

THE HIGH COURT

Record Number: 2007 No. 65 Ext.

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
JORINTAS SAKALAUSKIS

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 31st day of October 2007

1. The surrender of the respondent is sought so that he can be returned to the Republic of Lithuania in order to serve a sentence of imprisonment of two years and three months which was imposed upon him by a Court there on the 28th October 2005. There is, according to the European arrest warrant in this case a period of two years, one month and five days left to be served by him. The respondent was present at his trial and when he was convicted and sentenced, and accordingly there is no question of any undertaking being required under s. 45 of the European Arrest Warrant Act, 2003, as amended. It appears that he lodged an appeal against the sentence imposed but was not present when that appeal was rejected.

2. This sentence was imposed upon him in respect of two offences of theft and one offence of attempted theft. These offences satisfy the minimum gravity requirement under Lithuanian law. They correspond to offences in this State of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. No issue has been taken by the respondent in relation to correspondence. In fact there is just one point of objection raised now by the respondent. That point, which I shall return to shortly, is that the sentence of imprisonment imposed upon him, according to the warrant, is not divided as between the three offences, and Counsel has submitted that there can in such circumstances be no guarantee that the sentence imposed in respect of each offence satisfies the requirement that where surrender is sought so that a sentence can be served, the sentence remaining to be served in respect of an offence must be not less than four months. Counsel has submitted that it is possible that less than four months imprisonment was imposed on one or two of the three offences, and if so the surrender of the respondent would be prohibited by Part III of the Act and the Framework Decision. Before dealing with that submission, I will deal with the various matters which need to be satisfied before an order for surrender may be made by this Court under s. 16 of the Act.

3. Firstly, I am satisfied that the warrant in this case was endorsed for execution by the High Court on the 17th April 2007 and that the respondent was duly arrested on foot of that warrant on the 2nd July 2007 and brought before the Court as required immediately thereafter. There is no issue taken as to the respondent's identity and I am satisfied that he is the person in respect of whom this warrant has been issued by the issuing judicial authority.

4. The conviction and sentencing occurred when the respondent was present in Court, and, as I have already stated, no undertaking is required to be given that upon surrender he would be given the opportunity of a re-trial. The fact that he failed to attend his appeal hearing is not something which has been sought to be relied upon in this regard, and in any event it is clear that the fact that he may not have been present when that appeal was disposed of could not impose any obligation on the Lithuanian authorities to offer a re-trial.

5. I am satisfied that there is no reason under sections 21A, 22, 23 or 24 of the Act to refuse to order surrender and, subject to dealing with the single point of objection raised by the respondent, I am satisfied that his surrender is not prohibited by any provision contained in Part III of the Act or the Framework Decision.

6. The Point of Objection relied upon is set forth as follows:

"The European Arrest Warrant fails to comply with the requirements of section 11(g)(iii) of the European Arrest Warrant Act, 2003 as amended in that the penalties imposed in respect of *each* of the three offences (the subject of the European Arrest Warrant) are not specified.

The European Arrest Warrant does not specify that *each* of the three offences (the subject of the European Arrest Warrant) is an offence in respect of which a term of imprisonment or detention of not less than four months has been imposed (as required by section 38(1)(a)(ii) of the European Arrest Warrant Act, 2003 as amended)."

7. Counsel for the respondent has submitted that even if this Court is entitled to presume that if the Lithuanian authorities have issued a European arrest warrant for three offences, stating that there is a period of two years, one month and five days remaining to be served, and without specifying how long a sentence was imposed in respect of each offence, that authority has done so in the knowledge that there must be at least four months outstanding in respect of each offence referred to, the respondent in this case has raised an issue in this regard and the onus therefore has shifted back to the Lithuanian authority to demonstrate that the warrant complies with the minimum gravity requirement laid down in respect of each offence by the Framework Decision. He points to the fact that in a response given by letter to certain inquiries made by the Central Authority here, this matter was not clarified.

8. Ms. Cummins on behalf of the applicant has referred to the high level of trust between Member States of the European Union which underpins the arrangements by which European arrest warrants are issued and acted upon, and she submits that this Court is entitled to presume that the Lithuanian authority would not issue a warrant which did not comply with the requirements of the Framework Decision. She submits also that the respondent has failed to discharge the onus which is upon him to establish that those requirements are not satisfied in this case. Finally she has referred the Court to and relies upon paragraph (a) of s. 18 of the Interpretation Act, 2005 which provides as follows:

"18.-- The following provisions apply to the construction of an enactment:

(a) Singular and Plural. A word importing the singular shall be read as also importing the plural and a word importing the plural shall be read as also importing the singular; "

9. I am satisfied that the respondent has not discharged the heavy onus which rests upon him in order to show beyond any doubt that some requirement of the Framework Decision and the Act has not been complied with in this case as far as the period of sentence in respect of any of the offences referred to in the warrant is concerned. All the respondent has done is to plead in his Points of Objection that it has not been specified what sentence was imposed in respect of each offence and that each of the offences is one in respect of which at least four months remains to be served. Such a pleading is completely insufficient to shift the

onus of proof to the applicant. The respondent has produced no evidence of any kind. No affidavit has been sworn by him or anybody on his behalf to even attempt to stand up the pleading point made. It is simply an assertion that the warrant fails to specify the matter clearly to show that section 38 is satisfied. One must bear in mind that the respondent was present at his trial, conviction and sentencing. He appealed the sentence imposed upon him. He therefore knows precisely what sentence or sentences were imposed upon him by the Court in Lithuania, and yet he has failed to present any evidence to this Court to show that the minimum gravity requirement in respect of any one offence is not satisfied. Even if he cannot recall what happened, no attempt has been made to obtain any information from any lawyer who may have represented him or from the Court itself. Simply raising the point by way of point of objection does not even begin to make inroads upon the presumption which this Court is obliged to rely upon, namely that the warrant complies with the requirements of the Framework Decision which participating Member States have adopted on the 13th June 2002, and which Lithuania later signed up to upon their accession to the European Union. The warrant states that the period required to be served is two years, one month and five days. That is sufficient in order to satisfy the minimum requirement. If the respondent wishes to demonstrate that more than three separate periods of imprisonment were imposed, namely one in respect of each offence making a combined total period of two years and three months, it is up to him to do so and in that way discharge the onus of proof. No attempt to do so has been made, and the objection must fail accordingly.

10. I therefore express no view upon the capacity of s. 18 of the Interpretation Act, 2005 to assist the applicant in a situation such as this.

11. I am satisfied that an order of surrender must issue and I will make the appropriate order under section 16(1) of the Act.