

**THE HIGH COURT**

**RECORD NUMBER 2020/42 EXT**

**BETWEEN**

**MINISTER FOR JUSTICE AND EQUALITY**

**APPLICANT**

**AND**

**PETER MC DONAGH**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 23rd day of July, 2020.**

1. By this application, the applicant seeks an order for the surrender of the respondent to the United Kingdom of Great Britain and Northern Ireland ("the UK") pursuant to a European arrest warrant dated 8th January, 2020 ("the warrant") issued by District Judge Fiona Bagnall as the issuing judicial authority.
2. The warrant was endorsed by the High Court on 10th February, 2020 and the respondent was arrested and brought before the High Court on 4th March, 2020 when he was remanded in custody.
3. I am satisfied that the person before the Court is the person in respect of whom the warrant was issued. This was not put in issue by the Respondent.
4. I am further satisfied that none of the matters referred to in ss. 21A, 22, 23 or 24 of the European Arrest Warrant Act 2003, as amended ("the Act of 2003"), arise and that the surrender of the respondent is not prohibited for the reasons set forth therein.
5. The surrender of the respondent is sought in order to prosecute him in respect of one offence of theft and also to serve the remainder of a sentence of imprisonment imposed on 8th May, 2018 in respect of ten offences of fraud and one offence of possessing criminal property.
6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met. The offence in respect of which it is intended to prosecute him carries a maximum penalty of up to 10 years' imprisonment. The remainder of the sentence he is required to serve amounts to 2 years and 3 months' imprisonment.
7. In relation to the sentence imposed upon the respondent in 2018, part (d) of the warrant indicated that the respondent had attended at his trial for a number of days commencing on 23rd April, 2018, but failed to attend after the close of the prosecution case or thereafter and was convicted in his absence on 8th May, 2018. At part (d) of the warrant, the issuing judicial authority had ticked box 1 to indicate that the respondent had appeared in person at the trial resulting in the decision and had also ticked box 3.4 to indicate that the respondent was not personally served with the decision, but that he would be personally served with the decision without delay after the surrender and when so served he would be informed of his right to a retrial or appeal and would be informed of the timeframe within which he had to request a retrial or appeal, which would be a number of days, the amount of which wasn't stated.

8. The respondent delivered undated points of objection to surrender which can be summarised as follows:-
  - (i) contrary to s. 11 of the Act of 2003, there was insufficient detail in the warrant concerning the offences of which he had been convicted and was required to serve the remainder of the sentence;
  - (ii) it was not possible to establish correspondence with the offence of possession of criminal property;
  - (iii) part (d) of the warrant was unclear as to a right of appeal/rehearing and the requirements of s. 45 of the Act of 2003 were not met; and
  - (iv) the remainder of the sentence which the respondent was required to serve if surrendered would not expire until after the UK had departed from the European Union, although this was not pursued at hearing.
9. By way of additional information dated 11th March, 2020, the UK authorities indicated that the timeframe within which the respondent could appeal his conviction had expired but that he was entitled to apply at any stage for leave to appeal out of time. The additional information also provided further details in relation to the ten fraud offences in respect of which the respondent had been convicted.
10. The UK authorities furnished additional information dated 20th March, 2020 providing further details of the ten fraud offences in respect of which the respondent had been convicted. The additional information of that date set out the principles which would be applied to an application to extend the time for appeal and it was indicated that the caselaw suggested that justice prevails over procedure and the merits of the grounds of appeal would be considered, but an extension would be refused if there was no reasonable prospect of success. It was confirmed that the respondent was represented by a solicitor and counsel throughout the trial including the sentence hearing.
11. When this matter came on for hearing before this Court, no objections to surrender were pursued in respect of the requested surrender of the respondent to face prosecution for the single offence of theft. The issue as regards whether sufficient information had been furnished so as to allow the Court to determine whether correspondence could be made out between the offence of possession of criminal property and an offence in this State was not pursued, and I am satisfied that correspondence exists with the offence of possessing stolen property under s. 18 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. I am satisfied that no issue arises in respect of correspondence between any of the offences referred to in the warrant and offences in this State.
12. As regards the surrender of the respondent to serve the remainder of the sentence, Counsel on behalf of the respondent submitted that on the details furnished in the warrant, box 1 of part (d) had been ticked inappropriately by the issuing judicial authority as the respondent was not present at the sentence hearing, and further that the ticking of

box 3.4 was also not appropriate as it was clear that the respondent did not have a right of appeal or rehearing but merely a right to apply to extend time for same. It was submitted that in those circumstances, the requirements of s. 45 of the Act of 2003 had not been met.

13. A further request for additional information was made by the issuing judicial authority and a reply to same dated 3rd July, 2020 was received. This enclosed a fresh part (d) of the warrant with box 1 ticked to indicate that the respondent had appeared in person at the trial resulting in the decision, but in the alternative box 2 was also ticked to indicate that he had not appeared in person at the trial resulting in the decision, and in which case box 3.2 was also ticked to the effect that the respondent, being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the respondent or by the State, to defend him at the trial, and was indeed defended by that counsellor at the trial. Further information was provided to the effect that the respondent was represented throughout the trial and at the sentencing hearing by solicitor and counsel and that on the day before the respondent had failed to attend the hearing, the trial judge had expressly reminded the respondent that he was required to attend the next day.
14. Counsel on behalf of the applicant submitted that in the re-completed part (d) of the warrant, box 3.2 thereof had been appropriately completed stating that the respondent was aware that his case was ongoing when he decided to absent himself, and further that he had given a mandate to a legal counsellor of his own choosing and was actually represented by that solicitor and counsel throughout the trial including the sentence hearing. In such circumstances, the requirements of s. 45 of the Act of 2003 had clearly been met.
15. Counsel on behalf of the respondent submitted that had the original warrant contained the equivalent of the new part (d), then the respondent could have had no issue with same. However, he submitted that the Court could not simply disregard the earlier certification and that the Court should not be satisfied to rely upon the re-completed part (d).
16. In *Minister for Justice and Equality v. Fiszler* [2015] IEHC 664, Donnelly J. stated at paras. 26-29:-

*"Point (d) 3.2 makes provision for the situation where a person knows of their scheduled, or in other words, their planned trial, and opts to give a mandate to a lawyer to represent him or her at the trial. In those circumstances, the person has waived his or her right to attend at the trial..."*

*In ticking point (d) 3.2 the issuing judicial authority is relying upon the fact of the respondent's awareness of the scheduled trial and that he gave a mandate to a legal counsellor. In all of the information provided to this Court by the issuing judicial authority, which information is not contested by the respondent, it is demonstrated that the respondent was present throughout the trial proceedings from March 2007 up to and including 14th April, 2008. The information provided by*

*the issuing judicial authority establishes that this was an ongoing trial. It is also clearly established that the respondent was represented by legal counsel throughout that period and that he knew this counsel. In May 2008, he left the Polish Republic and came to the island of Ireland.*

*I have no doubt whatsoever on the basis of the information before me, provided by the issuing judicial authority, not contested by the respondent, that the respondent was aware that his trial was ongoing. The respondent was, therefore, aware that there was a scheduled trial – he was present at a trial that was being adjourned from time to time. He may not have been specifically aware of the next date but was aware that there was going to be a further trial date and was therefore aware of his scheduled trial.”*

17. In *Minister for Justice and Equality v. Lipatovs* [2019] IEHC 126, Donnelly J. held at para. 52:-

*“A person who is notified of their rights in respect of being present at a trial and who mandates a person to appear for them at that trial is clearly given notice of both the trial and the fact that the mandate will include any sentencing matter.”*

Donnelly J. rejected the respondent’s contention in that case that, even if he had waived his right to be present at his trial, he had not waived his right to be present at the sentencing, stating at para. 48:-

*“[T]he concept of trial encompasses the sentence hearing. Therefore, if there has been a waiver of the right to be present at the trial, it can be said that there is a waiver of the right to be present at the sentence.”*

18. It should be noted that recital (10) to Council of Framework Decision 2009/299/JHA provides:-

*“The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused where the person concerned, being aware of the scheduled trial, was defended at the trial by legal counsellor to whom he or she had given a mandate to do so, ensuring that legal assistance is practical and effective.”*

19. The issuing judicial authority has furnished additional information following a request for same pursuant to s. 20 of the Act of 2003. That information indicates that the respondent was present at his trial until the close of the prosecution case and then absented himself from same but continued to be represented by solicitor and counsel until the conclusion of the matter including the sentencing hearing. The re-completed part (d) of the warrant has ticked the boxes appropriate to those circumstances. In such circumstances, the issuing judicial authority is not required to provide information in relation to any right of appeal or rehearing. The respondent has not challenged the facts as set out in the warrant and additional information. I am satisfied that it is proper for this Court to accept the

additional information including the re-completed part (d) and that there are no reasonable grounds for questioning the accuracy or validity of the matters set out therein. I am satisfied that the requirements of s. 45 of the Act of 2003 have been met and I dismiss the respondent's objections in that regard.

20. Over the course of the hearing days in this matter, the Court sought the assistance of counsel in respect of issues such as waiver of rights and the interpretation of s. 45 of the Act of 2003. The Court is very grateful to counsel for the written submissions in that regard. However, in light of the additional information furnished by the issuing judicial authority, it was unnecessary to pursue those matters further in argument or in this judgment.
21. I am satisfied that the surrender of the respondent is not prohibited under part three of the Act of 2003.
22. Having dismissed the respondent's objections to surrender it follows that this Court will make an order pursuant to s. 16(1) of the Act of 2003 for the surrender of the respondent to the UK.