

THE HIGH COURT

2008 225 EXT

Between:

Minister for Justice, Equality and Law Reform

Applicant

And

James Jordan

Respondent

Judgment of Mr. Justice Michael Peart delivered on the 23rd day of October 2009:

The surrender of the respondent is sought by a judicial authority in the United Kingdom on foot of a European arrest warrant which issued there on the 18th November 2008. That warrant, following its transmission to the Central Authority in this jurisdiction, was duly endorsed for execution here by order of the High Court made on the 11th December 2008. On the 21st April 2009 the respondent was duly arrested here on foot of same, and was as required brought before the Court, from where he has been remanded on bail from time to time pending the hearing this application for his surrender pursuant to the provisions of s.16 (1) of the European Arrest Warrant Act, 2003, as amended.

Surrender is sought so that the respondent can be prosecuted in respect of a total of eight offences as set forth in the warrant. All these offences are sexual offences consisting respectively of rape, indecent assault of girls below the age of 16 years, sexual touching and intentionally causing or inciting a girl under that age to engage in sexual activity. All offences have been marked in the warrant as offences within the categories of offence listed in Article 2.2 of the Framework Decision, and offences therefore in respect of which double criminality is not required to be verified. At the hearing before initially a point was raised in respect of offences against one of the victims on the basis that it was not evident from the contents of the warrant that one victim was under the age of 16 years. This could have been relevant in relation to whether it had been appropriate to have categorised one of the offences as an Article 2.2 offence, but following an adjournment for that purpose it has now been clarified by further information received from the issuing judicial authority that this particular alleged victim was a girl under the age of 16 at the time of the alleged offence. It is now accepted by Counsel for the respondent, Tony McGillicuddy, BL, that no issue remains in that regard.

All offences meet the minimum gravity requirement.

The identity of the respondent is not disputed, and the Court is in any event satisfied from the affidavit evidence of the arresting officer, Sgt. Sean Fallon, that the person who he arrested on the 21st April 2009 and who is now before the Court is the person in respect of whom this European arrest warrant has been issued.

There is no reason to refuse to order surrender under the provisions of any of sections 21A, 22, 23, or 24 of the Act.

Neither, subject to dealing briefly with an objection raised in relation to s. 42 of the Act, is the surrender of the respondent prohibited by any provision of Part III of the Act or the Framework Decision.

Remaining points of objection raised:

1. Lack of information in the warrant – s. 11:

Mr. McGillicuddy has submitted that the warrant fails to meet the requirements of s. 11 of the Act which sets out what a European arrest warrant shall contain by way of information. Specifically he submitted that the fact that in respect of offences 5 and 6 in the warrant the name of the victim is not stated. They simply refer to the offence of indecent assault against “a girl under the age of 16” whereas the other offences set forth include the name of the victim in each case. Neither did the warrant give the date of birth of age of one of the victims, but this latter point has been clarified by the further information now provided. But in relation to the absence of the name of the alleged victim in offences 5 and 6 I am not satisfied in any way that this renders the warrant so defective as to be invalid in the light of the provisions of s. 11 of the Act. There is more than sufficient information contained in the warrant and in the additional information for the respondent to know what offences he is to be prosecuted in respect of, and that is the important thing. In any event, it is now abundantly clear from the additional information provided offences 5 and 6 relate to the same victim as is named in respect of offences 7 and 8, so there is no mystery about that remaining.

Section 42 objection:

Section 42 provides:

“42.—A person shall not be surrendered under this Act if—

(a) the Director of Public Prosecutions or the Attorney General is considering, but has not yet decided, whether to bring proceedings against the person for an offence, or

(b) proceedings have been brought in the State against the person for an offence consisting of an act or omission of which the offence specified in the European arrest warrant issued in respect of him or her consists in whole or in part.”

Mr. McGillicuddy has made the point firstly in relation to (a) above that in the present case there has been no evidence or information given to the effect that the DPP or the Attorney General is considering and has not yet decided to bring proceedings against the respondent for an offence under the provisions of the Sexual Offences (Jurisdiction) Act 1996, of which s. 2 provides for the prosecution here of certain offences where those offences have been committed in another State. The type of offences for which

surrender is sought would come within the ambit of s. 2, but in the absence of any information given to this Court by the Applicant this Court does not have to make enquiry in that regard in order to ensure that surrender is not prohibited. Section 42 merely ensures that where such proceedings may or are in existence, no order for surrender would be made. The lack of hard information in relation to the matter is not something which a respondent can point to as requiring that his surrender is prohibited. If such proceedings were being contemplated or were being prosecuted at the time of the application for surrender, the Applicant would bring that fact to the attention of the Court, and the Court would be prohibited from making the order sought. But it does not arise in this case.

For completeness, I should also conclude that there is nothing to suggest that proceedings have been brought here against the respondent in respect of any offence consisting of any of the acts specified in the warrant. There is no suggestion possible from the facts alleged in this warrant that any part of these offences took place in this jurisdiction, so there could be no question of proceedings against the respondent being commenced. This point of objection is fanciful and speculative and forms no basis for prohibiting the respondent's surrender.

I therefore am required to make the order sought for the surrender of the respondent to the authorities in the United Kingdom and will so order.