

THE HIGH COURT

Record Number: 2006 No. 1 Ext.

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
ROBERT AARON ANDERSON

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 14th day of March 2006

1. The respondent was arrested on the 30th January 2006 on foot of a European Arrest Warrant from Scotland dated 21st December 2005, which was duly endorsed for execution by this Court on the 17th January 2006. Having been arrested on that date he was duly brought before this Court and remanded to the hearing of this application for his surrender which is made by the applicant pursuant to the provisions of s. 16(1) of the European Arrest Warrant Act, 2003, as amended.

2. Points of Objection have been filed and delivered on behalf of the respondent, as he is entitled to do pursuant to O.98, r.5 RSC (S.I. 23/2005) and in which the respondent sets out five points of objection, but these in reality are just two points, namely that the offences charged in the warrant do not correspond to offences in this State, and that there has been such an amount of delay on the part of the authorities in Scotland in seeking his surrender that he ought not be surrendered.

Factual Outline

3. According to the statement contained in the European arrest warrant of the circumstances in which these offences were committed the respondent was convicted in Scotland on the 9th December 1996 of an offence under s. 103(1)(b) of the Road Traffic Act, 1988 (driving while disqualified) and was disqualified for life from holding and obtaining a driving licence. However it appears from this statement also that on the 26th April 2002 the Scottish police received some information that the respondent was driving a car at Bonar Bridge in Sutherland, Scotland, and that he was a disqualified driver at the time. Two police officers waited in a lay-by for the respondent to appear, following which they approached him and he conformed his identity and admitted that he was a disqualified driver. The respondent was arrested and brought to a police station where he was processed and appeared in Court on the 27th May 2002, on which occasion he was bailed to appear at a Sheriff and Jury sitting firstly on the 4th February 2003 and at his trial hearing on the 29th April 2003. It is stated that he failed to appear in Court on the trial date and a warrant for his arrest issued in respect of the charge of driving while disqualified.

4. A further warrant was obtained on the 2nd May 2003 for his arrest on the charge of failing to appear at his trial.

5. It appears that on the 15th April 2003, the respondent had again been spotted driving a car while disqualified. Again on that date he was stopped by police when he again admitted that he was disqualified. He was again arrested and brought to a police station, and was indicted to appear in court on the 10th November 2003 on the charge of driving while disqualified. He again failed to appear and another warrant issued.

6. The statement of the circumstances of the case concludes by stating:

"On the 24th August 2004 a Department of Work and Pensions enquiry by the police conformed that Robert Aaron Anderson was now resident at Caravan Loco Gara, Cuppanagh, Cloonloo, Republic of Ireland."

7. As I have already stated the European arrest warrant itself issued from Edinburgh Sheriff Court on the 21st December 2005, which is about one year and four months after the information was obtained as to the respondent's whereabouts.

The offences charged

8. The respondent is charged in Scotland with, firstly, two charges of driving a motor vehicle while being disqualified from holding or obtaining a licence, contrary to s. 103(1) of the Road Traffic Act 1988; and secondly, with one charge that having been granted bail in relation to solemn proceedings he failed without reasonable excuse to appear at the time and place for the diet of which he has been given due notice, contrary to s. 27(7) of the Criminal Procedure (Scotland) Act, 1995. Both alleged offences carry penalties in Scotland which exceed the minimum gravity requirement under the Act.

The respondent's grounding affidavit

9. In this affidavit he states that he came to live in the State on the 6th March 2003. By reference to the facts in the warrant that would have been just after his first appearance in Court on the 4th February 2003, and about seven weeks before the trial date set for the 29th April 2003 at which he failed to appear. He gives details of a number of locations at which he resided in both Co. Roscommon and Co. Sligo between March 2003 and the date of his arrest, and states that he is unemployed and has been claiming unemployment benefit here since June 2003, has applied for housing from Sligo County Council, lives here with his partner, and that he has settled into the local community, including by being a member of the local Civil Defence in Boyle. He also states that he opened a bank account prior to which he attended at a Garda Station so that he could obtain a Certificate of Identity from the Gardai for the bank in question before they would allow him open his account.

10. In relation to the offences in the European arrest warrant he states that since March 2003 he has had no contact from the Scottish police, that he was not aware that they were looking for him, and that because of the passage of time he was of the view that they did not intend to pursue him in relation to these matters. He goes on to state that while he has been here he has always used his correct name and identity details.

Passage of time

11. I have expressed the view in a number of cases recently that I am of the view that the Court when considering whether to make the order sought under s. 16 of the Act can have regard to the passage of time since the date of alleged commission of the alleged offences, even though there is no provision in the Act similar to that which was contained in s. 50(2)(bbb) of the Extradition Act, 1965, as amended, prior to the repeal of Part III thereof by the 2003 Act. That is because s. 37 of the 2003 Act provides, inter alia, that no person shall be surrendered under the Act if his/her surrender would constitute a contravention of any provision of the Constitution, and in view of the express statement in the Framework Decision given effect to by the 2003 Act that the fundamental rights of persons whose surrender is sought are respected.

12. It has been argued in a number of cases, and I agree, that accordingly it is open to requested persons to submit that on account

of delay their constitutional rights would be infringed if they were to be surrendered. In a number of such cases I have concluded that the submission was correct and I have refused to make the order sought.

13. However, in such cases the extent of the delay has been much greater than in the present case, and clear prejudice has been demonstrated. In the present case the delay, such as it is, is short, and no prejudice has been made out, except perhaps in so far as the respondent states that he has settled down here into the local community. That is not in any way to dilute or regard as less than important the need to proceed with expedition in matters of this kind. Reasonable expedition is required both of the requesting authorities and the authorities in the requested state. But each case in that respect will have to be considered on its own facts.

14. I am not concerned with the fact that the respondent states that he was unaware that the Scottish police were looking for him or that he was supposed to be attending court in April 2003. That will be a matter in due course for the respondent to plead in his defence of the charge of failing to appear in Court in April 2003.

15. Patrick McCarthy SC on his behalf has asserted that the point as to delay in this case is made on a stand-alone basis only, and not on the basis of a particular prejudice. While I would be satisfied that there can be cases where the delay is of such a magnitude as to give rise to a presumption of prejudice such as could entitle this Court to refuse to order surrender, and that, as in the case of *Minister for Justice, Equality and Law Reform v. Stapleton*, High Court, unreported, 21st February 2006, the respondent ought not necessarily to be put to the hazard, by being surrendered, of seeking relief in the requesting state in that regard, this is not such a case. The delay in this case is manifestly not excessive, inordinate or unreasonable, and the fact that there has not been any explanation of the delay from the date of his non-appearance in Court to the date on which the European arrest warrant was issued is not material in the present case since in my view the length of the delay in any event is not such as needs to be explained or excused. This is all the more so in the absence of any prejudice being asserted by the respondent. That point of objection must fail.

Correspondence

Driving while disqualified

16. The applicant submits that the facts alleged against the respondent in respect of these offences, namely that he was driving a motor vehicle on a road on a date when he was disqualified from holding or obtaining a driving licence, would, if done in this State give rise to an offence contrary to s. 38(1) of the Road Traffic Act, 1961 which provides:

"38.-- (1) A person shall not drive a mechanically propelled vehicle in a public place unless he holds a driving licence for the time being having effect and licensing him to drive the vehicle.

(2) (a) A person who contravenes subsection (1) of this section shall be guilty of an offence;

(b) "

17. A penalty of the necessary minimum gravity is provided for in s. 38(5) of that Act.

18. Mr McCarthy seeks on behalf of the respondent to make something of the fact that under the relevant Scottish statutory provision (s. 103(1) of the Road Traffic Act 1988) provides:

"A person is guilty of an offence if, while disqualified for holding or obtaining a licence, he (a) obtains a licence, or (b) drives a motor vehicle on a road."

19. Mr McCarthy submits that in this State there is no offence of driving "while disqualified", but only of driving without a licence. He submits that there is a distinction between driving without a licence and driving while disqualified, and that there is nothing in the statement of the facts of the case as set forth in the warrant to show that the respondent did not hold a licence, but only that he was disqualified.

20. I believe this to be a meaningless distinction. In looking at the facts as disclosed and carrying out the necessary inquiry as to whether those facts if committed in this State would give rise to an offence under our law, the Court not lose sight of common-sense. The facts are not unusual facts. The offence alleged to have been committed is a common enough offence. It is quite clear that in this country if a person has been disqualified from holding a driving licence and he drives thereafter he can be convicted of the offence created by s. 38(1) of the Road Traffic Act, 1961. The fact that the facts speak of the respondent of having been disqualified, as opposed to him not having a licence, makes no difference as far as I can see, and I therefore hold that correspondence is made out in respect of these particular offences.

Failing to appear

21. The applicant submits that the facts giving rise to the other offence referred to in the European arrest warrant, namely that having been granted bail to appear before the Court he failed to do so on the date in question, would if committed here give rise to an offence under s. 13(1) of the Criminal Justice Act, 1984 which provides:

"13.-- (1) If a person who has been released on bail in criminal proceedings fails to appear before a court in accordance with his recognizance, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1000 or to imprisonment for a term not exceeding twelve months or to both."

22. It is worth noting that s. 13(5) of the same Act provides that it shall be a Defence to that charge if the person provides a reasonable excuse for his non appearance. This latter subsection is of relevance since the equivalent offence in Scotland provides:

"An accused who having been granted bail in relation to solemn proceedings fails without reasonable excuse to appear at the time and place appointed for any diet of which he has been given notice (where such diet is in respect of solemn proceedings) shall be guilty of an offence and liable on conviction to the following penalties:

(a) a fine; and

(b) imprisonment for a period not exceeding 2 years."

23. On behalf of the respondent Mr McCarthy points to the fact that when one looks at the offence as provided for in Scotland and that provided in the State, the latter has an added ingredient missing from the former, namely that for an offence to be committed here there must be shown to have been a breach of the recognizance. There is no reference to such a breach being required in the

Scottish offence.

24. In my view the fact that there are shades of distinction between how the offence is worded in the Scottish Act and the offence in s. 13 of the 1984 Act here is not of any importance in this case. The facts disclosed in the warrant are simply that the respondent was arrested, he was given bail and was "indicted to appear at a Sheriff and Jury sitting...on the 29th April 2003". He failed to do so. That in our language is a breach of a condition of his bail, namely to appear in court. There is no mystery about that language or the concept. We have a similar regime of bailing an accused to appear in court at some future date. In such circumstances in this State the accused will enter into what is called a recognizance which may contain a number of conditions, but certainly one of them will be that he appear in court on the relevant date specified. That is what bail is. It is the same in Scotland as it is here apparently. If the respondent had been bailed in this State to appear at some future date he would have entered into such a recognizance which would have required of him precisely what was required of him in Scotland - namely that he turn up in Court for his trial. The fact that the offence under s. 13 speaks of failing to appear "before a court in accordance with his recognizance" does not mean that there is some added or extra ingredient to the offence here which would prevent correspondence being made out. I have absolutely no doubt that if the respondent did the same act here of not turning up for his trial he would, if the facts are proved, be guilty of the offence set forth in s. 13(1) unless he was able to come within s.13(5) by providing a reasonable excuse. In my view correspondence is made out in respect of this offence also.

Conclusion

25. I have dealt with the points of objection taken by the respondent. It remains to be satisfied that the conditions set forth in s. 16 are met by the applicant. I have considered the materials before the Court, and I am satisfied that the person before the Court is the person in respect of whom the European arrest warrant is issued; that the same has been endorsed in accordance with the provisions of s. 13 of the Act; that no undertaking is required for the purpose of s.45 of the Act since no conviction or sentence has been imposed in absentia; that the Court is not required by any of sections 21A, 22, 23, or 24 of the Act, as amended, to refuse surrender; and that his surrender is not prohibited by Part 3 of the Act.

26. I am therefore satisfied that an order should be made pursuant to s. 16(1) of the Act for the surrender of the respondent to such person in the issuing state as is duly authorised by the issuing state to receive him, and I so order.