

## THE HIGH COURT

Record Number: 2007 No. 175 Ext.

BETWEEN

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND  
CHARLES HALL

RESPONDENT

**Judgment of Mr Justice Michael Peart delivered on the 30th day of May 2008**

1. The surrender of the respondent is sought by a judicial authority in the United Kingdom so that he can serve two sentences of imprisonment imposed upon him on 6th March 2000 in respect of handling stolen goods, and so that he can face prosecution in respect of three other offences of handling stolen goods, theft, and escaping from lawful custody. These are well-known types of offence in this jurisdiction. No issue is raised in respect of correspondence in relation to any of the offences referred to in the warrant, and I am satisfied that they offences correspond to offences in this jurisdiction.
2. No issue is raised either on this application as to the identity of the respondent, and the Court is satisfied that the respondent before the Court is the person in respect of whom this European arrest warrant has been issued.
3. Minimum gravity is satisfied both in respect of the length of sentence remaining to be served, and in relation to the offences yet to be prosecuted.
4. Subject to addressing the points of objection raised by the respondent I am satisfied that there is no reason to refuse to order surrender under sections 21A, 22, 23 or 24 of the European Arrest Warrant Act, 2003, as amended ("the Act"), and that his surrender is not prohibited by any provision in Part III of the Act, or the Framework Decision.
5. The first issue raised by the respondent is one of unexplained delay on the part of the issuing state in the issue and execution of the warrant in respect of the offences yet to be prosecuted. These offences date back to 1999/2000, whereas the domestic warrants on which the European arrest warrant has been issued did not issue until June 2005. It was not until 1st October 2007 that the European arrest warrant issued. It was transmitted to the Central Authority here in November 2007, on foot of which he was arrested on the 13th November 2007.
6. The respondent states that while he was serving the terms of imprisonment referred to in the warrant, he received threats from a person to whom he owed a substantial sum of money, and that he was told that this person knew the whereabouts of his family. He says that he was threatened with a blood-filled syringe and informed that he should get his wife to pay over the money in question. He never made any report of these threats but applied for a transfer. However, before any decision was made, the respondent decided to leave the open prison where he was serving his sentence because he became aware that a threat had been made to his wife by two men who approached her in a food outlet and attempted to kidnap their son, and threatened that if she did not pay over the amount owing by the respondent they would return for their son. At that point, according to the respondent's affidavit, his wife went to reside with her mother, and was too scared to leave that house in order to visit the respondent in prison. She conveyed this information to the respondent by telephone. The respondent states that on hearing this information he panicked and left the open prison so that he and his family could seek safety in this country.
7. He states that he and his family have lived openly here since the year 2000 and that in 2003 he started a business servicing trucks and heavy machinery, and this has enabled him to modestly provide for his family.
8. He states that the West Mercia Police have been aware of his whereabouts in this country since the year 2000. He submits that this delay is unexplained and that there is a real prejudice to him now if surrendered to face trial on the outstanding charges because he can no longer recall the name of the prison inmate in whom he confided at the time these alleged threats were made in 2000, and who assisted him in his escape from that prison. Neither can he recall the name of the prison officer who was aware of the threat. He states also that as a result of this passage of time he cannot accurately reconstruct the chain of events and has forgotten names and places, and further that a car in question is no longer available for forensic examination. Neither can he remember the names of relevant witnesses.
9. Linked to these submissions is the fact that during the period of delay alleged, the respondent's personal and family circumstances have changed substantially, that he has set up a new home here, and has never attempted to conceal his presence here or his identity. He states that he and his wife have fostered a young child while here and expect to foster a second child in the near future and that an order made for his surrender will have a severe impact of these family members, including his elderly parents who live with him. I have read affidavits filed by family members which confirm these matters. However, no matter how difficult life may become for the respondent's family upon his surrender, it is not a matter to which this Court can have regard when considering whether or not an order should be made under s. 16 of the Act. This cannot be a ground for refusal under the Framework Decision or the Act, even though there is provision for an application in s. 18 of the Act for postponement of surrender on "humanitarian grounds". That is not a matter for consideration at this particular stage.
10. It is quite clear by now that an objection based on delay is not one which this Court can regard as a ground which prohibits surrender to the issuing state, and that any fears that the respondent has that he cannot now obtain a fair trial are matters to be ventilated in the courts of the issuing state, and not here. This follows clearly from the judgment of Fennelly J. in *Minister for Justice, Equality and Law Reform v. Stapleton* [2008] 1 ILRM 267. It would be inappropriate for this Court therefore to examine and express any view on whether the matters referred to by the respondent could amount to a sufficient prejudice to prohibit his trial, since if at all these will be the subject of a determination before a court in the issuing jurisdiction.
11. A second objection to surrender has been put forward. It is to the effect that his arrest under the European arrest warrant was improperly facilitated by members of An Garda Síochána by having him available at Tallaght Garda Station on the date of arrest, namely 13th November 2007, he having been arrested on a charge of making a threat to kill, which was subsequently dropped for lack of any evidence. He states that having been arrested on that charge he was not questioned in relation to it, but was detained overnight and given bail on the following day by the High Court. He goes on to state that when that matter came before Tallaght District Court on the 3rd December 2007 the prosecution offered no evidence of arrest, charge and caution. Behind his submission is one to the effect that the officer who arrested him on the 13th November 2007 at Tallaght Garda Station did so having made arrangements with his colleagues in Tallaght Garda Station to arrest the respondent on a false charge simply to facilitate him being

available for arrest on foot of this European arrest warrant. This of course is completely denied by Sgt Anthony Linehan who arrested him on foot of the present warrant. In his affidavit he states that when he received this endorsed warrant for execution he made enquiries and discovered that the respondent was also wanted by Gardai at Tallaght. He spoke to a member at that Garda Station who told him that she had received a complaint about certain matters, and that the DPP had directed that the respondent be charged with certain offences, and further that she intended seeking out the respondent on the 13th November 2007 in order to arrest him and charge him with those offences. Sgt Linehan then made his way to that Garda Station on the 13th November 2007 and arrested the respondent on foot of the present warrant.

12. In my view there is absolutely no room for the suggestion that Sgt Linehan and the Gardai at Tallaght Garda Station conspired to produce a situation where the respondent would be conveniently available for arrest there on the 13th November 2007, by concocting a charge against him so that they could arrest him and make him available to Sgt Linehan. The fact that the charge was later dropped or not proceeded with is not of itself evidence of anything of the kind suggested by the respondent. In any event, it is perfectly clear that there was no mystery about the respondent's whereabouts. Sgt Linehan could easily have made his arrest by finding the respondent at his home address. It is a completely unwarranted and unsubstantiated allegation of an unlawful conspiracy on the part of members of An Garda Síochána, and I reject it completely.

13. The Court is obliged to make the order sought under s. 16(1) of the Act, and will so order.