

THE HIGH COURT

Record Number: 2006 No. 10 Ext.

BETWEEN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

AND
JOHN PAUL BRENNAN

RESPONDENT

Judgment of Mr Justice Michael Peart delivered on the 14th day of March 2006

1. The applicant seeks an order under s. 16(1) of the European Arrest Warrant Act, 2003 for the surrender of the respondent to the United Kingdom, so that he can serve out sentences of imprisonment which were imposed on the 6th March 2002. On that date he was convicted on a charge of robbery for which he was sentenced to four and a half years, and also on a charge of breaching his bail by failing to appear in Court on 13th September 2001 for which he received a sentence of six months imprisonment to run consecutively to the other sentence. While serving these sentences he was transferred to an open prison from where he absconded on the 11th May 2003.

2. The European arrest warrant issued by the issuing judicial authority in Scotland on the 18th November 2005 sets out a full description of the circumstances and facts which gave rise to the charge of robbery in the first place, and also the facts relating to his failure to appear as required by his bail conditions, and for which the sentences of imprisonment were imposed, and also the additional charge now in respect of which his surrender is sought, namely that of escape from lawful custody.

3. Under s. 16(1) of the Act, this Court may make the order sought in this case provided it is satisfied as to a number of matters set out in that section, namely:

- (a) that the person before the Court is the person in respect of whom the warrant was issued;
- (b) the warrant has been endorsed in accordance with section 13 of the Act for execution;
- (c) where appropriate (i.e. in cases of a conviction/sentence imposed in absentia) an undertaking as required by section 45 of the Act;
- (d) that the Court is not required to refuse to surrender the respondent under sections 21A, 22, 23 or 24 of the Act;
- (e) that the surrender of the respondent is not prohibited by Part III of the Act, or the Framework Decision annexed thereto.

4. In addition the Court must be satisfied in relation to *correspondence* of the offences charged, and that the offences referred to in the warrant would carry under the law of the issuing state a penalty of the required *minimum gravity*, namely a maximum term of imprisonment of not less than twelve months, and also, as required by section 10 of the Act as amended, that a *decision has been made* by the UK authorities to charge and prosecute the respondent with the offences specified in the warrant.

5. Subject to deciding the issues specifically raised by way of Points of Objection, and a couple of additional points raised on the 7th March 2006 when the matter was being heard, I am satisfied as to (a), (b), (c) (which does not apply to the present case), (d) and (e).

6. As to correspondence, the offence of robbery for which the respondent was convicted is one of the offences in respect of which correspondence is to be presumed in accordance with Article 2.2 of the Framework Decision, given effect to by s. 32 of the 2003 Act; and the respondent's failure to appear in answer to his bail and for which he received a six month sentence, would correspond here to an offence under s. 13 of the Criminal Justice Act, 1984.

7. I am satisfied that the respondent's escape from lawful custody, and in respect of which he is charged in the UK with escaping from lawful custody contrary to Common Law, would give rise to the same offence contrary to Common Law if committed here. In that regard Mr McCarthy has referred the Court to Paragraph 6.118 of Charlton - Criminal Law.

8. I am satisfied that these offences satisfy the minimum gravity requirement. In that regard Mr O'Higgins SC had sought to argue that there is some uncertainty about how long a sentence could be imposed in the UK for the offence of escape contrary to Common Law. The European arrest warrant states that as it is a Common Law offence the maximum sentence which a judge could impose is life imprisonment, but at a later point in the warrant states that "the offender has to serve an appropriate minimum (the tariff) that reflects the punitive element of the sentence...". Mr O'Higgins submits that it is not clear what this minimum would be, and he submits that this is a breach of a constitutional guarantee not to be exposed to a system where not only can the respondent receive a life sentence but he can get an unspecified minimum sentence the length of which is unknown. I am satisfied that the Court on an application is not concerned with a matter of that kind. The Court must be satisfied that the offence for which he is sought is one for which it is possible to receive a sentence which satisfies the minimum gravity under the Act. Clearly a potential life sentence comes within that meaning, and the fact that any sentence of a length less than life might be imposed in any particular case does not take it out of that category. It is not necessary, as was submitted by Mr O'Higgins, that this Court should at the least seek a clarification from the UK authorities in this regard.

9. I am also satisfied from the warrant itself that a decision has been made by the requesting authority to charge and prosecute the respondent with the separate charge of escaping from lawful custody.

10. Mr O'Higgins has also submitted that there are aspects of the European arrest warrant which are unclear. For example, in paragraph (b) of the warrant it states that "the decision on which the warrant is based" is firstly a "Warrant of Arrest at first instance issued by Southern Derbyshire Magistrates Court on 22nd July 2005 (in relation to being unlawfully at large from Prison following a sentence of imprisonment for robbery and absconding from bail)", and secondly, a "Warrant of Arrest at first instance issued by Southern Derbyshire Magistrates Court on 18th October 2005 (in relation to escape from lawful custody)". Mr O'Higgins submits that in relation to the first above mentioned warrant it is capable of being read as meaning that a new offence has been committed of being unlawfully at large while a sentence is to be served, and that there is no reference to it being a committal warrant in respect of an unexpired portion of a sentence. While I feel that in some respects the wording of portions of this warrant could have

been clearer, and that a cursory read through the warrant can lead one to feel that there are ambiguities as to exactly what offences the authorities wish to further pursue in addition to having him returned to serve out his sentences already imposed, I am satisfied that when the document is properly and carefully examined, the meaning is perfectly clear, and that the position is clearly that the first warrant referred to, namely that dated 22nd July 2005 is that which issued following the respondent's escape from prison and so that he could be recaptured and returned to prison, and that the second warrant, namely that dated 18th October 2005 is so that he can face prosecution for the offence arising out of the escape itself.

11. Another matter raised by the respondent arose out of a concern that there may be some offence or offences still being considered by the Gardai or the Director of Public Prosecutions, and that in such an event the respondent's surrender would be prohibited by virtue of s. 42 of the 2003 Act as amended (inserted by s. 83 of the 2005 Act), which provides, as relevant:

"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) "

12. In this regard evidence has been given to the Court by Sgt. Anthony Linehan that he has made enquiries of the DPP's office and that he is satisfied that there are no matters still being considered against the respondent. All such matters as were being considered have been decided upon and necessary directions given. Mr O'Higgins's concern was that there may be matters still being considered by the Gardai as opposed to the DPP. But in my view the only matters of relevance are those still under active consideration by the DPP's office, and not An Garda Síochána, and accordingly I am satisfied that there is nothing relevant for the purpose of s. 42 of the Act which would require this Court to refuse to make the order sought.

13. In all the circumstances I am satisfied that an order should be made for the surrender of the respondent to such person in the United Kingdom, the issuing state, as is duly authorised to receive him.