



Neutral Citation Number: [2020] EWHC 3134 (Admin)

Case No: CO/4536/2019

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20/11/2020

**Before:**

**MR. JUSTICE SWIFT**

-----  
**Between:**

**PATRICK JESS**

**Appellant**

**- and -**

**HIGH COURT, IRELAND**

**Respondent**

-----  
-----  
**Florence Iveson** (instructed by Birds Solicitors) for the **Appellant**  
**David Ball** (instructed by the CPS) for the **Respondent**

Hearing date: 4 November 2020  
-----

**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely to be circulation to the parties' representatives by email, released to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:00 am on the 20/11/2020

**Mr JUSTICE SWIFT:**

**A. Introduction**

1. This is an appeal against an extradition order made on 13 November 2019 by District Judge Sarah-Jane Griffiths. The extradition order was made in respect of a European Arrest Warrant (“EAW”) issued on the 21 December 2018 and certified by the National Crime Agency on 18 January 2019. The warrant is an accusation warrant. It contains an allegation of attempted robbery said to have taken place in March 2015. It is alleged that the Appellant was one of two men who tried to rob a woman of her mobile phone. It is said that in the course of the attempted robbery the Appellant dragged the woman to the ground. He was arrested in April 2015. The warrant records that the Appellant admitted the offence but goes on to say that by May 2015 he had absconded.
2. The submission made to the District Judge was that the Appellant’s extradition would be oppressive by reason of his physical and mental condition and therefore contrary to section 25 of the Extradition Act 2003 (“the 2003 Act”), and further that extradition would be in breach of the Appellant’s Convention rights, specifically his rights under Article 8 ECHR, and for that reason barred by section 21A of the 2003 Act.
3. The Appellant left the Republic of Ireland for the United Kingdom in or about May 2015. After arriving in the United Kingdom, he was convicted of three criminal offences the most recent conviction being in February 2018. On 12 August 2018 the Appellant suffered a traumatic brain injury when he was assaulted while on a trip to Skegness. The consequences of this serious injury provide the foundation both for the submission based on section 25 of the 2003 Act and for submission that extradition would be in breach of his Article 8 rights.
4. The Appellant’s submission that extradition would be oppressive or unjust by reason of his health relied on expert evidence in the form of a neuropsychological assessment dated 8 June 2019 prepared by Dr. Michelle Read, a Consultant Clinical Psychologist at Northampton Health Care NHS Foundation Trust.
5. One part of the section 25 submission was that extradition would be oppressive because the Appellant would not be able to understand the proceedings in Ireland without the assistance of an intermediary, and no provision is made under Irish law for intermediaries to be appointed. The District Judge rejected that submission concluding there was no evidence before her that the Irish authorities would not make appropriate arrangements to permit the Appellant to participate in his trial. This point has not formed any part of the submission before me in this appeal.
6. The other part of the section 25 submission concerned the effect on the Appellant’s ill health were he to be imprisoned in Ireland. The District Judge first noted that if the Appellant were convicted, whether or not imprisonment was an appropriate punishment would be a matter for the Irish court. She then concluded that the evidence before her fell “far short” of what was required to make good a section 25 submission. She concluded that the Appellant would receive appropriate medical care if imprisoned in Ireland. She noted that there was no evidence that called into question either the ability or the willingness of the Irish authorities to provide appropriate healthcare to prisoners. The District Judge accepted that, if in prison, the healthcare available to the Appellant would be more limited than the treatment available to him in the community but

recognised that that of itself did not demonstrate that the Appellant would not be provided with adequate medical care.

7. The District Judge also addressed the point also made by Dr. Read that the Appellant suffered from depression and low mood, such that if in prison there could be a risk he would attempt suicide. The District Judge noted that if the Appellant were to be transferred to Ireland, usual steps would be taken by the National Crime Agency to alert the Irish authorities to that risk. She concluded the evidence of the risk of suicide in this case was such that the Irish authorities could take reasonable steps to guard against it. Here too, the District Judge noted that there was no evidence at all that the Irish authorities would fail to take such steps.
8. The Appellant's further submission that extradition would be a breach of his Article 8 rights was also rejected. The District Judge applied the well-known "balance sheet" approach recommended by the Divisional Court in *Polish Judicial Authority v Celinski* [2015] EWHC 1274 (Admin). The District Judge's conclusions at §§55 – 59 of her judgment were as follows:

“55. The RP has lived with his stepson for some time. I give substantial weight to interest of the RP's stepson and to the emotional harm and financial difficulties he would be caused if the RP were to be extradited. Sadly, this is not an unusual consequence in extradition cases. I also bear in mind the interest of the RP's partner and other family members. I have considered in particular the emotional distress that they will suffer if the RP is extradited. I find that there will be emotional distress and some financial difficulties to the RP's partner and stepson, should he be extradited. That said, the RP has been in custody since 19 February 2019 and his partner and stepchild have coped. I note that the RP states that his partner is struggling on benefits. The RP was not working prior to his remand in custody. Therefore, I find that the difficulties that the RP's partner had relying on benefits was the same then as it is now, and is a similar difficulty faced by many who are reliant on benefits.

56. As set out above, the RP does have anxiety and depression and has expressed suicidal thoughts, although he has no plans or intentions to harm himself. That said, Dr. Read concluded that should the RP be extradited, this would increase the risk of a deterioration in his mental health and additional support and monitoring of the RP would be recommended. Dr. Read does not conclude that the RP lacks capacity. Whilst it is likely that the RP will suffer a deterioration in his mental health if extradition is ordered, equally it may not happen, as different people respond in different ways. Further, as set out above, the prison and the JA, and those who are responsible for transporting the RP, all must be given copies of Dr. Read's report, so that they are all aware of the risks in this case. I am also satisfied, again for the reasons set out above, that I do not intend to repeat here, that the presumption is that Irish authorities would discharge their responsibilities to provide RP with appropriate medical

treatment whilst in custody and that they would take steps to prevent the RP from committing suicide. These factors outweigh the risk presented by the RP's mental health condition.

57. In relation to the RP's brain injury and treatment that he requires, the RP is receiving care in prison. Whilst that may not be the same level of treatment that would be available in the community he is being cared for and I find there is no evidence to suggest that the RP would not receive appropriate care and /or treatment if he was in custody in Ireland. Whilst being in custody in the UK, it has no doubt been a difficult experience for the RP, but I find that he has coped.

58. There has been a delay in this case, this weighs in the RP's favour however, the allegation is serious. Further, I give substantial weight to the RP's fugitive status. His attempts to evade justice have significantly contributed to the delay. I remind myself of dicta of the Lord Chief Justice at §39 of *Celinski* that

“the important public interests in upon holding judicial arrangements, and in preventing the UK being a safe haven for a fugitive as *Celinski* was found to be, would require very strong counter balancing factors before extradition could be disproportionate”

Those factors do not exist in this case.

59. Importantly, having carried out the balancing exercise above, I find that the balance is strongly in favour extradition. The RP is sought by the Irish JA for a serious offence. I remind myself that there is a very high public interest in ensuring that extradition arrangements are honoured. The request of the JA should be accorded a proper degree of mutual confidence and respect.”

9. The Appellant sought permission to appeal both on the section 25 ground and on the Article 8 ground. Chamberlain J considered the application for permission to appeal on the papers, and refused it. The application for permission to appeal was renewed at a hearing before Steyn J. She rejected the application for permission to appeal on the section 25, but granted permission to appeal on the Article 8 ground.

## **B. Decision**

10. My approach to the Article 8 ground of appeal will be in accordance with the principles set out by Lord Neuberger at §91-95 of his judgment in *In Re B* [2013] 1 WLR 1911. The question for me is whether the District Judge's conclusion on the application of Article 8 was wrong.

11. The submission on the Article 8 ground of appeal falls into two parts. The first part concerns the effect on the Appellant if he is imprisoned in Ireland. Based on Dr. Read's evidence it is submitted that full rehabilitative care will not be available, and this will be to the Appellant's detriment: for example, his reacquisition of functional skills will be delayed. It is also submitted that the District Judge was wrong to say there was no evidence that the Appellant would not receive appropriate care if in prison in Ireland. The point made is that while held on remand in HMP Wandsworth during these extradition proceedings, the Appellant has not received rehabilitative care. This shows, it is submitted, that it is unlikely such care will be available to the Appellant if he is to be imprisoned in Ireland. The second part of the Article 8 submission is that the District Judge failed to give proper weight to the time already spent on remand. Thus far, the Appellant has been in custody for some 20 months.
12. The Article 8 submission in this appeal does not, therefore, depend on the significance of personal and other relationships the Appellant has established since arriving in the United Kingdom in May 2015. Rather, the interference with the Appellant's Article 8 rights will occur, it is said, if he is either held on remand in Ireland pending trial or is sentenced to a term of imprisonment following conviction at trial and will arise because of the adverse impact that any form of detention will have on his rehabilitation from the brain injury sustained in August 2018. Thus, the submission is not that removal from the United Kingdom pursuant to an extradition order will *per se*, interfere with the Appellant's Article 8 rights. Rather the interference will arise if an Irish court places the Appellant on remand or passes a sentence of imprisonment following conviction. There is one further matter to add. Ms Iveson, who appears for the Appellant in this appeal, accepts that for the purposes of my decision I should and must assume that any decision by the Irish court either to place the Appellant on remand pending trial or to sentence him to imprisonment following conviction will be consistent with his Convention rights. This assumption, which I agree should be made in this case creates problems for the Appellant's Article 8 case. If my premise is that the Irish courts will take decisions that are consistent with the Appellant's Convention rights it is difficult to see what, for the purposes of my decision, could be said to be the act that is the interference with the Appellant's Article 8 rights, and which is to be justified.
13. Even if this problem is put to one side, the evidence in support of the Appellant's case is not strong. The Appellant's factual case rests on the evidence from Dr. Read. She makes the point (at §5.2.2 of her report) that the opportunities for rehabilitative therapy will be fewer in prison than in the community. She refers to "opportunities to engage in functional behaviour" as being limited, and also to "the absence of in-reach from specialist community services". I make two observations on this. First, Dr. Read's report does not explain, specifically, the types of therapy that are appropriate. For example, I assume that the reference to the need for assistance in respect of functional behaviour is to a need for the Appellant to learn again how to do basic, day-to-day tasks to help him look after himself. It would have been more helpful if these matters could have been explained in terms. Likewise, there is no explanation of what are the "specialist community services". I do not doubt that Dr. Read is correct to say that the opportunities to access rehabilitative therapy are more limited if a person is in prison. However, the extent and nature of the disadvantage could only be apparent if these matters were explained in specifics. My second observation is that Dr. Read's comments are not made by reference to the facilities and care available in the Irish prison system. That being so, I cannot accept the submission that the District Judge

was wrong to say there was no evidence before her to suggest that the Irish prison authorities would not provide appropriate medical care for the Appellant. There was no such evidence. Dr. Read's evidence was not and did not purport to be to that effect. I consider the District Judge's conclusion at §57 of her judgment, that if in prison the Appellant would be cared for but might not receive the level of care available to those in the community, to be the correct conclusion on the evidence available to her.

14. As to the second part of the Appellant's submission in this appeal, the significance of delay, the District Judge did take this into account at least so far as concerns the passage of time between the date of offending and the date the Appellant was apprehended pursuant to the EAW. I accept that the District Judge did not make express reference to the time the Appellant has spent on remand since his arrest.
15. The potential significance of time spent on remand is that if considered together with the effect of Article 26 of Framework Decision, it might show that even if the Appellant is returned to Ireland and is convicted, time spent on remand could be equivalent to or greater than any sentence of imprisonment that might be imposed. Thus, the weight attaching to any public interest to extradition could be diminished. In this case a specific enquiry has been made of the Irish authorities asking whether, in light the circumstances of this case including the Appellant's health and the time already spent on remand, his return was still sought. The Irish authorities responded on 28 October 2020 confirming that his extradition was sought. The Appellant submits that this response was "very limited". I disagree. The Requesting Judicial Authority has provided a full answer to the question put to it; there is no reason to doubt that the detailed information provided in support of the question was fully considered. Also, on this point, the Appellant refers to the judgment of the Divisional Court in *Kalinauskas v Prosecutor General's Office, Lithuania* [2020] EWHC 191 (Admin). In that case, at §20 of his judgment Supperstone J stated that he had "... no doubt that if the Appellant was to be sentenced now for the offending he would be immediately released". Whatever the position was in that case does not assist in this case, given the response now provided by the Irish authorities. In these circumstances my conclusion is that real weight continues to attach to the public interest in the Appellant's extradition in accordance with the usual arrangements under the Framework Agreement.
16. Drawing these matters together, I do not consider that the Appellant's extradition would be in breach of his Article 8 rights. The evidence of any relevant interference with the Appellant's Article 8 rights is not strong. As I have already explained, given the way in which this case is put on its facts, the alleged breach of Article 8 is not contingent on the extradition order *per se*, but only what might happen there after once the Appellant has been returned to Ireland. Yet in that regard, I assume, and I am entitled to assume, that any decision by the Irish court either to put the Appellant on remand pending trial or to impose a prison sentence on him following conviction would itself be consistent with his Convention rights. I also consider the District Judge was correct to conclude there was no evidence that the Appellant would not receive appropriate medical care if in prison in Ireland. The one remaining specific matter is the submission that the level of rehabilitative care available to the Appellant if in prison would be less than that which would be available to him in the community. I agree with the conclusion reached by the District Judge: that as a matter of fact it was likely that the level of care would be lower; but that for the purpose of the Article 8 submission even taking that into account, the consequence of extradition would not be a breach of the Appellant's Article 8 rights.

17. For these reasons, this appeal is dismissed.

---