

THE HIGH COURT

[2021] IEHC 150
[2020 No. 391 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

KATHRYN MCKEOWN

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 3rd day of March, 2021

1. By this application, the applicant seeks an order for the surrender of the respondent to the United Kingdom of Great Britain and Northern Ireland ("the UK") pursuant to a European arrest warrant dated 1st October, 2020 ("the EAW") issued by District Judge Fiona Bagnall, of Belfast Magistrates' Court, as the issuing judicial authority.
2. The respondent was sentenced by the Crown Court in Northern Ireland on 16th April, 2010 to a determinate sentence of 1 year and 3 months' imprisonment and a further 1 year and 3 months' imprisonment subject to release on licence. The respondent served the initial period of imprisonment and was released on licence on 20th October, 2010. Her licence was revoked on 13th June, 2011 and the surrender of the respondent is sought to serve 223 days' imprisonment, being the remainder of her sentence.
3. The EAW was endorsed by the High Court on 14th December, 2020 and the respondent was arrested and brought before the High Court on 23rd December, 2020. The respondent was granted bail.
4. I am satisfied that the person before the Court is the person in respect of whom the EAW was issued. This was not put in issue by the respondent.
5. I am further satisfied that none of the matters referred to in ss. 21A, 22, 23 or 24 of the European Arrest Warrant Act, 2003, as amended ("the Act of 2003"), arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The sentence in respect of which the surrender of the respondent is sought is in excess of 4 months' imprisonment.
7. The respondent was present at her trial and therefore no issue arises under s. 45 of the Act of 2003.
8. The sentence was imposed in respect of a single offence of possession of diamorphine (heroin) with intent to supply it to another. I am satisfied that correspondence exists between the offence referred to in the EAW and an offence under the law of the State, viz. an offence contrary to s. 15 of the Misuse of Drugs Act, 1977. No issue was taken in respect of correspondence.
9. At hearing, counsel for the respondent indicated that the respondent was pursuing a single point of objection to surrender, viz. that surrender was precluded under s. 37 of

the Act of 2003 as it would represent an unjustified and disproportionate interference with her right to a private and family life as guaranteed by article 8 of the European Convention on Human Rights ("the ECHR").

10. The respondent swore an affidavit dated 15th February, 2021 in which she sets out how she had a difficult childhood and suffered a number of traumas. She sets out various problems in her life at the time of commission of the offence in question and during the period following her release from prison. She describes how, since 2011, she has worked at different jobs, undertaken various courses and engaged with different agencies in order to tackle her addiction issues. She has been able to build a meaningful relationship with her two sons who had been taken into care. She has a granddaughter whom she helps out with. Since leaving Northern Ireland in 2011, she has made regular trips to Newry and been stopped from time to time by the PSNI, has lived most of the time in Dundalk and in 2012 met with members of the PSNI in Dublin to assist them with their inquiries into a serious assault. She avers that at no stage have the PSNI indicated to her that she was being sought by the Northern Irish authorities. She sets out a number of medical issues including depression and a basal cell carcinoma, which had to be removed. She has been heroin-free since 2015 and is on a methadone maintenance programme. She is regarded as a high risk in the event of contracting Covid. Various medical reports and other confirming documents are exhibited in the affidavit.
11. Counsel on behalf of the respondent emphasised that there had been a considerable lapse of time in this matter. At part F of the EAW, it is stated that the decision to seek her surrender was made following a review of outstanding warrants during 2018. This represents a lapse of time of approximately seven years between the revocation of her licence and the decision to seek her surrender. A further lapse of approximately two years occurred before the EAW was issued. No explanation is given in the EAW for these lapses of time. He submitted that the disruption which surrender would cause at this remove in time was wholly disproportionate. He submitted that the lapses of time, together with the changes in the respondent's private and family life, amount to specific and exceptional circumstances which would justify refusal of surrender.
12. Counsel on behalf of the applicant submitted that the delay was not so egregious as to justify refusal of surrender, either on its own or taken cumulatively with the respondent's personal circumstances. It was submitted that in accordance with the Supreme Court judgment in *Minister for Justice and Equality v. Vestartas* [2020] IESC 12, it was only in truly exceptional cases that such considerations could justify refusal of surrender and that while the respondent's circumstances evoked sympathy, they were not so exceptional. While there had been a significant lapse of time since revocation of the respondent's licence, the respondent had effectively absconded and had failed to reconnect with the probation service or other authorities in Northern Ireland with a view to regularising her position. The EAW had been issued by a judge and so the Court could assume proportionality was considered by the issuing judicial authority.

13. It should be borne in mind that rights under article 8 ECHR are not absolute but rather are expressly stated to be subject to interference by public authorities where necessary in a democratic society. Article 8 ECHR provides:-

- "1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

14. In *Vestartas*, MacMenamin J. stated as follows at para. 68:-

"68. *In carrying out an assessment in our law for the purposes of s. 16 of the Act, therefore, it is not accurate to speak of the task as one which is not governed by any predetermined approach, or pre-set formula, balancing competing public and private interests. In fact, the constant and weighty public interest in ordering surrender is not only underlined by Article 8(2) considerations such as necessity under law, freedom and security, but the words of ss. 4A and 10 of the Act. The test must be seen in light of the clear exposition in the judgments in *Ostrowski*. A court may often have to take private and family rights considerations into account. But it can only do so having regard to the limitation contained in Article 8(2) of the ECHR, and the public interest considerations inherent in the Act and the Framework Decision. To surmount these, in any case, would necessitate that the evidence requirement be high. The assessment does not involve a balance between the rights of the public and those of the individual. It is one, rather, where, as the Act provides, a court shall presume that an issuing state will comply with the requirements of the Framework Decision - unless the contrary is shown on the basis of cogent evidence."*

15. As regards delay, in *Vestartas*, MacMenamin J. stated at para. 89 that:-

"89. *Though a matter of legitimate concern, in this case the delay is to be viewed against the respondent's private and family circumstances. Unless truly exceptional or egregious, delay will not alter the public interest, although there may come a point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other constitutional or ECHR issues."*

16. It is clear that there is a significant public interest in surrender where the requirements of the Council Framework Decision dated 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States ("the Framework Decision") are met. How s. 37 of the Act of 2003 is to be approached in light of this significant public interest, particularly as regards article 8 ECHR, is set out by MacMenamin J. in *Vestartas* at para. 94:-

"94. The contrast with the exceptional facts in J.A.T. is plain. For an Article 8 defence to succeed, it can only be on clear facts based and cogent evidence. The evidence must be sufficient to rebut the presumption contained in s. 4A of the Act (see, para. 41 above). The circumstances must be shown to be well outside the norm; that is, truly exceptional. In the words of s. 37(1), they must be such as would render an order for surrender 'incompatible' with the State's obligations under Article 8 of the ECHR. This would necessitate that the incursion into the private and family rights referred to in Article 8(1) was such as to supervene the limitations on the right contained in Article 8(2), and over the significant public interest thresholds set by the 2003 Act itself."

17. In the current matter, there has been a significant lapse of time between the revocation of the respondent's licence and the issuing of the EAW. However, I do not regard the said lapse as so egregious as to justify refusal of surrender. Taking the lapse of time together with the respondent's personal circumstances and the changes thereto during that time lapse, I am not satisfied that the circumstances of this matter are so egregious or exceptional that a refusal of surrender is justified. Whilst surrender will be disruptive of the respondent's current circumstances, I do not regard such disruption as being truly exceptional so as to justify refusal of surrender. Significant disruption to the private and family life of an accused or requested person is almost an inevitable consequence of criminal or surrender proceedings. There is no evidence before the Court to indicate that the respondent's health needs cannot be adequately met if surrendered.
18. Ultimately, bearing in mind the terms of s. 37 of the Act of 2003, this Court must determine whether the respondent's circumstances are such as would render an order for surrender incompatible with the State's obligations under article 8 ECHR. While acknowledging and commending the efforts the respondent has made to turn her life around, I am satisfied that an order for surrender would not be incompatible with those obligations. I dismiss the respondent's objections to surrender.
19. I am satisfied that surrender is not precluded under part 3 of the Act of 2003 or any part of that Act.
20. Having dismissed the respondent's objections to surrender, it follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to the UK.