

THE HIGH COURT

Record Number: 2008 No. 132 Ext.

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
JANUSZ MAZURKIEWICZ

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 17th day of December 2008

1. The surrender of the respondent is sought by a judicial authority in Poland under a European arrest warrant issued there on the 25th October 2007. That warrant was endorsed for execution here by the High Court on the 9th July 2008, and the respondent was duly arrested here on foot of same on the 15th August 2008, and brought before the High Court as required by s. 13 of the European Arrest Warrant Act, 2003, as amended ("the Act"), after which he was remanded from time to time pending the hearing of the present application for his surrender.

2. His surrender is sought so that he can be prosecuted for one offence described as an "offence against property" which is contrary to Article 280, paragraph 1 of the Polish Penal Code, which satisfies the minimum gravity requirement under the Framework Decision and the Act.

3. The facts giving rise to the alleged offence are set forth in paragraph E of the warrant as follows:-

"On 23rd November 2004, acting jointly and in concert with [2 named persons], the requested person mugged Janusz Karkut in such a way that by using violence involving holding the aggrieved party's arms, they went through his pockets and stole his wallet with around PLN 400 cash and a case with an Alcatel mobile phone worth PLN 650, all for the total amount of PLN 1090."

4. No issue is raised by the respondent as to his identity, and I am satisfied from the affidavit evidence of the arresting Garda officer, Sgt, James Kirwan that the person whom he arrested and is before the Court as outlined above is the person in respect of whom this warrant has been issued.

5. There is no reason to refuse to order surrender under any of sections 21A, 22, 23 or 24 of the Act, and, subject to reaching a conclusion in relation to correspondence, the respondent's surrender is not prohibited by any provision of Part III of the Act or the Framework Decision.

6. The point of objection pursued by the respondent relates to correspondence only. Mr McGillicuddy for the applicant submits that the facts giving rise to the offence contained in the warrant disclose two possible offences in this jurisdiction if the respondent had done here what he is alleged to have done in Poland. Firstly, it is submitted that the facts disclosed reveal an offence of assault contrary to s. 3 of the Offences Against the Person Act, 1997 ("the 1997 Act"), and secondly, an offence of robbery contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 ("the 2001 Act").

7. John Byrne BL on behalf of the respondent submits that the facts as disclosed in warrant fall short of establishing all the ingredients for the offence here of robbery under s. 14 of the 2001 Act. Section 14 provides:-

"14.—(1) A person is guilty of robbery if he or she steals, and immediately before or at the time of doing so, and in order to do so, uses force on any person or puts or seeks to put any person in fear of then and there subjected to force."

8. Mr Byrne submits that "steals" as referred to in s. 14 must be interpreted by reference to the definition of "stealing" contained in s. 2 of the Act which provides:

"stealing" means committing an offence under s. 4 ...".

9. In turn, s. 4 defines the offence of theft as follows:-

"4.—(1) Subject to section 5, a person is guilty of theft if he or she dishonestly appropriates property without the consent of its owner and with the intention of depriving its owner of it." (my emphasis)

Section 4 (5) provides that a person "appropriates" property if he "usurps or adversely interferes with the proprietary rights of the owner of the property".

Section 2 defines "dishonestly" as meaning "without a claim of right made in good faith".

10. Mr Byrne submits that in the facts disclosed in the warrant there is nothing which alleges that what the respondent was done dishonestly and that the Court cannot simply infer dishonesty from the facts disclosed. Similarly he submits that the Court cannot simply infer from the facts that the respondent intended to deprive the owner of the property either temporarily or permanently.

11. Reading the words used in s. 14 of the Act by reference to the definitions of "dishonestly" and "appropriates" contained in the above sections, it can be read as follows:-

"14.—(1) A person is guilty of robbery if he or she [without a claim of right made in good faith, usurps or adversely interferes with the proprietary rights of the owner of the property], without the consent of its owner and with the intention of depriving its owner of it, and immediately before or at the time of doing so, and in order to do so, uses force on any person or puts or seeks to put any person in fear of then and there subjected to force."

12. It is worth referring to the provisions of s. 4 (2) of the Act which excludes two situations from the definition of "appropriates" – firstly where *"the person believes that he or she has the owner's consent ..."* and secondly where *"... he or she appropriates the property in the belief that the owner cannot be discovered by taking reasonable steps"*.

13. Taking the adapted version of s.14 which I have just set forth it is clear to me by reference to the description of the acts of the

respondent contained in the warrant that he is alleged in the warrant to have, without any claim of right made in good faith, interfered with the proprietary rights of the owner of the property, without the consent of the owner, without his consent and with the intention of depriving the owner of the property of it, and used force at the time against the owner in order to do so. This is not a case in which the issuing judicial authority has stated that the respondent simply "took" the property as occurred in the case of *Minister for Justice, Equality and Law reform v. Dunkova*, unreported, High Court, 30th May 2008, or *Minister for Justice, Equality and Law Reform v. Wroblewski*, unreported, High Court, 9th July 2008. The word "took" is neutral as to intention of motive when given its ordinary meaning. The use of the word "stole" in the present warrant is not neutral in that sense. I accept that the use of the word "stole" is not itself sufficient to constitute stealing under Irish law, but it is sufficient, because it is by reference to its ordinary meaning, to provide a context in which the facts contained in the warrant can be read. The facts clearly show that the respondent cannot have had any claim of right made in good faith. The facts clearly show that the consent of the victim was absent, and that the respondent intended to deprive the owner of the property. The facts clearly show the use of force when the property was robbed. These facts are sufficient to make the offence correspond to the offence here under s. 14 of the 2001 Act. The fact that the issuing judicial authority has not used the word "dishonestly" in the warrant does not matter. The same applies in relation to the absence of the word "appropriates" from the warrant.

14. I do not find it necessary to reach a conclusion as to whether the facts contained in the warrant are sufficient to constitute an offence of assault, given, as Mr Byrne has submitted, there is no allegation contained in the warrant that the victim did not consent to the assault upon him.

15. I will therefore make the order sought for the surrender of the respondent to Poland under s. 16(1) of the Act.