

THE HIGH COURT

2009 115 Ext

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND

WOJCIECH KASPROWICZ

RESPONDENT

JUDGMENT of Mr. Justice Michael Peart delivered on the 13th day of May 2010

The surrender of the respondent is sought on foot of a European Arrest Warrant which issued in Poland on 24th September, 2007, and was endorsed for execution here by order of this Court on 13th May, 2009. The respondent was duly arrested on foot of this Warrant on 19th August, 2009, and, as required by s. 13 of the European Arrest Warrant Act 2003, as amended ("the Act"), was brought before this Court and from where he has been remanded from time to time pending the hearing of the present application for his surrender.

There is no issue raised as to the identity of the respondent, but the Court can be satisfied in that regard, having regard to the affidavit evidence of Sergeant Seán Fallon who carried out the arrest that the person who he arrested and brought before the Court is the person in respect of which this Warrant has been issued.

Surrender is sought in respect of a total of seven offences set forth in the Warrant. Some of those offences are ones in respect of which the respondent has already been convicted and sentenced to terms of imprisonment which remain to be served. Others are ones in respect of which surrender is sought so that he can be prosecuted and tried in respect of same.

The offences for which he has been convicted already are those set forth in paragraph E of the Warrant at sub-paragraphs A and B thereof.

In respect of those at A thereof, the respondent was ordered to serve a period of one year and six months imprisonment, of which one year, five months and seven days remain to be served. No issue is raised in relation to correspondence in respect of these offences, and I am satisfied that those offences correspond to certain offences here under the Road Traffic Act 1961, as amended.

Minimum gravity is satisfied in relation to these offences by reason of the length of the sentence imposed.

In respect of the offence at B thereof, the respondent was ordered to serve a period of six months imprisonment, all of which remains to be served. Again, no issue is raised in relation to correspondence in respect of this offence, and I am satisfied that it corresponds to an offence here under s. 38 of the Road Traffic Act, 1961, as amended, namely of driving without holding a driving licence.

Again, minimum gravity is satisfied.

The offences at paragraph E, sub-paragraphs C and D are ones in respect of which surrender is sought for the purpose of prosecution.

Under paragraph C, there are four offences, namely C(i), C(ii), C(iii), and C(iv). Correspondence is made out in respect of C(i), C(iii), and C(iv) and that is not disputed by the respondent, but there is a question over correspondence in respect of the offence at C(ii).

There is also an issue arising in relation to correspondence in respect of the offence set forth at paragraph E, sub-paragraph D. However, minimum gravity in respect of the offences at C and D is satisfied.

No undertaking is required in respect of offences at A and B as it is not contended that these convictions occurred in absentia, and the Warrant states that he was present.

I am satisfied that the respondent is a person who comes within the ambit of s. 10 of the Act, even in respect of the offences for which he was convicted, as the Warrant refers to him as a "*fugitive from justice*" and he has not sought to contradict that statement.

The only issue arising is in respect of correspondence in relation offence C(ii) and D of paragraph E of the Warrant, and subject to addressing those issues, I am satisfied that his order should be surrendered and that there is neither any reason to refuse to order surrender by reason of any provision of sections 21A, 22, 23 or 24 of the Act, nor that surrender is prohibited by any provision in Part III of the Act or the

Correspondence

Offence C(ii)

This offence is described in the Warrant as follows:

"On 27th November 2005 in Stara Wisnlowa, having been placed in a police patrol car, he insulted [named police officers] by using vulgar and scurrilous words towards them while they were carrying out their official duties."

The only possible candidate offence put forward for correspondence is that contrary to s. 6 of the Criminal Justice (Public Order) Act 1994 - breach of the peace. However, that offence requires, *inter alia*, that it be committed in a public place, but in any event, I am satisfied that there is no corresponding offence in this State. The applicant does not press the matter really, even though further information has been provided as to exactly what was said by the respondent. So, no surrender can be ordered in respect of that offence.

Offence D

This offence is set forth as follows:

"On 27th February 2006, Gorzow Wielkopolski, along with Tomasz Wisniewski, in a Ford Fiesta car, Registration Number PZL 24EV, acting together and in collaboration, they possessed, without permission, a 'Valtro' gas pistol, model 8000 F.S. 9mm, calibre P.A. number 05886, Italian made, without having the required licence for that gun. "

All the submissions in respect of this offence related to whether it was clear that a gas pistol is a weapon capable of discharging anything and therefore capable of coming within the statutory definition of a firearm for the purpose of correspondence. However, while this matter was not noticed either by me, or presumably, by either counsel appearing, when this application was heard, it seems clear that the respondent is not named at all in relation to this alleged offence.

The only persons named are "Gorzow Wielkopolski "and "Tomasz Wisniewski ". None of the additional information clarifies this aspect, and I must conclude that some error has occurred, but I cannot order the respondent's surrender for that offence in these circumstances, and it is unnecessary to enter further upon the question raised as to the definition of a firearm and whether the alleged weapon is within the statutory definition for correspondence purposes.

I will therefore order surrender but restricted to the offences at A, B, C (i), C (iii), and C (iv) of paragraph E of the warrant, but not in respect of those at C (ii) and at D of paragraph E of the warrant.