

THE HIGH COURT

[2021] IEHC 687
[2020 No. 53 EXT.]

IN THE MATTER OF THE EXTRADITION ACT, 1965, AS AMENDED

BETWEEN

ATTORNEY GENERAL

APPLICANT

AND

MARTIN JUDE WALL

RESPONDENT

JUDGMENT of Mr. Justice Paul Burns delivered on the 11th day of October, 2021

1. In this application, the applicant seeks an order pursuant to s. 29(1) of the Extradition Act, 1965, as amended ("the Act of 1965"), committing the respondent to prison, there to await the order of the Minister for Justice ("the Minister") for his extradition to the United States of America ("the USA").
2. I am satisfied that a request for the extradition of the respondent to the USA has been made in writing in accordance with s. 23 of the Act of 1965 and received by the Minister on 6th January, 2020, as confirmed in the certificate of the Minister dated 6th February, 2020 which was completed for the purposes of s. 26(1)(a) of the Act of 1965.
3. In this Court, Binchy J. issued a warrant for the arrest of the respondent on 17th February, 2020 which was duly executed on 8th December, 2020.
4. The documentation received from the requesting state consists of:-
 - (i) A certificate of the Attorney General of the USA dated 22nd November, 2019 certifying that Thomas N. Burrows is, and was at the relevant time, Associate Director of the Office of International Affairs, Criminal Division, Department of Justice, USA;
 - (ii) The certificate of Thomas N. Burrows dated 21st November, 2019 attaching the affidavit, with attachments, of Gregory M. McConnell, Chief Assistant District Attorney, Office of the District Attorney for the Eastern Judicial Circuit of Georgia, sworn 18th November, 2019, offered in support of the request for the extradition of the respondent and asserting that true copies of those documents are maintained in the official files of the US Department of Justice in Washington DC; and
 - (iii) The affidavit of Gregory M. McConnell dated 18th November, 2019, together with the following exhibits:-
 - (a) Indictment and guilty plea voluntariness questions;
 - (b) Sentencing order;
 - (c) Relevant applicable statutes;
 - (d) Guilty plea transcript;
 - (e) Probation warrant;
 - (f) Affidavit and order tolling sentence;

- (g) Chatham County Detention Centre booking photo;
 - (h) Georgia Department of Driving Services driver's licence photo; and
 - (i) Polygraph report.
5. The surrender of the respondent is sought in order that he be re-sentenced in the USA for a conviction on charges related to online sexual abuse of another person believed to be a child. The respondent previously pleaded guilty to the said charges and was sentenced to a period of detention and, thereafter, to probationary supervision. However, he failed to abide by the terms of the probation, left the USA and came to this jurisdiction.
 6. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the request for extradition has been made. This was not put in issue.
 7. I am satisfied that the USA is a country to which Part II of the Act of 1965 applies and that the USA is a designated extradition state pursuant to the Extradition (United States of America) Order, 2019 (S.I. No. 393 of 2019).
 8. I am satisfied that the minimum gravity requirements set out at s. 10 of the Act of 1965 have been met. The balance of sentence which the respondent may be required to serve is 12 years, six months and 11 days' imprisonment.
 9. I am satisfied that a warrant for the arrest of the respondent dated 21st January, 2014 was issued by John E. Morse, Superior Court Judge in the Superior Court of Chatham County, Georgia, and a certified copy of same is before the Court as exhibited in the affidavit of Gregory M. McConnell.
 10. I am satisfied that an adequate statement of the offences for which extradition is requested, together with a copy of the relevant provisions of USA law, has been put before the Court by way of the affidavit of Gregory M. McConnell and the exhibits thereto, including copies of the indictment and sentencing order.
 11. I am satisfied that an accurate description of the requested person is set out in the affidavit of Gregory M. McConnell and, in particular, the photographs referred to therein.
 12. Counsel on behalf of the respondent indicated at the outset of the hearing that he was not taking any issue with the formal proofs in the matter. He indicated that surrender was being contested on two grounds, namely:-
 - (i) Lack of correspondence between the offences to which the extradition request relates and any offence under the law of this State as required by s. 10 of the Act of 1965; and
 - (ii) The conditions in which the respondent would be required to live, if surrendered, would be in breach of his fundamental human rights, in particular his right to private life and his right not to be subjected to inhuman or degrading treatment.

Background

13. On 14th February, 2012, the respondent entered a negotiated guilty plea before the Superior Court of Chatham County, Georgia in respect of three offences as follows:-
- (i) Utilising a computer online service to entice another person believed to be a child to engage in sexual conduct;
 - (ii) Obscene internet contact with another person believed to be a child; and
 - (iii) Criminal attempt to commit enticing a child for an indecent purpose.
14. The offences relate to events on 12th January, 2011 when an undercover detective created a non-sexually suggestive profile in an internet chatroom posing as a 13-year-old female. The respondent initiated contact with this detective and initiated conversation about sexual matters with the person he believed to be a 13-year-old female child. The respondent sent a nude photo of himself to the person he believed to be a 13-year-old female child and arranged to meet her at a particular location. When he arrived at the meeting location, he was placed under arrest. On foot of the negotiated guilty plea, the respondent received a total sentence of 15 years' probation of which he was required to serve a minimum of 240 days and a maximum of 365 days in a probation detention centre as a special condition of probation. Among his duties while on probation, he was to report as directed to the probation office. The respondent served the requisite period in the detention centre but, while serving the probated portion of his sentence, he failed to report to the probation office as directed, failed to reside at the address given by him and effectively absconded from probation supervision in breach of the terms of his probation. On 21st January, 2014, a probation arrest warrant was issued. The balance of his sentence is effectively stayed until he is brought back before the sentencing court.

Correspondence

15. In broad terms, s. 10 of the Act of 1965 provides extradition shall be granted only in respect of an offence which is punishable under the laws of the requested country and of the State and also provides for certain minimum requirements as to maximum penalty and/or sentence to be imposed. Section 10(3) of the Act of 1965 provides:-

"10.-(3) In this section 'an offence punishable under the laws of the State' means –

- (a) an act that, if committed in the State on the day on which the request for extradition is made, would constitute an offence, or*
- (b) in the case of an offence under the law of a requesting country consisting of the commission of one or more acts including any act committed in the State (in this paragraph referred to as 'the act concerned'), such one or more acts, being acts that, if committed in the State on the day on which the act concerned was committed or alleged to have been committed would constitute an offence, and cognate words shall be construed accordingly."*

16. The acts of the respondent in committing the three offences are set out in exhibit D of the affidavit of Gregory McConnell, being the transcript of the sentencing hearing. It is clear from that transcript that, at all material times, the respondent believed he was communicating with a 13-year-old girl, initiated and engaged in sexualised communications, including sending a naked photo of himself, and made arrangements to meet the girl with the intention of engaging in sexual activity with her.
17. The applicant proposed a number of corresponding offences in this jurisdiction. The respondent's objection to correspondence was essentially that, in the absence of there being a real child, the offences could not be committed in this jurisdiction and/or that the law of attempt and its interaction with the concept of impossibility is so uncertain in this jurisdiction that the Court could not be satisfied as to any correspondence.
18. As regards the first offence, counsel on behalf of the applicant proposed the corresponding offence in this State to be an offence contrary to s. 8(1) of the Criminal Law (Sexual Offences) Act, 2017, as amended ("the Act of 2017"), which provides:-

"8.(1) A person who by means of information and communication technology communicates with another person (including a child) for the purpose of facilitating the sexual exploitation of a child by that person or any other person shall be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding 14 years."
19. I am satisfied that had the respondent in this jurisdiction communicated with another person, whether a child or adult, by the same means and communicating the same content as he did when communicating with the detective on 12th January, 2011, that would constitute an offence contrary to s. 8(1) of the Act of 2017. It is not a prerequisite to an offence under s. 8(1) of the Act of 2017 that the communication be with a child. It is sufficient that the communication is with another person provided that the purpose of the communication is to facilitate the exploitation of a child. I have no doubt that the purpose of the communications from the respondent to the detective were for the purpose of facilitating the sexual exploitation of a child by the respondent. It is not necessary for the purposes of s. 8(1) of the Act of 2017 that sexual exploitation of a child be directed towards any named or particular child.
20. I note that counsel for the applicant submits that the acts of the respondent could also be regarded as an attempt to commit an offence contrary to s. 8(1) of the Act of 2017. As I have indicated earlier, I am satisfied that the acts of the respondent, in fact, would amount to the commission of an offence under s. 8(1) of the Act of 2017, but, in the event that I am incorrect in that finding, I am satisfied that, in the alternative, the acts of the respondent would amount to an attempt to commit the said offence. The issue of attempt is dealt with further herein.
21. As regards the second offence to which the respondent pleaded guilty, counsel for the applicant has proposed the corresponding offence in this jurisdiction to be an offence contrary to s. 6 of the Child Trafficking and Pornography Act, 1998, as amended ("the Act

of 1998”), and/or an offence contrary to s. 8(2) of the Act of 2017, or attempts to commit such offences.

22. Section 8(2) of the Act of 2017 provides:-

“8.(2) A person who by means of information and communication technology sends sexually explicit material to a child shall be guilty of an offence...”

In this instance, the respondent sent sexually explicit material, including a nude photo of himself, to a person who is not a child but whom he believed to be a child. As the person to whom the sexually explicit material was sent was not in fact a child, I am not satisfied that the acts of the respondent would amount to an offence contrary to s. 8(2) of the Act of 2017. However, I am satisfied that the acts of the respondent would amount to an attempt to commit an offence contrary to s. 8(2) of the Act of 2017. As for the respondent’s submission concerning impossibility, this is dealt with later on in this judgment.

23. As regards an offence contrary to s. 6(1) of the Act of 1998, that section provides:-

“6.-(1) Without prejudice to section 5(1)(e) and subject to subsections (2) and (3), any person who knowingly possesses any child pornography shall be guilty of an offence and shall be liable—

(a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding £5,000 or to imprisonment for a term not exceeding 5 years or both.”

The provisions of subs. (2) and (3) are not of relevance in the instant case. Similarly, the provisions of s. 5(1)(e) do not arise in the instant case.

24. Counsel for the applicant submits that the sexualised conversation recorded on the respondent’s phone to a chatroom and the nude photograph of the applicant in that context constituted child pornography for the purposes of the Act of 1998.

25. Section 2(1) of the Act of 1998 defines “child pornography” as:-

“2.-(1)(a) any visual representation—

that shows, or in the case of a document, relates to a person who is or is depicted as being a child and who is engaged in or is depicted as being engaged in explicit sexual activity,

(ii) that shows, or in the case of a document, relates to a person who is or is depicted as being a child and who is or is depicted as witnessing any such activity by any person or persons, or

- (iii) *whose dominant characteristic is the depiction for a sexual purpose, of the genital or anal region of a child or of a person depicted as being a child,*
- (b) *any audio representation of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity,*
- (c) *any visual or audio representation that advocates, encourages or counsels any sexual activity with children which is an offence under any enactment, or*
- (d) *any visual representation or description of, or information relating to, a child that indicates or implies that the child is available to be used for the purpose of sexual exploitation within the meaning of section 3,*

irrespective of how or through what medium the representation, description or information has been produced, transmitted or conveyed and, without prejudice to the generality of the foregoing, includes any representation, description or information produced by or from computer-graphics or by any other electronic or mechanical means but does not include... [exceptions not relevant]" (Emphasis added)

Section 2(1) of the Act of 1998 defines "document" as including:-

- "(a) *any book, periodical or pamphlet, and*
- (b) *where appropriate, any tape, computer disk or other thing on which data capable of conversion into any such document is stored."*

26. In *Mulligan v. DPP* [2016] IECA 79, a computer hard drive and storage device were found to contain photographs of children and an electronic record of a conversation between the appellant and a third party on Skype. The recorded conversation was held by the Court of Appeal as capable of being considered "child pornography" within the meaning of s. 2(1) of the Act of 1998.
27. I am satisfied on considering the acts carried out by the respondent and the contents of s. 6 of the Act of 1998, and in line with the reasoning of the Court of Appeal in *Mulligan*, the recorded communications between the respondent and the detective constituted child pornography. I am satisfied that correspondence can be established between the second offence of which the respondent was convicted and an offence contrary to s. 6 of the Act of 1998.
28. As regards the third offence, counsel for the applicant proposed the corresponding offence to be the offence contrary to s. 3(4) of the Act of 1998 of attempting to commit an offence contrary to s. 3(2) of the Act of 1998 which provides:-

"3.- (2) *A person who—*

- (a) *takes, detains, or restricts the personal liberty of, a child for the purpose of his or her sexual exploitation,*
- (b) *uses a child for such a purpose, or*
- (c) *organises or knowingly facilitates such taking, detaining, restricting or use, shall be guilty of an offence..."*

29. Section 2(1) of the Act of 1998 provides:-

"2.-(1) In this Act, except where the context otherwise requires-

'child' means a person under the age of 18 years."

Section 3(3) of the Act of 1998 also provides:-

"3.- (3) In this section 'sexual exploitation' means-

- (a) *inducing or coercing the child to engage in prostitution or the production of child pornography,*
- (b) *using the child for prostitution or the production of child pornography,*
- (c) *inducing or coercing the child to participate in any sexual activity which is an offence under any enactment, or*
- (d) *the commission of any such offence against the child.*

30. Counsel for the applicant submits that the acts of the respondent clearly constituted an attempt by the respondent to use a child for the purposes of the sexual exploitation of that child and/or an attempt to organise or knowingly facilitate such use.

31. Counsel on behalf of the respondent submitted the actions of the respondent could not amount to the criminal offence of attempt in this State. He submits that as there was no child involved, but merely a detective posing as a child, it was not possible for the offence to be completed and therefore it was impossible for the respondent to commit the substantive offences proposed by the applicant as corresponding offences. In such circumstances, he submits that the Court should be satisfied that impossibility was a bar to finding correspondence or, in the alternative, that the Court should acknowledge the uncertainty of the law in this area and simply decline to determine the issue. He submits that a request for extradition was not an appropriate matter in which to determine the parameters of the law on impossible attempts.

32. The Law Reform Commission considered the issue of impossible attempts in chapter 2.C of its Consultation Paper on Inchoate Offences (LRCCP 48-2008). The Law Reform Commission considered the competing subjective and objective approaches to impossibility and the law of criminal attempt. The Commission found no clear Irish

authority on the issue and that the caselaw from other jurisdictions failed to establish a consistent approach.

33. I do not believe that merely because it may be difficult to determine whether or not correspondence exists between the acts of the respondent and an offence under Irish law, the Court can simply decline to determine the issue and refuse surrender. Rather, the Court must consider the acts in the case before it, as opposed to hypothetical facts or academic issues, and determine whether those acts would constitute the offence of attempted commission of a particular crime in this jurisdiction. In this instance, the respondent had the intention of communicating with and meeting with a girl of 13 years old for the purpose of sexual exploitation of that child. He carried out a number of significant actions in furtherance of his intention, including engaging in sexualised conversation, sending a nude photograph of himself and arranging to meet with the person whom he believed was a 13-year-old girl. In such circumstances, I am satisfied that there is not only a sufficient *mens rea* but also a sufficient *actus reus* to constitute an attempt to commit the crimes as indicated earlier herein.

34. As is noted in the Law Reform Commission report, at para. 2.148:-

"...In a very real sense all attempts, looking back on them, were impossible attempts. Where an actor has shot at another and the bullet has missed by a matter of inches we can say that in the circumstances (the gun aimed slightly askew) it was impossible to commit murder. Impossibility does not differentiate which attempts are criminal and which are not because it is present in them all."

What is required to establish criminal liability for an attempt is not only that the defendant have a criminal intention but that he must commit sufficient acts towards the completion of the criminal act intended, such as brings his conduct within the parameters of the mischief which the offence seeks to punish. It may be that in certain extreme cases or hypothetical examples it will be difficult to determine whether a particular defendant has committed sufficient acts in that regard, but, in the vast majority of cases, it is likely that the trier of fact will be able to determine whether the attempt was a real attempt or merely an imaginary one. In terms of the present case, I am satisfied that the actions of the respondent went far beyond merely imagining criminal wrongdoing and constituted serious and significant acts to bring about the criminal offences.

35. Having considered the acts carried out by the respondent and the contents of s. 3 of the Act of 1998, I am satisfied that the acts of the respondent, if committed in this jurisdiction, would amount to the offence contrary to s. 3(4) of the Act of 1998 of attempting to commit an offence contrary to s. 3(2) of the Act of 1998 and thus the necessary correspondence can be established.

36. I am satisfied that correspondence can be established between the acts of the respondent and offences under the law of this jurisdiction and I dismiss the respondent's objections to surrender based upon an allegation of a lack of correspondence.

Conditions of Probation/Living Conditions

37. Counsel on behalf of the respondent submitted that, if surrendered, the respondent would face a probation and sex offenders' regime which amounted to inhuman and degrading treatment in breach of the Constitution and his basic fundamental rights as recognised in international conventions such as the European Convention on Human Rights ("the ECHR").

38. The respondent swore an affidavit dated 22nd March, 2021 in which he sets out various issues concerning the conditions of detention he faced after arrest and sentence. He avers that when it came to his release date in or around January 2013, he received a visit from his probation officer and was informed that he could not live within 1,000 feet of schools, churches, parks, swimming pools, day-care facilities and numerous other places. He avers that he was informed that he would not be released if the place where he intended to live did not meet the requirements. He indicates that another inmate offered him his home address which met the necessary requirements and, having provided same, he was released (it should be noted that this appears to indicate that it is possible to obtain accommodation which does fall within the parameters of the prohibited areas). At hearing, it was indicated to the court that the respondent did not in fact take up residence at that address and he had not intended to do so. He avers that, after being released, he had nowhere to live (thus, it would appear to be the case that the respondent misled the relevant authority as to where he intended to stay and that he had accommodation compliant with the probation regime). On release, he stayed in a homeless shelter where he found conditions to be difficult. He avers that he has struggled with addiction issues and sought out the services of AA. He avers that he obtained employment but, on being obliged to inform his employer of his criminal history, he was immediately let go. He stopped attending AA meetings. He avers that he was required to attend weekly classes for sexual offenders at the cost of US\$40 but that he had no way of meeting this cost without employment. He avers that he attended the first of the classes for sexual offenders but complains as to the quality of same. He was required to undergo a mandatory polygraph test every six months at the cost of US\$300 as part of his treatment. He managed to obtain work through a temporary employment agency but was informed by his probation officer that the temporary employment agency did not fall within the sexual offenders' parole parameters. He underwent the polygraph test and states that he found same degrading, demeaning and insulting. He was also required to fill out a sexual history questionnaire which again he found to be insulting and felt public shaming in having to read out the answers he had provided of his sexual history questionnaire in front of other participants in the class. He applied to the probationary services to be allowed to transfer to Florida where his mother was living but this was denied. He avers that the maximum amount of time he was permitted to stay in a particular shelter was six months and, after that, he obtained accommodation in an inner city shelter for one week. He avers that he was close to having no shelter and was advised by the probation services that he could sleep in a tent. He purchased a tent and sleeping bag and began sleeping in a "campground" where conditions were unhygienic and dangerous. He avers that he did gain employment on a number of occasions but it was short-lived due to the onerous conditions of his parole. He avers that he felt his only

options were that of suicide or returning to Ireland and he obtained a loan from a friend and travelled to Ireland.

39. In support of his submission, the respondent relied upon an affidavit and report of Ryan D. Langlois, an attorney practising in the state of Georgia. Mr. Langlois indicates that the state of Georgia has some of the harshest restrictions placed on sex offenders, with limitations placed upon where a convicted registered sex offender can live and work. In particular, it is an offence, punishable with 10 to 30 years' imprisonment for a sex offender to reside "*within 1,000 feet of a childcare facility, church, school or area where minors congregate*". Registered sex offenders are also restricted from working within 1,000 feet of such locations. Mr. Langlois sets out that, in the historic district of Savannah, it is virtually impossible to find any location where a registered sex offender could lawfully live or work (whether selecting the historic district of a town such as Savannah is the best example of the difficulty posed by the relevant Georgian legislation may be open to debate). Mr. Langlois indicates that most felony probation sentences, including that of the respondent, require the convicted person to waive their rights under the Fourth Amendment of the US Constitution (right to be free from search and seizure absent either a warrant or probable cause). This effectively allows law enforcement officers or probation officers to make unannounced home visits for the purpose of inspection to determine compliance. Residential and employment arrangements are approved by Department of Community Supervision officers and this is subject to inconsistency between such officers. The relevant Georgia legislation requires certain offenders, such as the respondent, to be placed on a publicly available registration list which includes the "*name; age; physical description; address; crime of conviction, including conviction date and the jurisdiction of the conviction; photograph, and the risk assessment classification level provided by the board and an explanation of how the board classifies sexual offenders and sexually dangerous predators*". This information is required to be available to the public and the sheriff's office is required to inform the public directly of any change to address or the presence of a registrant in the immediate community. It is stated that this may expose such an offender to possible vigilante violence. In the case of Chatham County, the publicly available database organises registered sex offenders by postal code and provides an interactive map indicating the residential locations of registered offenders. Mr. Langlois sets out the difficulties many offenders meet in petitioning to be removed from the sexual offenders' register. It appears that Georgian law allows the probation period to be as long as the maximum sentence provided for under the law and this leads to protracted periods of probation with a higher possibility of breaching same.
40. The applicant furnished the requesting state with copies of the affidavit of the respondent and the affidavit and report of Mr. Langlois. By way of response to same, the requesting state furnished a letter from an assistant district attorney of the Eastern Judicial Circuit in Savannah, Georgia, responsible for the prosecution of the respondent. In the letter, it was emphasised that the respondent is protected against torture and inhuman and degrading treatment by both the USA Constitution and the Georgia Constitution. The decision in

Christian v. State, 347 Ga. App. 391, 394 (2), 819 S.E.2d 682, 686 (2018) is quoted as follows:-

"Both the Georgia and the federal constitutions categorically prohibit inflicting cruel and unusual punishments. A punishment is cruel and unusual if it (1) makes no measurable contribution to accepted goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. Whether a punishment is cruel and unusual is not a static concept, but instead changes in recognition of the evolving standards of decency that mark the progress of a maturing society."

41. Specifically, in response to the report of Mr. Langlois, issue is taken with the experience and expertise of Mr. Langlois, who was admitted to the Georgia Bar in October 2018. Issue is taken with some of the assertions in the report which appeared to be expressions of opinion without source attribution, for example: "... *life after prison ... is difficult, but it is especially difficult, if not untenable for convicted sex offenders*". Issue is also taken with the relevance of matters in states other than Georgia. Emphasis is placed upon the fact that the respondent is a convicted sex offender who has absconded from probation supervision.
42. The submissions of the respondent are to a large extent premised on the assumption that the surrender of the respondent is sought in order to submit him once more to probation without detention and/or that following service of any sentence of detention he will be required to remain within the state of Georgia. However, it must be borne in mind that the respondent is being sought in order to impose a further period of detention upon him. The respondent was sentenced to a period of detention and released under probation. He did not comply with the terms of his probation. He is now required to serve such further term of detention as the court in Georgia shall decide. What may happen thereafter is, to a large extent, speculation. The respondent pleaded guilty to a number of sexual offences and, as part of a negotiated plea, he received a total sentence of 15 years' probation including that he serve between 240 and 365 days in a probation detention centre. The terms of his probation included a prohibition on him residing within 1,000 feet of a childcare facility, church, school or area where minors congregate. It would appear that the respondent gained his release by furnishing false information as to where he would reside upon his release so as to give the impression he would comply with that requirement. Thus, he obtained his release knowing that he did not have an address at which to reside which would be compliant with the requirements of his probation. He failed to comply with the terms of his probation and it is now intended that he should be returned to prison to serve such further period in detention as a court should determine. His probation outside of detention has come to an end and to that extent the terms of his former probation outside of detention are not of immediate concern.
43. Similarly, if he serves such further period in detention as a court determines, he may not be given the benefit of any further probation but rather may be subject to the law of the

state of Georgia as regards post-release conditions for sexual offenders for so long as he remains in that state. If he is not under probation, then he is free to leave that state.

44. I note that, in the letter of the Assistant District Attorney for Chatham County, it is stated that:-

"Once respondent completes his sentence in Georgia, he is no longer duty bound to reside here and can return to Ireland where the Irish sex offender registry may be less stringent. It will be my recommendation to the court that Respondent's probation be revoked in an amount of time that is fair and just under the circumstances and that any period of time that remains on probation following revocation, if any, be terminated."

45. It is clear that what is intended on the part of the prosecuting authorities in the state of Georgia is that, upon his surrender, the respondent will have his probation revoked for a certain period, meaning that he will go into detention and thereafter will be free to leave the USA. In such circumstances, the respondent will no longer be required to remain in the state of Georgia after his release. It cannot be accepted for certain that the sentencing judge will go along with any recommendation made by the District Attorney's Office, and so such an indication from the District Attorney's Office cannot have a decisive impact upon the decision of this Court. However, it appears to me that this is the intended, and most likely, outcome of the respondent's surrender.
46. At present, the respondent is sought in order to impose upon him a further period of detention and what may happen thereafter appears to me to be a matter of speculation. There is no basis for refusing surrender on grounds that the conditions of the respondent's detention will be such as to amount to a breach of his fundamental rights. I consider speculation as to what might be the position which the respondent will face upon his subsequent release as too uncertain to ground a refusal to surrender.
47. In light of the above findings, it is not strictly necessary to consider whether the terms of the respondent's probation amounted to a breach of his fundamental rights. Similarly, in light of the above findings, it is not strictly necessary to consider whether the terms of post-release supervision of sex offenders in the State of Georgia amounts to a breach of the fundamental rights of such offenders. Nevertheless, for the sake of completeness, I will set out the Court's findings in that regard.
48. Counsel for the respondent referred the Court to the decision of the European Court of Human Rights ("the ECtHR") in *MSS v. Belgium and Greece* (Case 30696/09, 21st January, 2011) which concerned the treatment of asylum seekers. In that case, an asylum seeker from Afghanistan made his way through Iran and up into Greece and thereafter to Belgium. Greece was the appropriate country for determining his asylum application but he had opposed being sent there from Belgium on the basis (i) that his application for asylum would not be properly examined and (ii) due to the appalling conditions of detention and reception as regards asylum seekers in Greece. On arrival in Greece, he was placed in detention for a number of days, then given an asylum seeker's

card and informed that he had to report to the aliens' directorate to declare his home address in Greece so that he could be informed of progress of his asylum application. He did not report as required and went to live in a park in central Athens. A number of months later, he was arrested, attempting to leave Greece using a false Bulgarian identity card and a suspended sentence was imposed. He subsequently attended at the police headquarters where his pink card was removed for six months and it was noted that he had informed the police that he had nowhere to live and asked the Ministry of Health and Social Security to help find him a home. The ECtHR considered various reports from human rights bodies relating to conditions in Greek detention centres for asylum seekers. It also considered living conditions for asylum seekers after they were released from detention. It was noted that they were given no information about possibilities of accommodation and, in particular, were not notified that they should inform the authorities that they had nowhere to live which is a prerequisite for the authorities to try to find them some form of accommodation. This led to many asylum seekers simply sleeping on the streets or in makeshift camps. The court found that the conditions of detention in Greece amounted to degrading treatment in breach of Article 3 ECHR. The asylum seeker had also alleged that the state of extreme poverty in which he had lived since he arrived in Greece amounted to inhuman and degrading treatment within the meaning of Article 3 ECHR.

49. The ECtHR noted that Article 3 ECHR cannot be interpreted as obliging a state to provide everyone within their jurisdiction with a home and nor does it entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living. However, both European Community law and the domestic Greek legislation which transposed same had laid down minimum standards for the reception of asylum seekers. The court attached considerable importance to his status as an asylum seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection. The court noted that he had allegedly spent months living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live. Added to that was the ever-present fear of being attacked and robbed and the total lack of any likelihood of the situation improving. The court was of the opinion that, had the Greek authorities examined the applicant's asylum request promptly, the suffering could have been substantially alleviated. In light of that and in view of the obligations incumbent upon the Greek authorities under European law as transposed into Greek law, the court considered that the Greek authorities did not have due regard to his vulnerability as an asylum seeker and must be held responsible because of their inaction and failure to respond to the situation in which he found himself. The court held that through the fault of the authorities, he had found himself in a situation incompatible with Article 3 ECHR and, accordingly, there had been a violation of that provision.
50. Counsel for the respondent submits that *M.S.S.* was authority for the proposition that living conditions outside of detention could be so bad as to amount to a breach of Article 3 ECHR. However, it appears to me that the finding in that case of a breach of Article 3 ECHR was dependent upon the special status of asylum seekers and the failure on the

part of the Greek authorities to properly give effect to the European law regarding the treatment of asylum seekers which had been transposed into Greek domestic law. In essence, the ECtHR found that Greece had knowingly failed to give adequate effect to the relevant legislation and had, thus, brought about a breach of Article 3 ECHR rights.

51. In the instant case, the respondent does not fall into a special category of vulnerable persons recognised by international or domestic law as requiring special protection. Nor can it be said that the requesting state has or is likely to act in breach of its own domestic legal obligations to the respondent. The respondent here is in a radically different position from that of *M.S.S.* and I do not find that decision of much assistance in this matter.
52. In *Adamson v. United Kingdom* (1999) 28 EHRR 209 the ECtHR considered United Kingdom legislation requiring persons convicted of certain sexual offences to register information to the police including name, date of birth, address and making failure to comply with the registration requirements a criminal offence punishable with up to six months' imprisonment. The court found this did not amount to a penalty within the meaning of Article 7 ECHR. The court also found that the requirement to provide information to the police did not amount to a disproportionate interference of the convicted person's rights to a family or private life. The court also rejected the contention that the registration system amounted to inhuman and degrading treatment or punishment.
53. The applicant submits that while the system for probation and registration of sex offenders in the state of Georgia operates differently and more stringently than such regimes in this jurisdiction, such differences are an inherent part of the extradition process.
54. I accept that it is unlikely that two differing jurisdictions such as Ireland and the USA would have identical or broadly similar practices and procedures in relation to probation and post-release supervision of sex offenders. I also accept that it is not a prerequisite to surrender that the requesting state's laws or mores should mirror Irish laws or mores. It is for each state to determine the balance between individual rights and the requirements of the common good as it should apply in that state or that society. However, that is not to say that on foot of extradition arrangements, surrender must always be ordered regardless of differences between the administration of justice in the respective states. As stated by Murray C.J. in *Minister for Justice Equality and Law Reform v. Brennan* [2007] 3 I.R. 732 at para. 40:-

"40. ... There may well be egregious circumstances, such as a clearly established and fundamental defect in the system of justice of a requesting state, where a refusal of an application for surrender may be necessary to protect [fundamental or human rights]."
55. Does the system of probation and post-release supervision for a convicted offender such as the respondent amount to such egregious circumstances that surrender must be refused? I think not.

56. In *Attorney General v. Martin* [2012] IEHC 442, the High Court considered objections to the extradition of the respondent to the USA, including an objection based upon the requirement that the respondent would have to register as a sex offender. In that case, the respondent had made arguments very similar to the arguments made herein to the effect that the Florida Sexual Predators Act required registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, community and the public and provided for community and public notification concerning the presence of sexual predators. In that case, Mr. Martin had also argued that restrictions placed upon persons convicted of sexual offences in Florida, including the restriction of the entitlement of such persons to live within specified distances of schools, playgrounds etc. rendered those affected as functionally homeless. Edwards J. held at para. 10.31:-

"10.31. The mere fact that registration as a sex offender in Florida imposes different, and probably more onerous, requirements on the offender than would be imposed on a sex offender registering in Ireland is irrelevant. As O'Donnell J. has stated at paragraph 66 in Nottinghamshire County Council v. B and Others [2011] IESC 48, 'it is clear that the Constitution expects the legal systems of friendly nations will differ from that of Ireland' and, at paragraph 65, that '...the Constitution requires the Courts to refuse return only when the foreign procedure is so contrary to the scheme and order envisaged by the Constitution and so proximately connected to the order of the Court, that the Court would be justified, and indeed required, to refuse return.' Similar sentiments were expressed by the former Chief Justice in Minister for Justice, Equality and Law Reform v. Brennan [2007] IESC 21, [2007] 3 I.R. 732."

57. Edwards J. went on to state at para. 10.32:-

"10.32. It is entirely speculative to suggest that the designation of the respondent as a sexual predator under the Florida Sexual Predators Act will unnecessarily expose him to violence from the public and unduly interfere with his entitlement to private life and rehabilitation. No cogent evidence has been adduced tending to support that suggestion. The Court is particularly unimpressed with the suggestion that restrictions placed on persons convicted of sexual offences, including the restriction of the entitlement of such persons to live within specified distances of schools, playgrounds, etc. renders those affected as functionally homeless. There can be many reasons for homelessness including alcohol, drug addiction, mental disorders and so on. It does not necessarily follow that sex offenders in Jacksonville who are homeless, and living under a causeway, are homeless simply because they are registered as sex offenders."

58. I am satisfied that the registration requirements under the law of Georgia, as regards convicted sex offenders such as the respondent, do not amount to a breach of his right to a family and private life as protected by Article 8 ECHR or his right to privacy under the Constitution. Neither the respondent's constitutional right to privacy or his right to privacy

as recognised by Article 8 ECHR, can be regarded as absolute. As Article 8(2) ECHR makes clear, the right to privacy may be interfered with by a public authority in accordance with law and such as is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. There is no constitutional or other bar to public authorities making justifiable incursions into the right of privacy in order to legitimately further the common good, particularly as regards the prevention of crime and the protection of the rights and freedoms of others, including the protection of children from persons convicted of sexual offences against children. A person convicted of a serious criminal offence has no automatic right to prevent publication of his identity or the fact that he has been convicted of such offence. Reporting restrictions as regards the identity of convicted sexual offenders are there in order to protect the privacy of complainants/victims.

59. Any right to privacy invoked by the respondent, in order to oppose surrender, must be weighed in the context of the strong public interest in having offenders, or alleged offenders, who have fled abroad returned to the state wherefrom they have fled, in circumstances where Ireland has entered into reciprocal arrangements with other states to do so.
60. Insofar as the respondent objects to surrender on the basis that the public nature of the sexual offenders' register in the state of Georgia amounts to an unjustifiable interference with his privacy rights, I dismiss such objection.
61. I accept that the requirements of the respondent's probation were more onerous than would be imposed in this jurisdiction. It may be that the post-release supervision system in the state of Georgia will be more onerous than that which might be imposed in this jurisdiction. However, I am not satisfied that such requirements will amount to inhuman and degrading treatment or expose the respondent to a real risk of same. I am not satisfied that it will be, or is likely to be, impossible to meet such requirements or that it must necessarily follow that, due to such requirements, the respondent will be rendered, or is at a real risk of being rendered, homeless and penniless. A fellow inmate was able to provide him with an address that would have been compliant, albeit the respondent had no real intention of residing there. While it is right to sympathise with and assist former prisoners who unfortunately find themselves in straightened circumstances, it is often not easy to attribute the impecuniosity or homelessness of a particular former prisoner to a single cause. More often such circumstances are multi-factorial in origin. I note the respondent has made passing reference to substance abuse on his part and partial attendance at AA meetings.
62. I am not satisfied that, if surrendered, the respondent will inevitably be driven into homelessness and poverty by reason of the system of probation and/or post-release supervision in the state of Georgia. Nor am I satisfied that any risk of future homelessness and/or poverty can be solely, or sufficiently, attributed to the system of probation and/or post-release supervision to the extent that same could be regarded as

the state of Georgia breaching the respondent's right not to be subjected to inhuman or degrading treatment. I am not satisfied that the system of probation and/or the operation of the sex offenders' register in the state of Georgia is so contrary to the scheme and order envisaged by the Constitution that this Court is required to refuse extradition. I dismiss the respondent's objection to extradition based upon perceived breach of his right not to be subjected to inhuman or degrading treatment.

63. I am not satisfied that there are substantial grounds for believing that, if surrendered, there is a real risk of the respondent being subjected to a breach of his right to privacy or right not to be subjected to inhuman or degrading treatment or punishment, or any other fundamental right, so that this Court should refuse surrender.

Conclusion

64. Being satisfied that the requirements for the making of an order have been met, having dismissed the respondent's objections to surrender and being satisfied that there is no bar to the making of the order, it follows that this Court will make an order pursuant to s. 29(1) of the Act of 1965 committing the respondent to prison, there to await the order of the Minister for his extradition to the USA.