

## THE HIGH COURT

2008 164 EXT

**BETWEEN:****MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM****APPLICANT****AND****EDWARD JOHN DOYLE****RESPONDENT****Judgment of Mr Justice Michael Peart delivered on the 22nd day of May 2009:**

The surrender of the respondent is sought by a judicial authority in the United Kingdom under a European arrest warrant which issued there on the 2nd April, 2008. That warrant was endorsed for execution here by the High Court on the 19th September, 2008, and the respondent was duly arrested on foot of same on the 10th October, 2008, and thereafter brought before the High Court, as required by s. 13 of the European Arrest Warrant Act 2003, as amended ("the Act"). He has been remanded on bail from time to time since that date, pending the hearing of the present application for his surrender under s. 16 (1) of the Act.

The respondent was convicted in respect of two offences on the 12th October, 2006, and in respect of which, according to the warrant, he was sentenced to a period of 39 months imprisonment. The warrant indicates that he was released from prison on the 25th February, 2008 but that he failed to comply with the terms of his release, and that his surrender is sought so that he may serve the unexpired period of his sentence "between the 25th February, 2008 and the 26th May, 2009".

I should say at this point that paragraph (e) of the warrant states that the warrant is issued so that he can be prosecuted for the offences, but this is simply an error. It is quite clearly so, and that his surrender is sought so that he can serve the remainder of the sentence imposed. This error is certainly not one which invalidates the warrant.

The two offences for which he was convicted come within the category "grievous bodily injury" contained in the list of offences set forth in Article 2.2 of the Framework Decision. They have been marked as such, and therefore double criminality is not required to be verified in respect of them. Minimum gravity is also satisfied by the length of sentence imposed on the respondent.

Additional information provided by the issuing judicial authority has indicated that the respondent was sentenced to 30 months imprisonment on the charge of grievous bodily harm, and a period of 9 months for that of actual bodily harm. These sentences are consecutive sentences. According to information provided the respondent had spent 91 days in custody while on remand prior to his conviction, and the balance of sentence to be served takes that into account.

There is no issue arising as to the identity of the respondent, but the Court is in any event satisfied from the affidavit of the arresting Garda Sergeant, Sgt. Seán Fallon, that the person who he arrested and who is 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 the respondent's surrender by reason of any of the provisions of sections 21A, 22, 23 or 24 of the Act, and subject to reaching conclusions in relation to the points of objection raised by the respondent, his surrender is not prohibited by any provision of Part III of the Act or the Framework Decision.

**Points of Objection:**

The respondent has filed an affidavit to ground his points of objection. He states that on the 10th October, 2006 he pleaded guilty to the two offences referred to in the warrant. In this affidavit he states that he was released on the 25th February, 2008. He then goes on to explain that while he had been in prison he had "applied for repatriation to Ireland", and that this application was approved, and that he received a letter from the applicant herein dated 15th October, 2007 informing him of this fact. He states that he thereupon consented to his transfer and signed a consent form in that regard, and he exhibits copies of these documents. This application was processed pursuant to the provisions of the Transfer of Sentenced Prisoners Acts, 1995-1997. It would appear that this transfer was not effected thereafter. That transfer did not take place. But he was released from prison under licence on the 25th February, 2008.

The licence on foot of which he was released informed him of the terms and conditions of his release. The respondent has exhibited a copy of the licence under which he was released on the 25th February, 2008. That document was signed by him also in order to confirm that the licence had been handed to him and that its requirements had been explained to him. One of the conditions was that upon release on that day he must report to a named Probation Officer at Bury St. Edmunds at 12pm on that date, and place himself under the supervision of the probation officer.

The respondent states that upon release he told his supervising officer that he intended to return to his mother's house in Ireland, and that he was not "prohibited from doing so", and he understood that he was permitted to do so. He says that the sole reason for wanting to come back here was to be with his mother who was not in good health. He states that he came here openly and did not "flee" from the United Kingdom.

However, further information has been obtained from the issuing judicial authority in response to what the respondent has stated. That information includes information from the probation officer nominated in the licence on foot of which the respondent was released, and to whom he was to report at 12 noon on the day of his release. She states that the

licence was revoked on the 25th February, 2008 because the respondent failed to report to the probation service at Bury St. Edmunds as required. She states that he was not permitted to leave the United Kingdom, and was not at liberty to do so. She also states that she was not aware of his intention to leave the United Kingdom, and that he had not completed his sentence, and that because of his failure to report as required he remains subject to recall. Finally she states that the period during which he has been unlawfully at large will be added to the sentence and that his expiry date will be recalculated.

These are the facts therefore on which this Court must consider whether, as submitted by the respondent, he is not someone who fled from the United Kingdom before completing his sentence, and that he has already completed his sentence. I am completely satisfied that what the respondent has averred to in his affidavit is an incomplete account of what occurred. I am satisfied that he did not comply with the conditions of his release since he did not report as required to the probation service. I cannot accept that he was entitled to believe that he was free to leave the United Kingdom. I do not accept that he informed the probation officer of his intention to leave the United Kingdom and come to Ireland, and that he was not prohibited from doing so. I do not accept that the probation officer was aware of his intention. In my view he is a person who comes within the provisions of s. 10 of the Act.

The respondent has submitted also that he has served already the 9 month sentence imposed and cannot be surrendered to serve that sentence, and that s. 22 of the Act (specialty) is engaged therefore. I do not accept that this aspect constitutes a reason why his surrender is prohibited or that s. 22 is engaged in the way submitted. The fact is that two sentences were imposed which were consecutive. It is a matter for the issuing state to determine the order in which these sentences are served, and I am entitled to presume that when the sentence is recalculated in order to take account of the period at large that he will not serve any part of the sentences which he may have already served.

It has also been submitted that the respondent is a person whose application for transfer to this jurisdiction was made and granted, and that he therefore did not flee. However, it is clear that this procedure was never implemented. It is true that he applied for a transfer so that he could complete his sentence here, and that this application was granted and that he signed a consent in that regard. But clearly before that was effected, the procedure for his release on licence was put in place. The fact that he had gone through the transfer procedure up to the point of consenting thereto does not alter the fact, as events turned out, that he breached the terms of his licence in the way described, and came to this country when he was not permitted to do so.

For all these reasons I am satisfied that the Court is required to make the order for surrender, and I will so order.