Neutral Citation No: [2019] NIQB 106 | *Ref:* **DEE11064**

Judgment: approved by the Court for handing down | *Delivered:* **20/12/2019**

(subject to editorial corrections)*

17/ 026194

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (DIVISIONAL COURT)

IN THE MATTER OF AN APPLICATION UNDER THE EXTRADITION ACT 2003

BETWEEN:

UNITED STATES OF AMERICA

Requesting State/Applicant;

and

JONAH JOSEPH HORNE

Requested Person/Respondent.

Before: McBRIDE J and SIR DONNELL DEENY

SIR DONNELL DEENY (delivering the judgment of the court)

[1] By an Order for Discharge made under the Extradition Act 2003 ("the 2003 Act") Her Honour Judge Smyth ordered that the extradition proceedings against Jonah Joseph Horne ("Mr Horne") be discharged on the ground that: "The clemency and commutation system within Florida has been fully considered and deemed inadequate."

[2] This decision followed her considered judgment of 27 August 2018 rejecting other grounds for refusing extradition of Mr Horne to the State of Florida. A warrant had been issued for the offence of second degree murder committed in Boca Raton, Florida on 7 June 2016. She was concerned that Mr Horne faced a real prospect of an irreducible life sentence without hope of remission. She gave the Requesting State an opportunity to "provide an adequate assurance which would safeguard the defendant's rights in the event of his conviction and the imposition of a life sentence."

[3] Following the receipt of further materials she delivered an addendum judgment on 8 March 2019. She records that she had sought an assurance from the Governor of Florida that "the defendant will not be imprisoned for more than 40 years, regardless of whether a longer sentence is imposed". The governor declined to give such an assurance and the judge made the Order set out at [1] above.

[4] The Requesting State sought leave to appeal the Order of Discharge to the single judge. Leave was refused by order of the single judge of 25 March 2019. The United States now proceeds on foot of a notice of 27 March 2019 to renew its application for leave to appeal the Discharge of the Extradition application to the full Divisional Court.

[5] Dr Tony McGleenan QC appeared with Mr Stephen Ritchie for the Requesting State. Mr David McDowell QC and Mr Sean Doherty appeared for Mr Horne. The court is grateful to counsel for their learned written and oral submissions. It is common case between the parties that the only remaining issue before this court is the one identified in the Order of Discharge of 8 March 2019 set out above. The judge at first instance received assurances which she accepted that Mr Horne would not be subject to the death penalty if returned to Florida. She also considered but ultimately rejected an argument that the prison conditions in the State of Florida were such as to be incompatible with the rights of the defendant under Article 3 of the European Convention on Human Rights ("the Convention") . But she remained concerned that this man might be subject to an irreducible sentence of life imprisonment without review if returned to the United States. Her conclusion on this issue is to be found at paragraphs 51 and 52 of her judgment of 27 August 2018.

> "[51] The authorities are clear that an irreducible life sentence is not compatible with a defendant's convention rights. Although the Assistant State Attorney has explained the circumstances in which a defendant sentenced to life imprisonment may apply for clemency or commutation of sentence, no evidence has been provided of a review mechanism based on objective, pre-established criteria made known to the offender at the time of his sentence so that the authorities could ascertain whether he had progressed to such an extent that his continued detention could no longer be justified. In those circumstances, I am not satisfied that the arrangements within the Requesting State are Article 3 compliant.
>
> [52] The extradition system is based on mutual trust and recognition and in those circumstances this court considers it appropriate to allow the Requesting State an opportunity to provide an adequate assurance which would safeguard the defendant's Convention rights in

> the event of his conviction and the imposition of a life sentence."

[6] In the event the judge was not so satisfied and made the Order of Discharge on 8 March 2019. This matter was previously listed before the Divisional Court. That hearing led to further material being submitted on behalf the Requesting State with responses on behalf of Mr Horne which this court has considered.

Factual background

[7] The factual background to the case is set out in the affidavit in support of the request for extradition of Mr Horne sworn by Lauren E. Godden, Assistant State Attorney, and signed also by the State Attorney, on 26 April 2017 at West Palm Beach, Florida. Ms Godden has been an Assistant State Attorney for the 15th Judicial Circuit of the State of Florida since September 2005. Her duties are to prosecute persons charged with criminal violations in Palm Beach County, Florida.

[8] She sets out the circumstances relating to the shooting dead of Jacob Walsh on 17 June 2016. She avers, based on surveillance videos, cell phone text messages and other material that the deceased met with Mr Horne and one Matthew Lewis with a view to a drugs sale. The men met at 12.17 am with Mr Horne getting out of a Jeep motor vehicle, approaching another vehicle and getting into a dispute with the deceased. Mr Horne then fires a weapon while at the passenger door of Mr Walsh's car and Mr Walsh runs away towards a nearby apartment complex; he subsequently died of the gunshot wound inflicted on him. In addition to the surveillance video and mobile phone text information, Mr Horne said to a witness who drove him and Lewis between 1.00 am and 1.30 am on the night of the shooting: "Oh my God … I shot him … The kid … I shot him in the front seat and then he ran." Furthermore, when the Jeep was located a cigarette butt was found on the rear passenger seat which when tested had Mr Horne's DNA on it. Following a sworn probable cause affidavit a judge of the 15th Judicial Circuit Court issued a warrant on 12 November 2016 for the arrest of Mr Horne on the charge of second degree murder with a firearm.

[9] Mr Horne had in fact departed not only the scene but the United States. He had come to Lisburn in Northern Ireland. It seems that he placed a photograph of himself on social media and a sharp eyed law enforcement officer in Florida spotted this. Mr Horne had several dozen previous criminal convictions. Analysis of the photograph identified the location and Mr Horne was subsequently arrested. He currently remains in custody pending the outcome of the extradition proceedings.

Submissions on behalf of the appellant

[10] Dr McGleenan submitted that the judge erred in concluding that a whole life sentence was inherently and always unlawful under the Convention. He relied on

the decision of the ECtHR in *Vinter v United Kingdom* [2016] 63 EHRR 1. The Grand Chamber sets out its views. They included the following central conclusions:

> "106. For the same reasons, Contracting States must also remain free to impose life sentences on adult offenders for especially serious crimes such as murder: the imposition of such a sentence on an adult offender is not in itself prohibited by or incompatible with art. 3 or any other article of the Convention. [76] This is particularly so when such a sentence is not mandatory but is imposed by an independent judge after he or she has considered all of the mitigating and aggravating factors which are present in any given case.
>
> 107. However, as the Court also found in *Kafkaris*, the imposition of an irreducible life sentence on an adult may raise an issue under art. 3. There are two particular but related aspects of this principle that the Court considers necessary to emphasise and to reaffirm.
>
> 108. First, a life sentence does not become irreducible by the mere fact that in practice it may be served in full. No issue arises under art. 3 if a life sentence is de jure and de facto reducible.
>
> In this respect, the Court would emphasise that no art.3 issue could arise if, for instance, a life prisoner had the right under domestic law to be considered for release but was refused on the ground that he or she continued to pose a danger to society. This is because states have a duty under the Convention to take measures for the protection of the public from violent crime and the Convention does not prohibit States from subjecting a person convicted of a serious crime to an indeterminate sentence allowing for the offender's continued detention where necessary for the protection of the public. [79] Indeed, preventing a criminal from re-offending is one of the "essential functions" of a prison sentence. [80] This is particularly so for those convicted of murder or other serious offences against the person. The mere fact that such prisoners may have already served a long period of imprisonment does not weaken the State's positive obligation to protect the public; States may fulfil that

> obligation by continuing to detain such life sentenced prisoners for as long as they remain dangerous. [81]
>
> 109. Second, in determining whether a life sentence in a given case can be regarded as irreducible, the Court has sought to ascertain whether a life prisoner can be said to have any prospect of release. Where national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner, this will be sufficient to satisfy art. 3."

[11] They further reached the following general conclusion in respect of life sentences at paragraphs [109] to [121]. A whole life sentence may be a proper punishment for heinous crime and may be imposed by the courts of Contracting States. But there must be, the Grand Chamber concluded, a possibility that the prisoner is released where his continued detention could "no longer be justified on legitimate penological grounds".

[12] Counsel for the Requesting State submitted that the judge erred in seeking a guarantee from the United States. The United States is not a Contracting State of the Convention. Rather it is in a Treaty relationship with the United Kingdom. It is the submission of the lawyers for the United States that refusal of this extradition would be a violation of that extradition agreement. Even if that were not the case Dr McGleenan submits that the appropriate test is not one of guarantee or absolute certainty. He relied on the decision of the House of Lords in *Regina (Ullah) v Special Adjudicator* [2004] UKHL 26; [2004] 2 AC 323. He relied on paragraph [24] of the judgment of the court.

> "While the Strasbourg jurisprudence does not preclude reliance on articles other than article 3 as a ground for resisting extradition or expulsion, it makes it quite clear that successful reliance demands presentation of a very strong case. In relation to article 3, it is necessary to show strong grounds for believing that the person, if returned, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment: *Soering*, paragraph 91; *Cruz Varas*, paragraph 69; *Vilvarajah*, paragraph 103. In *Dehwari*, paragraph 61 (see paragraph 13 above) the Commission doubted whether a real risk was enough to resist removal under article 2, suggesting that the loss of life must be shown to be a "near-certainty". Where reliance is placed on article 6 it must be shown that a person has suffered or risks suffering a flagrant denial of a fair

trial in the receiving state: *Soering*, paragraph 113 (see paragraph 10 above); *Drodz*, paragraph 110; *Einhorn*, paragraph 32; *Razaghi v Sweden*; *Tomic v United Kingdom*. Successful reliance on article 5 would have to meet no less exacting a test. The lack of success of applicants relying on articles 2, 5 and 6 before the Strasbourg court highlights the difficulty of meeting the stringent test which that court imposes. This difficulty will not be less where reliance is placed on articles such as 8 or 9, which provide for the striking of a balance between the right of the individual and the wider interests of the community even in a case where a serious interference is shown. This is not a balance which the Strasbourg court ought ordinarily to strike in the first instance, nor is it a balance which that court is well placed to assess in the absence of representations by the receiving state whose laws, institutions or practices are the subject of criticism. On the other hand, the removing state will always have what will usually be strong grounds for justifying its own conduct: the great importance of operating firm and orderly immigration control in an expulsion case; the great desirability of honouring extradition treaties made with other states. The correct approach in cases involving qualified rights such as those under articles 8 and 9 is in my opinion that indicated by the Immigration Appeal Tribunal (Mr C M G Ockelton, deputy president, Mr Allen and Mr Moulden) in *Devaseelan v Secretary of State for the Home Department* [2002] IAT 702, [2003] Imm AR 1, paragraph 111:

> 'The reason why flagrant denial or gross violation is to be taken into account is that it is only in such a case - where the right will be completely denied or nullified in the destination country - that it can be said that removal will breach the treaty obligations of the signatory state however those obligations might be interpreted or whatever might be said by or on behalf of the destination state'."

[13] He submitted that while a whole life sentence for Mr Horne, if imposed, could constitute inhuman or degrading treatment contrary to the Convention it was

necessary for Mr Horne to "show strong grounds for believing that … he faces a real risk" of such a sentence without possibility of remission.

[14] Reference was also made to the decision of the ECtHR in *Soering v The United Kingdom* [1989] 11 EHRR 439. Counsel drew the court's attention to paragraph [91] of that judgment:

> "In sum, the decision by a Contracting State to extradite a fugitive may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if extradited, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country. The establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3 of the Convention. Nonetheless, there is no question of adjudicating on or establishing the responsibility of the receiving country, whether under general international law, under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment."

[15] He submitted that that requirement of substantial grounds for believing that Mr Horne faced a real risk of life without the possibility of remission was the test that should have been and is now to be applied. It was not appropriate to seek a "guarantee" from the Requesting State.

[16] Counsel relied on the judgment of the court in *Giese v Government of the United States of America* [2018] EWHC 1480 (Admin). At paragraph 38 the Divisional Court stated.

> "The overarching question is whether the assurance is such as to mitigate the relevant risk sufficiently. That requires an assessment of the practical as well as the legal effect of the assurance in the context of the nature and reliability of the officials in country giving it. Whilst there may be States whose assurances should be viewed through the lens of a technical analysis of the words used and suspicion that they will do everything possible to

> wriggle out of them, that is not appropriate when dealing with friendly foreign governments of States governed by the rule of law where the expectation is that promises given will be kept."

[17] Counsel submitted that sufficient assurances had now been given by the United States, if not already sufficient, to mean that there was no real risk of this man serving a sentence for the rest of his life with no possibility of reduction.

[18] At paragraph 47 of *Giese* Lord Burnett says:

> "Assurances have been accepted routinely from the [United States] government and the promises made have been honoured."

[19] Dr McGleenan submitted that we should order extradition of Mr Horne. He submitted that the judge had erred in her assessment as seen at [51] of her judgment. In any event further assurances and clarification had now been provided which enabled this court to take a different view from the Crown Court judge.

Submissions on behalf of the Defendant

[20] Mr David McDowell QC supplied the court with cogent submissions on behalf of his client. He helpfully accepted the relevance of the authorities cited by Dr McGleenan.

[21] He accepted that the United Kingdom and the United States did have an Extradition Treaty with the aim of furthering extradition but reminded this court that section 87 of the 2003 Act provided that the judge, or in this case this Divisional Court, "must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998."

[22] He submitted that there was a real risk of an irreducible life sentence in this case i.e. a risk that was more than fanciful.

[23] His central argument was that the prosecution commitment to seek a sentence of not more than 40 years, which the judge below and this court acknowledge to be compatible with the case law under the Convention in the extradition context, is not binding on a judge in Florida. He submits there is a real risk of a whole life sentence being imposed on Mr Horne and of he serving that sentence. He relied on certain emails and affidavits, from Carey Haughwought, public defender and that of 11 October 2018 received from Scott T Pribble. Mr Pribble in that affidavit avers that he graduated from the Florida State University College of Law with Honours in 2010 and is employed as an Assistant Public Defender in Palm Beach County Florida where he has "handled countless criminal cases ranging from misdemeanour offences to capital cases. I have tried over 60 jury trials to verdict including a

number of capital murder cases." Such an experience entitles his views to be carefully considered by this court. He avers, as is not in dispute, that the prosecution's seeking of a limited sentence of that kind is not binding on the court. This would not be the case if Mr Horne were actually to plead guilty or enter a plea of noli contendere but his present position is that he denies these charges. At paragraph 17 of his affidavit he gives a number of examples in reported cases of judges imposing a higher sentence on a prisoner than that sought by the prosecution. I observe that none of those sentences were whole life nor of as long as 40 years.

[24] As to the extradition context he says this at paragraph 20 of his affidavit.

> "Moreover, a judge may resent the suggestion by the local prosecutor or by the United States government that she should temper her discretion solely in order to satisfy a foreign nation's views about criminal justice and fair sentencing, especially when those views run contrary to the prevailing views in the State of Florida and the United States."

[25] One of the factors played in aide by the United States in claiming extradition is the power of the Governor of Florida to exercise his prerogative to reduce the sentence. However Mr Pribble avers that the current Governor of Florida Rick Scott has only commuted one homicide offence during his two 4 year terms as Governor.

[26] He further avers that at the time of his affidavit, 11 October 2018, there were 5,487 offenders serving sentences for second degree murder in the State of Florida. Of that number 1,410 are serving life without parole with 2,218 serving sentences of 40 years or more. The second figure must include the former. Mr Pribble provided further information by way of emails in response to further matters emanating from the United States and we have taken these into account.

[27] Counsel pointed out the limitations of appeal on a sentencing basis to the state appeal courts or federal courts in the United States. He submitted there was no judicial review of the Governor's decision if he declined to commute the sentence to accord with the assurance given by the District Attorney.

[28] He acknowledged that there was the possibility of Presidential pardon but submitted that that was most unlikely. He referred the court to the decision of the European Court of Human Rights in *Trabelsi v Belgium* [2015] 60 EHRR 21. At paragraph 112 the court said this.

> "The court has, however, held that the imposition of an irreducible life sentence on an adult may raise an issue under Article 3.

> 113. This latter principle gives rise to two further ones. First of all, Article 3 does not prevent life prison sentences from being in practice served in their entirety. What Article 3 does prohibit is that a life sentence should be irreducible de jure and de facto. Secondly in determining whether a life sentence in a given case can be regarded as irreducible the court seeks to ascertain whether a life prisoner can be said to have any prospect of release. Where a national law affords the possibility of review of a life sentence with a view to its commutation, remission, termination or the conditional release of the prisoner this will be sufficient to satisfy Article 3."

[29] The court went on to cite the decisions in *Vintner* and *Cathcaris.*

> "Furthermore, the court explained for the first time that a whole life prisoner was entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions including when a review of his sentence would take place or could be sought. Consequently, where a domestic law did not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arose at the moment of the imposition of the whole life sentence and not at a later stage of incarceration."

[30] One also, however, notes paragraph 120 of *Trabelsi* which reads as follows.

> "If the extradition is likely to have consequences in the requesting country which are incompatible with art. 3 of the Convention the contracting State must not extradite. It is a matter of ensuring the effectiveness of the safeguard provided by art. 3 in view of the serious and irreparable nature of the alleged suffering risked."

At paragraph 114 the court had acknowledged that the possibility of Presidential clemency by way of pardon or computation of sentence had been held to be a relevant factor. On examining the facts of *Trabelsi* one does not see the same assurances there as given in this particular case before us.

[31] The criminal record of the client only came to light at a late stage in the hearing. Mr McDowell was not dismayed by this but said that rather it increased the risk of a judge imposing a whole life sentence on the accused despite the prosecution request.

View of the Court

[32] The court concludes in the light of the authorities including *Trabelsi* that the appropriate test to be applied is whether Mr Horne "would run the real risk of being subjected to treatment contrary to Article 3" (paragraph 116 of *Trabelsi*). A whole life sentence without the possibility of release or remission would, in the present state of European jurisprudence, constitute a breach of Article 3 of the Convention.

[33] In assessing the real risk it is the duty of the court to take into account and assess the factors that create or increase such a risk and the factors that remove or lessen such a risk and arrive at a view of the net position.

[34] The court acknowledges that the concession by the State Attorney that he will only seek a sentence of 40 years' imprisonment at most is not binding on the judge, if this man is convicted of second degree murder. There is therefore that possibility of a whole life sentence being imposed. We take into account that Mr Horne had a not insignificant criminal record in addition, a factor which may tend to increase the length of a sentence.

[35] Against that however we note that Mr Pribble, despite his obvious industry and concern, could not point to an instance in Florida of a judge imposing a whole life sentence when the prosecution had only sought a time limited sentence. Nor did his examples include any sentence of 40 years let alone whole life.

[36] We acknowledge that some 25% of prisoners serving sentences for second degree murder had been sentenced to whole life sentences on foot of Mr Pribble's affidavit. That must be seen in the context of what has just been set out.

[37] The prosecutor averred that it was extremely unlikely that the judge would go against the prosecution request in this case. We accept that view which is not contradicted by anything adduced on behalf of Mr Horne. As stated above there is no instance of a whole life sentence being imposed by a judge against a request from the prosecution to impose a lesser sentence.

[38] Furthermore we consider that it is likely that the principle of judicial comity would not be resented by a judge of the State of Florida but would add strength to the prosecutor's request for a sentence of not more than 40 years. We note that such a request is not in any way inherently unreasonable to make to a court as some three-quarters of those sentenced for second degree murder are sentenced to 40 years or less.

[39] We consider that the view expressed by the United States of America through its Embassy in its Diplomatic Notes to this court would carry weight with the sentencing judge in the State of Florida. In its note of 10 September 2018 the Embassy of the United States says, inter alia, the following:

> "While the United States is not, therefore, obligated to provide the assurance requested, in consideration of the request of the Court and given the intentions of the US prosecutor, the United States is prepared in this case to further inform the Government of the United Kingdom of Great Britain and Northern Ireland as follows:
>
> Should Horne be convicted of the charge which carries the potential penalty of life imprisonment, he will not be subject to an unalterable sentence of life imprisonment because, if a life sentence is imposed, he may seek review of his sentence on appeal and he may subsequently seek relief from his sentence in the form of a petition for a pardon or commutation to a lesser sentence. If pardon or commutation is granted pursuant to applicable US legal procedures, this would result in a reduction of the sentence."

[40] We consider that that clear expression of view by the Embassy is one that is likely to carry weight with the sentencing judge in the State of Florida and with other courts or elected officers in the U.S.

[41] We note that over and above the power of the Governor of Florida to commute sentences, which does indeed seem to be rarely exercised, the President of the United States has the power to commute sentences. As explained in *Trabelsi* this is a more widely used power than in some European jurisdictions. If the sentencing judge in the State of Florida did impose a whole life sentence without the possibility of remission and that was upheld by the Appeal Courts of Florida and, if heard, by the Federal Courts of Appeal, contrary to the view we have formed, Mr Horne would have ample time to draw to the attention of the Pardon Attorney of the President of the United States that the assurance given to this court by the United States had not been honoured by reason of the judge's sentence and to seek commutation of the sentence.

[42] For completeness we note the assurance by the State Attorney for the 15th Judicial Circuit including Palm Beach County dated 7 September 2018 to the Crown Solicitor that his assurance as to sentence is binding on all future prosecutors in the State of Florida.

[43] The possibilities of a review of a whole life sentence on appeal and of relief on the sentence in the form of a petition or commutation are reinforced and emphasised by the further Diplomatic Note of the Embassy of the United States of America furnished to this court and dated June 14 2019. That note emphasises the long history of co-operation on law enforcement related issues including extradition between the United States and the United Kingdom:

> "In all of these situations, the United States has fulfilled the assurances it provided. Further, the United States is unaware of a single instance where the Government of the United Kingdom communicated a concern about any such US assurance going unfulfilled. The United States is careful to ensure that it is able to honour any assurances provided to the United Kingdom."

These further sentences in the Diplomatic Note of that date are significant as mitigating factors which were not before the Judge.

[44] We take into account the right of Mr Horne to appeal his sentence within the Florida State system. We note the further submissions of Mr Pribble with regard to the limitations on that right of appeal but nevertheless the existence of such right is a further factor to be taken into account in reducing the risk of a whole life sentence without remission. In that regard Dr McGleenan submitted that Mr Pribble, having accepted that the Court of Appeal in Florida could strike down a sentence where the judge had taken into account an improper consideration, then logically it could also alter the sentence if he or she had failed to take into account a proper and relevant consideration, namely the assurances given to the United Kingdom and to our courts in the course of the extradition. Indeed Mr Pribble acknowledges that the Court of Appeal in Florida had the power to set aside the sentence "for whatever reason".

[45] It may be that that court would not then substitute a sentence itself in accordance with the law and practice of Florida but we cannot think there is any significant risk of the court of first instance ignoring that Appellate Court if its first decision to impose a whole life sentence is found to be unlawful.

[46] We have assessed the possibility of a Motion to Reduce sentence but do not give weight to it as a significant factor.

[47] As indicated briefly above we note that even if, which we conclude is extremely unlikely, a whole life sentence was both imposed and survived the appellate courts of the State of Florida despite the assurances given on behalf of that State, that applications to Federal Courts are also possible.

[48] While we acknowledge that commutation is clearly rarely granted by the Governor of Florida that may well be very different in a case of this kind, necessarily unusual, where a fugitive has been extradited from the United Kingdom back to the State of Florida on foot of assurances given. Clearly if, by an unlikely and unhappy chance those assurances were not honoured we consider that the Governor of the State of Florida could well intervene so as to ensure that the attitude of the courts in this country, and no doubt in other European States, would not be adversely affected by a failure to honour clear assurances given on behalf of the State of Florida by one of its attorneys.

[49] Taking all these factors into consideration we consider the risk of a whole life sentence without possibility of remission being imposed on this citizen of Florida, if convicted of the crime of second degree murder, to be very slight and most unlikely. We consider the possibility of that whole life sentence being maintained on appeal and after consideration by the Governor of Florida and the President of the United States to be wholly negligible. We do not consider therefore that there is a real risk, a more than fanciful risk in counsel's phrase, of this man being subjected to cruel or inhumane and degrading treatment by suffering a whole life irreducible sentence.

[50] We allow the appeal by the Requesting State against the Order for Discharge by the Judge of 8 March 2019. Pursuant to section 106 of the 2003 Act we quash the order for discharge, remit the case to the judge, and direct her to proceed as she would have been required to do if she had decided the question differently at the extradition hearing.