

THE HIGH COURT

Record Number: 2007 No. 181 Ext.

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
JAROSLAW STANKIEWICZ

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 6th day of May, 2008

1. The surrender of the respondent so that he can be returned to the Republic of Poland under a European arrest warrant which issued there on the 26th September 2007. The warrant was duly endorsed here for execution by order of this Court on the 7th November 2007, and the respondent was arrested on foot of same on the 23rd November 2007, and brought before the Court as required by the provisions of s. 13 of the European Arrest Warrant Act, 2003, as amended. Thereafter he was remanded from time to time pending the hearing and determination of this application.
2. His surrender is sought so that he can serve a sentence of imprisonment imposed on him on the 15th January 2001, and in respect of which, according to the warrant, there is a period of one year, two months and fourteen days remaining to be served. The warrant also discloses that when this sentence was imposed on that date, it was suspended "for a probation period of five years", and that "over that period [the respondent] was to be put on probation".
3. On the 19th May 2005, however, the suspension was lifted so that the sentence could be served. Further information adduced on this application shows that by reason of the fact that he committed a further offence for which he was convicted on the 18th November 2004 and therefore within the probationary period of five years referred to, an application was made to lift the suspension in respect of the earlier sentence.
4. Before addressing the point of objection raised by the respondent, namely that he is not a person who comes within the provisions of s. 10 of the Act, not having in his submission, 'fled' the requesting state, I should state at the outset that I am satisfied that the respondent is the person in respect of whom this warrant has been issued, and that the two offences for which he was convicted and for which he was so sentenced are corresponding offences in this State, being offences under s. 3 of the Non-Fatal Offences Against the Person Act, 1997, and that the sentence remaining outstanding satisfies the minimum gravity requirement.
5. I am further satisfied that there is no reason under sections 21A, 22, 23 or 24 of the Act to refuse surrender, and that there is nothing in Part III of the Act or the Framework Decision why his surrender is prohibited.
6. The only point raised against surrender is that this Court cannot make the order sought because the respondent is not a person to whom s. 10 of the Act applies. The basis for that point is contained in the affidavit of the respondent filed in support of his Points of Objection. In that affidavit he states that at his trial and conviction he was represented by a lawyer who has since died. But he states that when he left Poland in March 2005 he did so for the purpose of seeking work here, and he denies that between January 2001 and March 2005 he committed any further offences in Poland, and that in leaving Poland and coming to this country he did not breach any conditions imposed upon him by the court in Poland when it suspended its sentence. Specifically he states that there was no reason for him not to leave Poland, since there was no condition attached to the suspension of his sentence which required that he remain in Poland. He goes on to state that prior to March 2005 he left Poland regularly to seek work in Germany and that he was informed by his lawyer that he was permitted to do this, and that the Polish police were aware that he was leaving Poland during this time in order to work in Germany.
7. He also states that he was never aware that the suspension had been lifted on the 15th May 2005 until he was arrested on foot of the European arrest warrant herein. He states that after he was convicted and sentenced in January 2001 he believed that the case was finalised and was never made aware of any further application or court dates. He denies that he committed the offence in respect of which he was later convicted in May 2005, and that he did not instruct any lawyer to represent him in relation thereto, and that if any such lawyer represented him, he/she did so without any instructions from him. In this regard the information adduced by the applicant on this applications states, *inter alia*, that a lawyer represented the respondent on the application which was made for activation of the suspended sentence. That information also states that it was not a condition of the suspension that the respondent reside at any particular address, but that in order to be informed of any correspondence which might be sent to him the court needs to know where he is residing at material times.
8. The respondent seeks to distinguish the facts of the present case from those in the case of *Minister for Justice, Equality and Law Reform v. Sliczynski*, ex tempore, High Court, 11th October 2007 since in that case the Court was made aware of the conditions of the suspending of sentence and that the respondent was aware of those conditions also. In the present case the Court has not been provided with those conditions, and it is urged upon the Court that the evidence of the respondent in his affidavit ought to be accepted, namely that there was no condition which served to prevent him from leaving the jurisdiction of Poland, and accordingly he should be seen, for the purpose of s. 10(d) of the Act, as somebody who has not *fled* the issuing state before he commenced serving the sentence.
9. This point of objection must fail at the outset since in my view the respondent has failed to discharge the onus of rebutting the strong presumption that the issuing state will not seek the respondent's surrender in circumstances where he is not in breach of a condition of suspension attaching to the sentence imposed on the 15th January 2001. The respondent has simply asserted that he left Poland only to seek work and not in breach of conditions imposed. While he has stated that his then lawyer is deceased, it does not follow that the information as to the nature of the conditions imposed upon him could not be obtained from the Court which sentenced him, and in my view it does not prevent him from obtaining assistance from some other lawyer in Poland in order to gather the necessary information to assist him in satisfying this Court that no conditions were breached by him by leaving Poland and coming to this State. Given the nature of the arrangements which this State and other designated states, including Poland have adopted in relation to the European arrest warrant, there is an obligation on this state to surrender persons who are the subject of such warrants unless very clear circumstances and facts are shown to exist why such an order should not be made. As I have said, this Court can safely assume that an issuing state acts in good faith in these matters, and it follows that there is a heavy onus upon any respondent who raises a point of objection, to support that objection by cogent evidence. Mere assertion cannot be sufficient. To conclude otherwise would lead to a situation where the aims and objectives of the Framework Decision would be undermined and set at naught simply by unsubstantiated assertions made on affidavit by a respondent. It must be borne in mind that the basis of the respondent's submission is the judgment of the Supreme Court in *Minister for Justice, Equality and Law Reform v. Tobin* where, on the

very particular facts of that case, it was clear that the respondent had breached no law or obligation imposed upon him by the Court in Hungary. It was clear that the Court in Hungary accepted that this was so. The onus of proving that situation was discharged by that respondent in a way which has not been done in any way in the present case.

10. The Court will therefore make the order sought in this case under s. 16(1) of the Act.