

THE HIGH COURT

RECORD NUMBER 2020/40 EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

MARK ANDREW ADAMS

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 16th day of July, 2020.

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 8th January, 2020 ("the warrant") issued by District Judge Fiona Bagnall as the issuing judicial authority. The warrant is based on three local warrants of arrest issued on 8th January, 2015 by the same District Judge.
2. The warrant was endorsed by the High Court on 10th February, 2020 and the Respondent was arrested and brought before the High Court on 6th March, 2020 when he was remanded in custody.
3. I am satisfied that the person before the Court is the person in respect of whom the warrant was issued. This was not put in issue by the Respondent.
4. 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.
5. The surrender of the respondent is sought in order to prosecute him in respect of three offences, viz. possession of criminal property, attempting to remove criminal property from Northern Ireland and entering into an arrangement to remove criminal property from Northern Ireland. The relevant statutory provisions are set out in the warrant. On 19th May, 2018 the respondent was intercepted at Belfast International Airport where he was due to take an outbound flight to Spain. When asked whether anyone had given him anything to take out of the country, the respondent replied "yes €180,000". Two brown envelopes in the respondent's hand luggage were found to contain a total of €180,550 in cash. The respondent had booked 497 international flights into or out of the United Kingdom between 14th May, 2014 and 9th May, 2018. On 64 occasions, the outward and return flights were within a matter of hours. The respondent was asked about previously being stopped at Dublin airport in 2015 when €570,000 in cash was seized and gave no comment.
6. At s. (e) III of the warrant, it is certified that the said offences fall within article 2(2) of the Council Framework Decision of 13th June, 2002 on the European Arrest Warrant and the Surrender Procedures between Member States, as amended ("the Framework Decision"), and the relevant box is ticked for "*laundrying of the proceeds of crime*". By virtue of s. 38 of the Act of 2003, it is not necessary for the applicant to show correspondence between an offence in the warrant and an offence under Irish law where

the offence in the warrant is an offence to which article 2(2) of the Framework Decision applies. There is nothing in the warrant that gives rise to any ambiguity or perceived manifest error such as would justify this Court in looking behind the certification in the warrant. The issue of correspondence was not pursued at hearing.

7. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. Each of the offences referred to in the warrant carries a maximum penalty of up to 14 years imprisonment.
8. The respondent's position is complicated by the fact that he has been returned for trial before the Dublin Circuit Criminal Court in respect of money laundering offences (separate to the offences which are the subject matter of the extradition request) and his trial is due to take place in Dublin on 29th June, 2021. Counsel on behalf of the respondent submitted as follows:
 - that it was likely that if an order for his surrender to the UK was made, that order would be postponed in order to conclude the criminal proceedings pending before the Circuit Criminal Court in Dublin;
 - (a) by that time the UK would no longer be in the transitional period provided for in the withdrawal agreement between the United Kingdom and the European Union (C.384 I/90);
 - (b) the UK would no longer be entitled to the mutual trust and confidence that exists between member states of the European Union ("the EU");
 - (c) the UK would not be bound by the European Charter of Fundamental Rights ("the Charter") and would be free to depart from the obligations imposed upon states by the Charter and/or the European Convention on Human Rights ("the ECHR");
 - (d) in such circumstances, there was a real risk that the fundamental rights of the respondent would not be respected.
9. It was further submitted that in the event of the respondent being convicted of the domestic offences before the Dublin Circuit Criminal Court, his surrender could be further postponed until after completion of any custodial sentence imposed. It was submitted that this was a cause of greater uncertainty as regards whether the respondent's fundamental rights under the Charter or the ECHR would be respected. Counsel also submitted that in such circumstances, the respondent's right to an expeditious and fair trial would be at risk due to lapse of time.
10. In fairness to Counsel for the respondent, he accepted that this Court could not engage in speculation as to what the UK may or may not do in terms of the protection of fundamental rights at the end of the transition period or thereafter. He also accepted that he was not relying at this stage upon any precise information or evidence concerning how the respondent's fundamental rights were at real risk of being breached. He accepted that the respondent's concerns would not crystallise until a future date and were dependent upon matters which may or may not occur. He indicated that his position was essentially

one of articulating the respondent's concerns in order to preserve the position of the respondent in terms of challenging his future surrender and of avoiding a plea in any future proceedings that he was prohibited or estopped from making such arguments as he had not made them in the current extradition proceedings.

11. Counsel on behalf of the applicant confirmed that if an order for surrender was made, she would be asking the Court to postpone the operation of same until the domestic proceedings had been determined. She submitted that the respondent's objections to surrender were speculative, vague, unsupported by evidence and were subject to innumerable variables so that this Court could not refuse surrender on foot of same. She submitted that the Court had to consider the warrant before it, determine whether or not it met the requirements set out in the Act of 2003 and consider whether refusal of surrender was mandated by any of the relevant provisions of the Act of 2003. She referred to the decision of the Court of Justice of the European Union ("the CJEU") in *RO* (Case C-327/18 PPU) which involved a reference from the High Court seeking a preliminary ruling (following the UK serving notice of its intention to withdraw from the EU) as to whether the uncertainty of the extent to which a national of a member state would in practice be able to enjoy rights under the EU treaties, the Charter or relevant legislation if surrendered to the UK on foot of a European arrest warrant, required a Member State to refuse surrender to the UK. The CJEU determined that mere notification by a Member State of its intention to withdraw from the EU in accordance with article 50 of the Treaty on the Functioning of the European Union ("TFEU") cannot be regarded, as such, as constituting an exceptional circumstance, within the meaning of the case law capable of justifying a refusal to execute a European arrest warrant issued by that Member State. The CJEU went on to state at para. 49:-

"However, it remains the task of the executing judicial authority to examine, after carrying out a specific and precise assessment of the particular case, whether there are substantial grounds for believing that, after withdrawal from the European Union of the issuing Member State, the person who is the subject of that arrest warrant is at risk of being deprived of his fundamental rights and the rights derived, in essence, from Articles 26-28 of the Framework Decision..."

12. The CJEU at para.61 of its decision noted that the UK is a party to the Convention and had incorporated its provisions into its national law, and that after the withdrawal of a member state, a presumption can still be made that the former member state would apply the substantive content of the rights derived from the Framework Decision if the national law of the former state incorporated the substantive content of those rights, and, in particular, if the former member state continued to participate in international conventions such as the European Convention on Extradition and the ECHR after withdrawal from the EU. Only if there is concrete evidence to the contrary could the judicial authorities of a member state refuse to execute the European arrest warrant.
13. At the time of giving judgment in this matter, the transitional arrangements between the EU and the UK remain in place and will continue to remain in place until 31st December,

2020. It is accepted by both the applicant and the respondent that under those arrangements, including the withdrawal agreement between the UK and the EU and the national legislation put in place in this jurisdiction to give effect to same, the provisions of the Act of 2003 continue to be in force and this Court is obliged to give effect to same. The essential question before the Court is whether the Court is satisfied that the respondent has demonstrated the existence of a real risk that his surrender to the UK, including his surrender following a postponement of same due to domestic charges pending, will result in a breach of his fundamental rights under the Charter, the ECHR or the Constitution. On the case before me, the respondent has failed to adduce any cogent evidence suggesting there are substantial or reasonable grounds for believing that if he is surrendered to the UK he will be exposed to a real risk of being subjected to treatment contrary to his fundamental rights. I therefore dismiss the respondent's objections to his surrender.

14. In his points of objection, the respondent requested the Court seek guarantees from the UK authorities that:-
- (I) the respondent would continue to enjoy the benefit of the rights conferred by article 5(3) of the Framework Decision;
 - (II) the respondent would continue to enjoy the benefit of the Framework Decision as regards mutual recognition of judgments in criminal matters imposing custodial sentences;
 - (III) the respondent will have a right to effective remedy as guaranteed by article 47 of the Charter and in particular the right to apply to a court in the UK under article 267 of the Treaty on the Functioning of the European Union ("TFEU") for a reference to the CJEU;
 - (IV) the UK will not derogate from the Charter, in particular articles 51 and 52 thereof and/or the ECHR.

As the respondent has failed to adduce any cogent evidence to support the proposition that there is any real risk that his fundamental rights will be breached if surrendered, I decline the respondent's request to seek such guarantees.

15. I am satisfied that the surrender of the respondent is not prohibited by part three of the Act of 2003.
16. In light of the foregoing, 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.