Neutral Citation Number: [2010] IEHC 400

THE HIGH COURT

2010 65 Ext

Between:

Minister for Justice, Equality and Law Reform

Applicant

And

Piotr Stawera

Respondent

Judgment of Mr Justice Michael Peart delivered on the 4th day of November 2010:

The surrender of the respondent is sought by a judicial authority in Poland on foot of a European arrest warrant which issued there on the 23rd November 2009.That warrant was endorsed for execution by order of the High Court on the 3rd March 2010. On Saturday 26th June 2010 at about 8pm the respondent attended at Clondalkin Garda Station in fulfilment of a requirement upon him to produce his driving licence, and when he arrived there to do so, he met Garda Bambrick and handed him his driving licence. Garda Bambrick then became aware from a computer record that a European arrest warrant existed for the arrest of the respondent, and so informed him. He thereupon requested that the respondent remain in the Garda station while he made some further enquiries, and the respondent complied with that request. At about 8.15pm on that date Garda Bambrick proceeded to arrest the respondent on foot of the European arrest warrant, and complied with the requirements in relation to the arrest itself and as required by section 13 of the European Arrest Warrant Act, 2003, as amended, explained to the respondent certain rights set out in that section.

In the immediate aftermath of that arrest, Garda Bambrick sought authorisation from the member in charge at Clondalkin Garda Station to download a copy of the warrant from the computer network, and having received such authorisation he did so and handed a copy thereof to the respondent.

Being conscious of the requirement under section 13 (5) of the Act of 2003 that following arrest the respondent is required to be brought before the High Court "as soon as may be" following arrest, he telephoned the Chief State Solicitor's Office. It appears from his evidence before me that following that telephone call, the solicitor to whom he spoke made contact with the High Court Registrar who was on duty over that weekend, who in turn made enquiries from the High Court judge then on duty, who, as I have been informed, told the Registrar that the respondent should be brought before the High Court on Monday the 28th June 2010. It appears that a duty judge had sat on Saturday 24th June 2010 until about 6pm, but had risen by the time this arrest took place. Thereafter, a different judge was on duty, and it is the latter who gave the indication that the respondent should be brought before the High Court on Monday the 28th June 2010.

I did not receive evidence from the solicitor in the Chief State Solicitor's Office who made contact with the Registrar on that Saturday; neither have I heard evidence from that duty Registrar, so to that extent some of the information before the Court is in the nature of hearsay. However, Counsel for the respondent and for the applicant take any no issue with this evidence. Accordingly, the application has proceeded, and correctly in my view, on the basis that what the Court has been told by Garda Bambrick is what actually occurred.

The fact that the respondent was not produced before the High Court until about 1pm on Monday the 28th June 2010, having been held in custody in the interim period following his arrest is at the heart of a submission made by Kieran Kelly BL on the respondent's behalf, namely, that as the respondent was not brought before the High Court "as soon as may be" following his arrest, there has been such a breach of the precise procedures laid down in section 13 of the Act of 2003 as to require that on this application for his surrender, the Court should decline to make the order. I will return to that submission shortly as it is the principal point of objection being relied upon by the respondent, though an issue has been raised also in relation to correspondence which I shall also come to.

At any rate, it is the position that on Monday the 28th June 2010 the respondent was brought to the High Court in Dublin, having remained in Garda custody since his arrest on the previous Saturday. Evidence of arrest was given to the High Court, whereupon a hearing date was fixed for the application for surrender, as required, and the respondent was remanded on bail to that date, and has remained on bail pending the completion of the present application.

The respondent's surrender is sought so that he can serve in Poland what remains of a sentence of two imprisonment imposed upon him on the 27th May 2008, and upheld on appeal on the 30th September 2008. He had pleaded guilty to the offence in question.

Of that sentence a period of nine months and nine days remains to be served, the respondent having spent a period of one year, two months and twenty one days in pre-trial custody awaiting his trial. It appears that following sentence being passed the respondent was released from detention and failed thereafter to voluntarily present himself at the prison to serve the balance of his sentence.

The offence which gave rise to this sentence of imprisonment is set forth in the warrant. Briefly stated the offence consists of having with the assistance of a scanner and printer forged Polish currency notes, and further attempting to forge other such notes. The issuing judicial authority has marked this offence as being one within the category of "forgery" contained in the list of offences set forth in Article 2.2 of the Framework Decision, being offences for which correspondence/double criminality need not be verified.

However, in addition to marking the offence as an Article 2.2 offence, the issuing judicial authority has completed paragraph E 2 of the warrant which is required to be completed in respect of offences not coming within any of the offences set forth in Article 2.2. That would appear to be simply an error in the completion of the warrant since there appears to be no reason why the offence in question could not be reasonably considered to be one involving forgery.

However, in case I am wrong about that, I am satisfied in any event that the offence corresponds to an offence here under section 33 of the Criminal Justice (Theft and Fraud Offences) Act, 2001, namely one of counterfeiting currency notes, or indeed under section

34 of the same Act of passing counterfeited notes.

On that basis I am not satisfied that there is any need to revert to the issuing judicial authority to ask it to confirm whether the marking of the offence as an Article 2.2 offence is an error, or whether there was an error made by the completion of paragraph E 2 of the warrant. Either way the provisions of section 38 of the Act are satisfied, and further enquiries would not serve any useful purpose.

The offence satisfies minimum gravity, even for the purpose of Article 2.2 given the length of sentence which the offence attracts in the issuing state, and by the length of sentence imposed upon the respondent.

I need to deal with the submissions of Counsel in relation to whether it is fatal to this application that the respondent was not brought before the High Court until Monday 28th June 2010, but subject to doing so I am satisfied that there is no reason to refuse to order surrender by reason of any provision in sections 21A, 22, 23 or 24 of the Act, and that his surrender is not prohibited by any provision of Part III of the Act of 2003 or the Framework Decision.

Issue: "As soon as may be"- section 13:
I have set forth the factual details giving rise to this issue, and there is no need to repeat same.

Section 13 makes provision for the endorsement and execution of a European arrest warrant, as well as providing for procedures to be adopted following the arrest of a person on foot of same. Relevant to the present issue is section 13 (5) of the Act of 2003 which provides:

> *"(5) A person arrested under a European arrest warrant shall, **as soon as may be after his or her arrest**, be brought before the High Court, and the High Court shall, if satisfied that that person is the person in respect of whom the European arrest warrant was issued—*
>
> > *(a) remand the person in custody or on bail (and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence),*
> >
> > *(b) fix a date for the purpose of section 16 (being a date that falls not later than 21 days after the date of the person's arrest), and*
> >
> > *(c) inform the person that he or she has the right to—*
> >
> > > *(i) consent to his or her surrender to the issuing state under section 15,*
> > >
> > > *(ii) obtain, or be provided with, professional legal advice and representation, and*
> > >
> > > *(iii) where appropriate, obtain, or be provided with, the services of an interpreter." (my emphasis)*

Tony McGillicuddy BL submits that the phrase "as soon as may be" must permit of reasonable latitude in any particular circumstances prevailing, and is not to be equated to "forthwith". He submits that a meaning akin to 'as soon as reasonably practicable in all the circumstances' would be appropriate, and that if one considers the enquiries made by Garda Bambrick following his arrest of the respondent, and the information provided to him as a result of those enquiries in an effort to bring the respondent before the High Court following arrest, then the provision in section 13 (5) of the Act of 2003 must be considered to have been complied with. It is submitted by Mr McGillicuddy that the Garda in question acted in a bona fide and responsible manner throughout, and that there was no question of any deliberate breach of constitutional rights involved in the fact that through no fault of the arresting Garda, it was not possible to bring the respondent before a High Court prior to the Monday following arrest.

Kieran Kelly BL for the respondent has referred to the need for expedition and urgency in matters concerning the European arrest warrant appears from forstly the Framework Decision and secondly the provisions of the Act of 2003 which provided tight time-limits for the taking of various steps. He submits that one of those steps which are required to be taken with a sense of urgency and expedition is the bringing of a person before the High Court following arrest. It is submitted that it is clear that following arrest a person cannot lawfully be kept in Garda custody until it is convenient for him to be brought before the High Court, and that he must be brought before the High Court immediately so that there can be at the earliest possible opportunity a judicial involvement in any decision for further custody or in the matter of bail. Mr Kelly has referred to a similar situation which arose in the United Kingdom and which is the subject of a judgment of Scott Baker LJ in *Regina (Nikonovs) v. Governor of Brixton Prison and another* [2006] 1 WLR 1518, and where on an application for an order of habeas corpus, the arrested person was released from custody. Under the equivalent provision in the UK's Extradition Act, 2003 the requirement is that following an arrest the person he/she *"must be brought **as soon as practicable** before the appropriate judge".* In that case a person was arrested at 5.45am on Saturday 17th September 2005. The respondent was not brought before Bow Street Magistrates Court until Monday 19th September 2005 because it was believed by relevant personnel that there was no sitting at that Court until the Monday morning. In fact that belief was incorrect as the court was sitting throughout Saturday and the respondent could have been brought to court on the same day as his arrest. It was concluded that the respondent had not been brought before the court "as soon as practicable" after his arrest, since the only reason for his not being brought to court before the following Monday was the mistaken belief by those concerned that there was no court sitting on the Saturday in question. In other words, it was practicable to have brought him to court on the day of his arrest.

Mr Kelly urges that the same strict interpretation should be applied to the facts of the present case where there was a duty judge on call for urgent matters, and he submits that it ought to have been possible for the respondent to be brought before that judge, as not infrequently occurs in other cases at a weekend, rather than be held in custody over Saturday and Sunday night.

Conclusion:
I am satisfied that the *Nikonovs* case can be distinguished on its facts from the present one, since the error identified in that case is absent in the present case. In the present case, it is an undisputed fact that the High Court judge on call on the evening of this arrest, having been contacted by the duty Registrar, indicated that the respondent should be brought before the High Court on Monday. In those circumstances it cannot be said that there was a sitting of the High Court to which the respondent could have been brought. In such circumstances, the next available High Court sitting was on the following Monday, and therefore by being brought before the High Court sitting on Monday the respondent was brought before the High Court "as soon as may be". I would add that "as soon as may be" does permit of some more reasonable latitude that does a phrase such as "forthwith" or indeed "as soon as practicable".

It would however have been preferable if the High Court judge on duty on the Sunday had been available to deal with the matter, since a man was in custody for at least a day longer than was strictly necessary. However, the Garda in question did everything in his power to bring the respondent to Court sooner than was in fact possible in the circumstances, and in those circumstances, and given the information obtained via the duty judge in question, I am satisfied that he was brought before the High Court in accordance with the provisions of section 13 (5) of the Act of 2003.

I am not to be taken as concluding that if there had been some error occurring as in *Nikonovs* resulting in the respondent not being brought before the High Court "as soon as may be" that surrender would have to be refused. It would no doubt give rise to an application for release at an early stage under Article 40 of the Constitution. That is a separate matter not arising on the present application. But whether a breach of section 13 (5) of the Act of 2003 argued on the application for surrender under section 16 would require surrender to be refused will have to await a decision in some later case in which the facts require such a decision to be reached.

I will therefore make the order for surrender sought in this case.