

THE HIGH COURT

2010 53 Ext

Between:

The Minister for Justice, Equality and Law Reform

Applicant

And

Krzysztof Serdiuk

Respondent

Judgment of Mr. Justice Michael Peart delivered on the 11th day of June, 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 8th December, 2009. That warrant was endorsed for execution by the High Court on the 24th February, 2010, and in due course the respondent was arrested on the 12th April, 2010, and, as required, was brought before the High Court from where he has been remanded from time to time pending the determination of this application for his surrender to be concluded.

Surrender is sought so that the respondent can be returned in order to serve a sentence of eight months' imprisonment which was imposed upon him in respect of one offence of driving while under the influence of alcohol. The sentence imposed was originally one of 2 years but this was later reduced to eight months, which satisfies minimum gravity.

The warrant indicates that he drove while there was in his body a quantity of 3,100 tugs of alcohol per one litre of blood. This translates into 310 tugs. of alcohol per 100 mls. of blood. The equivalent limit under s. 49(2) of the 1961 Act is 80 tugs. per 100 mls. of blood.

The only issue raised by way of objection on the respondent's behalf relates to the question of correspondence with an offence in this State under s. 49(2) of the Road Traffic Act 1961, as amended ("RTA"), so I will return to that issue shortly.

I am satisfied that the person before the Court is the person in respect of whom this warrant has been issued.

No undertaking is required to be provided under s. 45 of the European Arrest Warrant Act 2003, as amended.

I am satisfied that there is no reason to refuse to order surrender by reason of any provision of ss. 21A, 22, 23 or 24 of the Act, and subject to addressing the question as to correspondence, I am satisfied that surrender is not prohibited by any provision of Part III of the Act or the Framework Decision.

Correspondence:

The facts detailed in the warrant which gave rise to this offence are set forth as follows:

"On 5 October 2004 in Wroclaw being in breach of the prohibition to drive mechanical propelled vehicles which had previously been decided by the court, he was driving the car Mercedes 124, registration numbers: WYK 6661 under the influence of alcohol - 3,1 mg/l of alcohol in the blood."

Additional information has clarified that the level of alcohol in his blood was 3100mgs. per 1000 mls. of blood, which adapted to the language of the Road Traffic Act 1961, as amended is 310mgs. of alcohol per 100mls. of blood. In order parance he was more than four times over the limit of 80mgs of alcohol per 100 mls of blood which operates in this jurisdiction. At first glance it seems clear that if the respondent was found in this State to have been driving with this level of alcohol in his body, he would commit the offence created here by s. 49(2) RTA.

However, Mr. Farrell seeks to draw a distinction of some significance between what he was convicted for in Poland and the particular offence in this jurisdiction with which correspondence is sought to be established.

The Polish offence is that *"he was driving the car Mercedes 124, registration numbers: WYK 6661 under the influence of alcohol"*, whereas the offence under s. 49(2) RTA, as amended is committed by driving a mechanically propelled vehicle *"while there is present in his body a quantity of alcohol such that, within 3 hours after so driving ... the concentration of alcohol in his blood will exceed a concentration of 80 milligrammes of alcohol per 100 millilitres of blood"*.

Mr. Farrell submits by reference to this distinction that the offence under s. 49(2) RTA in this State is not committed by driving while drunk or under the influence of alcohol simpliciter. He submits that it is s. 49(1) RTA that is directed to an offence at the time of driving since it speaks of not driving in a public place *"to such an extent as to be incapable of having proper control of the vehicle"*. By contrast, the offence under s. 49(2) RTA in his submission is committed only if not later than 3 hours following the driving there is more than 80mgs. of alcohol in the person's body per 100 mls. of blood. By reference to that, it is submitted that there are no facts contained in the warrant to indicate that the respondent had an amount of alcohol exceeding 80mgs. per 100 mls. of blood in his body during a period up to three hours after he drove the vehicle. Mr. Farrell emphasises the use in the s. 49(2) offence of the words *"after so driving"*, and

submits that there is no evidence in this case that there was alcohol in his body "3 hours after so driving", the only allegation being that there such a level at the time of driving. Accordingly, it is submitted that the ingredients of the offence put forward for correspondence are absent in this case.

Mr. McGrath for the applicant submits that the absence of any reference to the time at which the respondent was tested in the warrant, or whether three hours after the driving there was excess alcohol in his body is of no consequence since the important question is simply whether at the time of driving he had a level of alcohol in his body which exceeds the limit here of 80mgs. per 100mls. of blood.

Conclusion:

It is of course true that there is nothing in the warrant which indicates at what time after the respondent was stopped by the police he was tested or how he was tested or what level of alcohol there may have been in his body at any particular time up to three hours after the driving. But I cannot agree with Mr. Farrell that a proper interpretation of s. 49(2) RTA results in the offence being committed not by reference to the time of driving but by a period up to three hours after the driving. It is important to have regard to the way the section is worded and I draw attention to the words "will exceed a concentration of 80 ...". It seems clear to me that the offence is committed by a person when he/she drives a mechanically propelled vehicle when he/she does so while or at a time when he/she has so much alcohol in his body at that time as will result in there still being in his body up to 3 hours afterwards a level of more than 80mgs. of alcohol per 100mls. of blood. In this way it is clear that since that level still exists up to three hours after driving, it is safe and beyond doubt in fact that at the time of driving there was more than that level. The respondent is convicted of driving while there was at the time of driving 310mgs. of alcohol per 100 mls. of blood in his body, *i.e.* more than 80mgs, of alcohol per 100mls. of blood.

Mr. Farrell's submission is based on what I feel is too contrived or stretched an interpretation of the section. It is counter-intuitive to think that if a person drives in Poland with a level of alcohol in his body which exceeds the permitted level in this country, he would not commit an offence in this State if he did the same here. Apart from being counter-intuitive, it is clear that he would do so, even by reference to the clear meaning of the words used in the section.

Accordingly, I am satisfied that an order for surrender must be made, and I will so order.