, if the steps which were necessary to be taken are anything to judge by.I need not say anything further in that regard.

37. Even though the UK police can be exculpated completely with regard to the lapse of time, and indeed would have been entitled to be extremely upset and concerned about the delay caused by what happened on the 25th November 1998, there is nothing in the judgment of Hardiman J.which suggests, as far as I can glean therefrom, that this lapse of time should not be regarded as an exceptional in the sense of providing a gateway to the consideration of "other exceptional circumstances", even though the UK police were not dilatory.In Coleman, the learned judge proceeded *"assuming the lapse of time to be exceptional"*.In the present case, I have no doubt in my mind in the present case, given the length of time involved and the source of the lapse of time, that it should be regarded as exceptional.

Other exceptional circumstances:

Re-offending post 1998:

38. The Court must avoid double counting the nature of the cause of the lapse of time when considering the question of other exceptional circumstances.I have already considered the unusual cause of the delay as a justification for considering the lapse of time as exceptional.But there is an aspect of this case which is related to the lapse of time, which can be regarded as separate and distinct from what I have already taken into account.It is a consequence for the applicant of the lapse of time, as opposed to the cause.

39. It is the unusual fact in this case that during the period of time between 1998 and 2004, the applicant committed crimes here which resulted in his imprisonment.These also reactivated the sentence which had been reviewed in July 1998.None of that would have occurred if, at the end of 1998, the applicant had been returned to the UK to be sentenced or otherwise dealt with on foot of his plea of guilty.

40. One could speculate that having served any sentence imposed on him in the UK, he would, because of his drug addiction, have

committed further offences whether in that jurisdiction, or here if he had returned to this country.But such speculation would be very unfair to the applicant.He may have benefited from treatment in prison or out of prison, or he may have otherwise rehabilitated himself, given that rehabilitation is one of the accepted aspirations of the prison regime.I would certainly be prepared to give him the benefit of the doubt in that matter – especially given the progress reported now from the clinic here where he attends regularly and is making excellent progress.

41. I refrain, of course, from jumping to a conclusion that the delay which occurred between 25th November 1998 and now has caused the applicant to re-offend.But I regard this factor as something capable of being an "other exceptional circumstance" for the purpose of the section.

Embroiled in Judicial Review proceedings:
42. Another "other exceptional circumstance" is the fact that while efforts were being made to have the matter brought back before the District Court between 1998 and 2004, the applicant himself was involved in those applications by way of judicial review.His legal advisers were served with the documents related to these applications, and no doubt the applicant was required to attend his solicitor to get advice and give instructions, and perhaps he attended Court.I have no information on whether he attended Court on any of these occasions.But he would have been embroiled in the uncertainty attaching to his future as a result of what had happening and which was out of his control.That is in my view sufficient to constitute another "other exceptional circumstance" for the purpose of the section.

Drug treatment since December 2004:
43. In spite of the frailty in the proof of this treatment in the sense that the medical report is not even exhibited in any affidavit, I am prepared to accept it for the purpose of accepting that the applicant, albeit at a very late stage, has taken positive, and so far successful, steps to turn his life around.That is a factor also to be considered under this heading.

UK police files lost:
44. Since I have no evidence to suggest that the applicant's position with regard to sentencing has been prejudiced in any way as a result of the loss of these files by the UK police, I cannot regard this as a sufficient factor to constitute an exceptional circumstance.

45. I am satisfied, therefore, that with the exception of the lost files, the other matters which I have referred to are exceptional circumstances, which are above and beyond the exceptional lapse of time itself.It follows that the Court should go further now and consider whether *"it would, having regard to all the circumstances be **unjust, oppressive or invidious**."* Since these words are used disjunctively, it follows that if any one of the three is satisfied, the order should be made.

46. T**he Concise Oxford Dictionary of Current English, 1999 ed**.defines the word "unjust" as "not just, contrary to justice or fairness"; the word "oppressive" as "harsh or cruel "; and the word "invidious" as "[action/conduct] likely to excite resentment or indignation against the person responsible, esp.by real or seeming injustice".I propose to consider the questions of oppression and invidiousness first, because it seems to me that a finding under either of these would automatically mean that it would be unjust.

47. If the applicant is returned to be sentenced, there does not appear to be any guarantee that he would be given credit for any time served in this jurisdiction relating to processing of the application for his rendition.In this regard, s.67 of the Criminal Justice Act 1967 in England provides:

> "67.—(1) The length of any sentence of imprisonment imposed on an offender by a court shall be reduced by any relevant period ……
>
> (1A) In subsection (1) above "relevant period" means –
>
> (a) any period during which the offender was in police detention in connection with the offence for which sentence was passed; or
>
> (b) any period during which he was in custody –
>
> (i) by reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those proceedings arose; or
>
> (ii) by reason of his having been so committed and having been concurrently detained otherwise than by order of a court, or
>
> (iii) …… " (my emphasis).

48. There could be no guarantee that this section would be widely interpreted so as to allow reduction by a period of time spent in prison in this jurisdiction pursuant to an order of an Irish Court, as opposed to an order made by an English Court.From a policy point of view such might well be undesirable as it could encourage offenders in England to abscond to another jurisdiction for the purpose of effectively serving a sentence or a good part of it in a jurisdiction of his/her choice.

49. The fact is that in the present case the applicant appears to have spent a total of almost five months in custody in connection with the extradition procedures.The first such period was from the 16th July 1998 until his discharge by the District Judge on the 25th November 1998, and then for 21 days between the 10th September 2004 and his being granted bail on the 22nd September 2004.

50. Under s.9 of the Theft Act, 1968 in England, a person convicted of the offence of burglary in relation a premises other than a dwelling house is liable to a maximum sentence of ten years imprisonment.There can be little possibility that the applicant's offence would be regarded as being anything other than at the lower end of the range of sentencing.

51. Even allowing for the view that the offence for which he would be sentenced on his return might be regarded as being at the lower end of the scale, this Court cannot assume that an English Court would not impose a sentence of perhaps eighteen months or two years.That would mean that even if he was given credit for almost five months spent in prison here during the extradition process, there would, even allowing for normal remission, be some time still to be served.Therefore it would be stretching things in my view to regard it as oppressive in the sense of being "harsh or cruel" to return him for sentencing.

52. On the other hand, the fact that he has responded so well to his drug treatment and has been seen worthy of a medical report which speaks so well of his efforts is something which in my view should be considered under this heading also.It will not have been easy for the applicant to first of all to make the decision to get treatment, and having made the decision, then to persevere and succeed in the way he has been shown to have succeeded thus far by the medical centre.I am of the view that this indicative of a genuine attempt, so far successful, to kick the habit of twenty two years and resume a more appropriate lifestyle.I do not propose to set out the details of this medical report in full, because there arte confidential matters referred to, but I will just quote from the final paragraph: *"……also in view of his extremely good progress with us and his stability it would be of enormous benefit if he could remain in treatment at [the clinic]"*.In my view it would be harsh and cruel, and therefore oppressive to deny the applicant the opportunity of making further progress along the path to recovery by interrupting his treatment now by returning him to England.

53. I believe that it would also be invidious (in the sense defined earlier as "likely to excite resentment or indignation against the person responsible, esp.by real or seeming injustice") to do so, given all the circumstances of this case.

54. I also consider that it would be invidious to do so in view of the nature of the delay caused in this case, and the fact that during the periods of that delay the applicant offended here over the period of delay when he ought to have been in England to face his sentence and serve it.

55. There is also the fact to which I have also referred, that he was during that period of time embroiled in the process of judicial review in the way I have described.That is something which he ought not to have had to deal with (whatever the extent of his actual involvement was) and which would justify a reasonable person in thinking it invidious that he should now so long afterward the date of his arrest on foot of the warrant in July 1998 be returned to England.It would also amount to being oppressive in the sense of harsh or cruel.

56. Finally, I should say that I found it necessary to disregard, for the purposes of considering whether the lapse of time itself was exceptional, the fact that the UK authorities bore no culpability for the delay which was encountered following November 1998.The same in my view needs to apply to the effects of the delay as referred to me above in the context of "other circumstances", as well as in the context of having regard to all the circumstances of the case.It seems to me that for the purpose of considering an application under s.50 of the Act, the Court's focus needs to be applicant directed, rather than directed to any lack of culpability on the part of the requesting authority, as opposed to the organs of state in this jurisdiction.The concepts of being "unjust, oppressive or invidious" are referred to only in respect of the applicant's return, and the fact that it might seem unfair to the requesting authority who has no hand act or part in the delay themselves, not to do so, does not appear to be a factor to be weighed in the balance.

57. In all the circumstances I believe that it would be oppressive and invidious, and therefore unjust, to return the applicant to the UK at this stage, and I therefore direct his release in accordance with the section.