Neutral Citation Number: [2022] EWHC 286 (Admin)

Case No: CO/660/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/02/2022

Before:

MR JUSTICE CHAMBERLAIN

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Between:

MICHAEL WALSH	**Appellant**
- and –	
HIGH COURT IRELAND	**Respondent**

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Emilie Pottle (instructed by **National Legal Service**) for the **Appellant**
The Respondent was not represented.

Hearing date: 2 February 2022

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Approved Judgment

Mr Justice Chamberlain :

Introduction

1 The appellant, Michael Walsh, is sought by the Republic of Ireland pursuant to a European arrest warrant ("EAW") issued on 15 October 2019 and certified on 17 September 2020. The Irish authorities seek his surrender for trial for possession of a controlled drug. The offence is said to have been committed on 4 July 2012, when he was stopped by police and found to have 6 kilogrammes of cannabis, with a street value of EUR 120,000, in the boot of his car. The framework list is ticked for "illicit trafficking in narcotic drugs and psychotropic substances". Two alternative offences are charged, the only difference being the value of the drugs. The maximum sentence is either 14 years or life imprisonment.

2 On 19 February 2021, after hearing at Westminster Magistrates Court, District Judge Sarah-Jane Griffiths ordered his extradition. On 14 October 2021, Dove J adjourned the question of permission to appeal to be considered at a "rolled-up hearing", i.e. a hearing at which permission to appeal would be considered together with the substantive appeal if permission were granted. Before Dove J, there were two grounds of appeal: first, that the EAW did not comply with the requirements of s. 2 of the Extradition Act 2003 ("the 2003 Act"); second, that the judge erred in concluding for the purposes of s. 21A of the 2003 Act that extradition would not be disproportionate with the appellant's rights under Article 8 ECHR. The first of these grounds is not pursued. There is therefore only one ground of appeal, that the judge erred in concluding that extradition would not be incompatible with the appellant's rights under Article 8 ECHR.

3 The judge set out the factual background as follows, based on further information from the Irish authorities. It is not suggested there was any error in this respect. The appellant was interviewed on two occasions on the 4 July 2012. He was then released from custody and a file prepared for the DPP. The file was completed and forwarded to the DPP on 3 December 2012. A decision was made to charge the appellant on 7 January 2013. Between then and 15 October 2019 numerous attempts were made to trace the appellant using the systems available to the Irish authorities for this purpose. Checks were made on the relevant IT system in May 2013, August 2013, January 2014, July 2014, October 2014 and April 2018 with a view to locating, arresting and charging the appellant. There was evidence that the appellant's ex-partner had informed the Irish authorities that the appellant was in the UK in December 2014.

4 The respondent accepts that the appellant had no obligation to inform the Irish authorities of his whereabouts. However, he was made fully aware when released from detention that he would be investigated for the offence and the penalty he might receive upon conviction.

5 The judge summarised the evidence given by the appellant before her as follows. The appellant is an Irish national. He worked in Germany and Poland. He returned to live in Ireland in 2012, where he claimed benefits and struggled financially. He was asked to pick up a package and drop it off at a particular location. He did not know what was in the package but would be paid EUR 1,600. It was in these circumstances that he was stopped by police while driving a vehicle on 4 July 2012. He made admissions in relation to the offence but did not identify any other persons involved. He gave his address to the

police and was released. In February 2013, having received no correspondence in relation to the offence, he found employment at an airport in the Channel Islands and worked there until October 2013, when he moved to the UK to work.

6 The appellant met his current partner, who is a Thai national, in July 2013 and they have been together ever since. His partner has worked on and off in the UK. He has returned to the Republic of Ireland on only one occasion and that was by bus from Belfast to Dublin.

7 The judge had before her the contents of a statement from the appellant's partner. This confirms that the couple had a son in November 2018. The appellant's partner said that she did not know how she would survive if the appellant had to go back to Ireland. She would only be able to work if she had someone to watch her son. She would also have to pay for food and rent. It would be hard for her son not to have his father around. It would be difficult for her to visit the appellant in Ireland.

8 The judge found that the appellant was not a fugitive. She considered the impact of delay both under the rubric of s. 14 of the 2003 Act and in the context of Article 8 ECHR. She concluded that the delay in this case did not amount to oppression. She said that this was not a case where, for example, the appellant had been led into a false sense of security that he would never be called to account. Indeed, it was likely that he knew he would be charged and would receive a custodial sentence should he be convicted. It was also relevant that the appellant had not returned to Ireland, save on one occasion already described, "to avoid coming to the attention of the [Irish authorities] in case he was wanted for this offence".

9 The judge accepted that the appellant, his partner and son would suffer some hardship, both financial and emotional, if he were to be extradited. However, this fell "far short" of that required to amount to oppression. The appellant's son would remain in the care of his partner. Whilst there would be an emotional and financial impact, his partner and son would cope. The judge also considered another issue: the immigration status of the appellant's partner. It is not necessary to say anything more about this because, although initially the grounds of appeal included a challenge to this aspect of the judge's reasoning, Ms Emilie Pottle for the appellant indicated that this challenge was no longer pursued.

10 As to Article 8, the judge directed herself in accordance with the relevant authorities, including *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551. She bore in mind the public interest in honouring the international obligations of the UK. In that connection, she noted that the offences were serious. The appellant had been found in possession of drugs with a street value of EUR 120,000. he had made admissions in interview. The offence carried a maximum sentence of 14 years or life imprisonment.

11 Against that, the judge noted that the appellant had a partner and so and would lose his employment if extradited. She said this:

> "Should the RP be extradited, there would be some financial hardship and emotional distress to the RP's partner and their son but they would remain together. This is not a sole carer case. The RP's son would remain in the care of his mother, as he does now. I accept that there would be emotional distress

> to the RP's partner and son should he be extradited but on the evidence before me, they would cope."

12 The judge noted that the appellant has two sons from a previous relationship in Ireland, with whom he had limited contact since 2013. Both could visit him. She said that there had been "some delay" in this case, which weighed in the appellant's favour.

13 The judge found that the balance fell strongly in favour of extradition. She was satisfied that although the Article 8 rights of the appellant were engaged extradition would not constitute a disproportionate interference with those rights. She also dismissed an argument that extradition would be disproportionate in terms of s. 21(3) of the 2003 Act.

14 I have considered carefully Ms Pottle's skeleton argument, which is based heavily on the challenge to the judge's findings in relation to the appellant's partner's immigration status. As I have said, that challenge is no longer pursued. Ms Pottle therefore accepted in oral submissions before me that the only remaining challenge was to the judge's assessment of the impact of the delay on the Article 8 balancing exercise. As to that, she indicated that she could not add anything by way of oral submissions to the points made in her skeleton argument.

15 In my judgment, the judge's conclusion on Article 8 was reached after a careful balancing of the relevant factors. The judge was entitled to have regard to the fact that the quantity and value of cannabis with which the appellant was found was very substantial and that he undoubtedly faced a significant custodial sentence if convicted. She was entitled to note that he had admitted being in possession, albeit his case was that he stood to benefit only to the tune of EUR 1,600. Whether that is accepted will of course be a matter for the Irish court.

16 The judge correctly concluded that the appellant was not a fugitive. Although there had been delay, some of it unexplained, this had to be seen against the background that the appellant had not returned to Ireland since leaving in 2013, save on one occasion and by a means by which he could hope not to come to the attention of the authorities. The judge had fully in mind the undoubted impact of extradition on the appellant's partner and their young child.

17 I am unable to detect any relevant factor that was not taken into account or any irrelevant factor that was. Neither the reasoning nor the ultimate conclusion discloses any arguable error which could be corrected by this court.

18 Permission to appeal is therefore refused.