

THE HIGH COURT

[2015 No. 6 EXT]

BETWEEN

MINISTER FOR JUSTICE EQUALITY AND LAW REFORM

APPLICANT

AND

CHARLES MCGINLEY

RESPONDENT

JUDGMENT of Mr. Justice Noonan delivered the 20th day of October, 2015.

1. This is an application brought pursuant to the provisions of the European Arrest Warrant Act 2003 (as amended) ("the Act") for the surrender of the respondent to the authorities in Northern Ireland. The European Arrest Warrant ("EAW") was issued by Belfast Magistrates Court on the 9th December, 2014 and was endorsed for execution by the High Court on the 13th January, 2015. The respondent was arrested on foot of this warrant on the 11th March, 2015 at Dundalk Courthouse, Co. Louth

2. The three offences, which are the subject matter of the warrant, are alleged to have been committed on the 15th November, 2011. The respondent was charged with these offences before Belfast Magistrates Court on the 16th November, 2011, and was admitted to bail on the 18th November, 2011. It is alleged that he absconded while on bail giving rise to the delay in bringing this application.

3. No issue has been raised as to the identity of the respondent and I am satisfied from the evidence of Bean Garda Stacy Linnane that s. 16(1)(a) has been complied with and that the respondent is the person in respect of whom the EAW was issued.

4. With regard to s. 16(1)(b), I have examined the original warrant and I am satisfied that it has been endorsed in accordance with s. 13 of the Act for execution. Again, this is not in issue. The EAW states that the surrender of the respondent is requested for the purpose of prosecution and accordingly s. 45 does not apply, thus satisfying the requirements of s. 16(1)(c). With regard to s. 16(1)(d), the sections referred to therein do not apply and therefore the court is not required to refuse surrender on this ground.

5. The EAW gives particulars of the three offences which can be described in concise form as:

- a) Hijacking a vehicle
- b) Criminal damage
- c) Common assault

Each offence carried a maximum sentence in excess of twelve months imprisonment, and accordingly satisfies the minimum gravity requirements contained in s. 38 (1)(a)(i).

6. Section (e) of the EAW provides a description of the circumstances in which the offences were committed, including the time, place and degree of participation in the offences by the respondent. A detailed narrative of those circumstances appears in section (e). In summary, it is alleged that in the early hours of the morning of the 15th November, 2011, a taxi driver, Kieran Logue, picked up three fares, all male, who proceeded to hijack his vehicle and assault him. They then made off in the vehicle. It is alleged that when the vehicle was recovered, damage had been caused to it.

7. In a letter of the 9th July, 2015 to the respondent's solicitors, the Chief State Solicitors set out particulars of offences under the laws of the State which are said to correspond with the offences with which the respondent is charged in Northern Ireland. In his notice of objection, the respondent makes a number of points which may be summarised as follows:

- 1) The EAW contains insufficient detail to link the respondent with the alleged criminal conduct detailed in the warrant.
- 2) As a result of excessive delay in the execution of the warrant, the respondent has suffered prejudice by virtue of the fact that he was a juvenile at the time of the alleged offences but is now an adult.
- 3) The respondent's surrender on foot of the warrant would be disproportionate.
- 4) The application made by the applicant on foot of the warrant is an abuse of process.

8. I propose to deal with each of these in turn:

No Link to the Respondent

9. It was submitted that there is nothing in the warrant in relation to the hijacking charge which sufficiently identifies the respondent as the alleged culprit. The narrative in the EAW refers to the hijacking being ostensibly carried out by the eldest of the three males, whoever that might be. This however totally ignores the subsequent facts alleged where all three males chased and assaulted Mr. Logue. This demonstrates clearly that the three males were at all material times acting in concert in the execution of a common purpose and joint enterprise. The same considerations, in my view, apply to the assault and the criminal damage charges. In that regard, it seems to me that the judgment of the Supreme Court in *Minister for Justice Equality and Law Reform v. Stafford* [2009]

IESC 83 is relevant. In that case, the Supreme Court upheld a decision of the High Court regarding a European Arrest Warrant in which Peart J. said the following:

"The principle of mutual recognition must be interpreted in a way which precludes this Court, except in the most obvious and glaring inadequacy and failure to make any link between the person named in the warrant and the alleged offence, from seeking to go behind the description contained in paragraph (e) and in so doing questioning the bona fides of the warrant signed as it is by the issuing judge.

The requirement that the warrant contains a description of the degree of the respondent's involvement in the offences means just that – a description thereof. There is no requirement that a particular level of involvement be described in the sense of having to pass a certain threshold of involvement so as to show anything like a *prima facie* case. That would be to require strength of argument demonstration. In my view the principle of mutual co-operation is consistent with the requesting authority being expected to show a degree of participation or involvement by the respondent in the offences set forth in the warrant. Beyond that it is a matter for the requesting authority, who in this case has stated that it has been decided to charge and try the respondent with the charges, to prove its case at trial beyond a reasonable doubt so as to dislodge the presumption of innocence which he presently enjoys as of right. To go further in my view and expect that the requesting authority should at this stage be required to set forth all of its proposed evidence in more detail is not something required by either the letter or the spirit of the Framework Decision."

11. These sentiments were echoed by the views of Denham J. (as she then was) in delivering the judgment of the Supreme Court where she said:

"19. The question which arises for determination is whether the acts alleged on the warrant show a link with the requested person. It is not necessary to show a *prima facie* case. It is not necessary to show a "strong" case. The issue of guilt or innocence is for the jury in the requesting state.

20. This case is one of circumstantial evidence. There is no reason why an accusation of a crime based upon circumstantial evidence could not be the basis for a European arrest warrant. It is necessary to look at the facts alleged in each warrant."

12. I am therefore satisfied that in respect of the three offences alleged, sufficient links to the respondent has been demonstrated and further, that the offences with which she is charged can correspond to offences under the law of the State thus satisfying the requirements of s. 38. The evidence further established that there are no proceedings in the State pending or being considered against the respondent for an offence and thus the s. 42 prohibition on surrender does not arise.

Excessive Delay

13. The EAW expressly refers to the fact that the respondent absconded while on bail and whilst the respondent complains of delay in execution of the warrant in his affidavit, he offers no evidence in relation to this allegation in the warrant. Counsel for the respondent in argument did not seek to place emphasis on this point and rightly so in my view as there is absolutely no evidence put forward by the respondent that he has been prejudiced in any way by the delay. Although he says he was a juvenile at the material time, he does not explain why this does or could result in prejudice to him. Accordingly, this complaint is not made out.

The Surrender Would be Disproportionate

14. Other than vague statements of breach of his rights in the notice of objection, unsupported by anything in his affidavit, the respondent puts forward no basis for the allegation of disproportionality and accordingly it cannot be sustained.

Abuse of Process

15. This point was neither explained or pursued in argument and thus has no basis.

16. I am therefore satisfied that none of the points of objection raised by the respondent have any merit.

S.42 of the Act

17. By letter of the 14th August, 2015, the DPP has confirmed that there is no prosecution either being considered or pending in this jurisdiction in relation to any of the matters the subject of the EAW and I am therefore satisfied that there is no bar to the respondent's surrender under s. 42.

18. I will accordingly order the respondent's surrender pursuant to the EAW.