

**THE HIGH COURT**

[2021] IEHC 8  
[2018 No. 311 EXT.]

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

**BETWEEN**

**ATTORNEY GENERAL**

**APPLICANT**

**AND**  
**M.C.T.W.**

**RESPONDENT**

**JUDGMENT of Mr. Justice Paul Burns delivered on the 12th day of January, 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 her 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 18th October, 2019, as confirmed in the certificate of the Minister dated 22nd October, 2019 which was completed for the purposes of s. 26(1)(a) of the Act of 1965.
3. In this Court, Quinn J. issued a warrant for the arrest of the respondent on 24th September, 2019 which was duly executed on 7th October, 2019.
4. The documentation received from the requesting state consists of:-
  - (i) a certificate of the Attorney General of the USA, dated 17th October, 2019, certifying that Thomas N. Burrows is, and was at the relevant time, Associate Director of the Office of International Affairs, Criminal Division, USA;
  - (ii) a certificate of Thomas N. Burrows dated 17th October, 2019, attaching the affidavit, with attachments, of Parker S. Kline, USA Attorney, USA Attorney's Office for the Northern District of Mississippi, 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 D.C.; and
  - (iii) an affidavit of Parker S. Kline dated 11th October, 2019, together with the following exhibits: a copy indictment; a copy arrest warrant; a copy of applicable statutory provisions; an affidavit of FBI Special Agent Molly Blythe and photographs of the respondent.
5. The surrender of the respondent is sought in order that she may be prosecuted in the State of Mississippi in respect of a single count of international parental kidnapping.
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 offence in respect of which extradition is sought carries a maximum penalty of 3 years' imprisonment in the requesting state. The corresponding offence in this State carries a maximum penalty of 7 years' imprisonment.
9. I am satisfied that, in accordance with s. 10 of the Act of 1965, the requisite correspondence as between the offence in respect of which extradition is sought and an offence under the law of the State has been established. I find the relevant corresponding offence in this State to be an offence contrary to s. 16 of the Non-Fatal Offences Against The Person Act, 1997, as amended ("the Act of 1997"). I shall return to this issue further herein.
10. I am satisfied that a warrant for the arrest of the respondent, dated 4th December, 2018, was issued by the United States District Court for the Northern District of Mississippi and a certified copy of same is before the Court as exhibited in the affidavit of Parker S. Kline.
11. I am satisfied that an adequate statement of the offence 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 Parker S. Kline and the exhibits thereto, including a copy of the indictment dated 4th December, 2018.
12. I am satisfied that an accurate description of the requested person is set out in the affidavit of Molly Blythe, and in particular the photographs referred to therein.
13. The alleged background to this matter is as follows. The respondent was married to [BC] and the couple separated in March 2017. With respect to the couple's two minor children, who were born in 2008 and 2013 respectively, the Chancery Court of Lafayette County granted the respondent uninterrupted summer visitation and permission to travel to Denmark during the time period of 6th July to 6th August, 2018. The respondent was under court order to return the minor children to the USA by 6th August, 2018. Having taken the children to her native Denmark, the respondent indicated to her husband that she did not intend to return the children to the USA on 6th August, 2018 and did indeed fail to so return them. As a result of this failure, the respondent was found by the Chancery Court of Lafayette County to be in "*wilful, intentional and contumacious contempt*" of that court's order. A final decree of divorce was entered on 11th September, 2018, awarding custody of the children to [BC]. In October 2018, a Danish court ordered that the children should be returned to the USA and to the custody of [BC].
14. On 31st October, 2018, a criminal complaint against the respondent for international parental kidnapping was executed by US Magistrate Judge Roy Percy and on 4th

December, 2018, a federal grand jury in the Northern District of Mississippi returned and filed an indictment charging the respondent as follows:-

*"On or about August 7, 2018, and continuing to the date of Indictment, in the Northern District of Mississippi and elsewhere in and outside the Northern District of Mississippi, [MCTW], the defendant, did retain two minor children outside the United States, with the intent to obstruct the lawful exercise of another person's parental rights, in violation of Title 18, United States Code, section 1204."*

15. An arrangement was made between the respondent and [BC] for the children to be handed over to him in Copenhagen on 6th February, 2019. However, the respondent did not stick to that arrangement, but rather fled Denmark with the children. A criminal investigation was commenced in Denmark but the whereabouts of the respondent could not be established. She had apparently travelled into Germany and then could not be traced further. On 12th September, 2019, the respondent was arrested in Co. Carlow, Ireland, under the Road Traffic Acts following her involvement in a single vehicle road traffic accident. The owner of property damaged in that accident contacted [BC] after carrying out an online search in respect of the respondent and seeing a Facebook alert concerning the missing children. The respondent was arrested on 7th October, 2019 under the Act of 1965 pursuant to a provisional arrest request from the USA.
16. The respondent delivered points of objection dated 11th March, 2020, which may be summarised as follows:-
  - (i) there is no corresponding offence in this State;
  - (ii) if surrendered, the respondent's fundamental rights would not be respected, and in particular:-
    - (a) she would not receive legal aid as an indigent litigant; and
    - (b) she would be exposed to a real risk of being subjected to torture, inhuman or degrading treatment due to detention conditions in Mississippi;
  - (iii) surrender would be oppressive, disproportionate and in breach of the respondent's right to a private and family life;
  - (iv) in circumstances where the Danish authorities had decided not to prosecute the respondent, this Court could infer that there is no evidential basis for her prosecution in the USA; and
  - (v) there is no public interest in the surrender of the respondent.
17. By way of notice of additional points of objection to surrender dated 10th November, 2020, the respondent submitted that surrender should be refused due to delay on the part of the requesting state in seeking surrender.
18. The respondent swore two affidavits herein dated 17th February, 2020 and 10th November, 2020, respectively. In the first affidavit, the respondent set out the

background to her personal and family difficulties. She set out how the family law proceedings in Mississippi had drained her of financial resources. She averred that her husband had ceased paying alimony and child support. She accepted that the court in Mississippi had permitted her to take the minor children to Denmark and to return them to the USA on 6th August, 2018. She set out how she decided to remain in Denmark as she felt she would be better able to deal with the family proceedings in the Danish courts as she would get legal aid. She indicated that proceedings under the Hague Convention were taken against her in Denmark. She participated in those proceedings, including an appeal, and the Danish courts ordered the return of the children to the USA. She stated that she decided not to return the children to the USA as she felt such a return was not in their best interests. She left Denmark and made her way to Ireland with the children. Following the road traffic accident, she arranged with An Garda Síochána to be brought before the High Court in relation to these extradition proceedings on 7th October, 2019. Following her appearance before the High Court in relation to the extradition request, she had to attend a separate High Court sitting in respect of an application under the Hague Convention. The children were escorted to that hearing by representatives of the child and family agency, Tusla. The Hague Convention proceedings went on for a number of days and were compromised by agreement between the parties on 21st October, 2019. As part of the agreement, she agreed to the return of the children to the USA and [BC] gave an undertaking that he would not pursue, facilitate or assist any prosecution against the respondent in the USA or elsewhere arising from the respondent's removal and/or retention of the children from the USA or elsewhere, subject to the legal obligations of [BC] which are outside his control. She alleged her husband had reneged on the said agreement regarding access and was likely to renege on other aspects of the agreement. She expressed her belief that if surrendered, she would most likely be refused bail, would be unable to afford legal representation, would receive a custodial sentence and then be deported. In such circumstances she believed she would be permanently unable to reconnect with her children. She stated that the Danish authorities might also be seeking her extradition.

19. The Court directed that a copy of the respondent's first affidavit be furnished to the US authorities for their comments in respect of same. By letter dated 6th May, 2020, the US Department of Justice reiterated its view that the respondent had been guilty of criminal conduct frustrating the father's parental rights and frustrating the US court order for the return of the children. The US authorities had invested much effort in trying to find the respondent and obtain the return of the children. The respondent had acted in deliberate violation of US and Danish court orders. The letter made it clear that the USA was still seeking the extradition of the respondent.
20. In her second affidavit dated 10th November, 2020, the respondent confirmed that the Danish authorities had indicated that no prosecution was being pursued against her in Denmark. She outlined the difficulties she was having trying to make contact with her children and how she filed an application in the family courts in Mississippi which she hoped to process from Ireland. She stated that since November 2019, she was in a new relationship and intended to marry and had recently suffered a miscarriage.

21. The Court afforded the respondent the opportunity to obtain a legal expert report from a suitably qualified legal practitioner in Mississippi. In an affidavit dated November 2020, Mr. George Lucas averred that he was a retired lawyer with specialised experience and knowledge of criminal law in Mississippi. He retained a licence to practise. He had only come across two previous prosecutions for international parental kidnapping in violation of Title 18 US Code section 1204. He summarised the necessary proofs of commission of the offence as:-

- (i) the existence of a valid order of child custody;
- (ii) a requirement that the child has been or is a resident of the USA;
- (iii) a requirement that the child has been removed or retained in a foreign location in violation of the valid order and that such retention is willingly done; and
- (iv) that the willingness can be proved by circumstantial evidence.

He opined that the fact that the children had been returned would be favourable and of benefit to the respondent but that if convicted, she would likely face a custodial sentence of 10 to 16 months. If held in remand awaiting trial, the conditions are not good but she would be provided with a basic standard of medical care, adequate food and necessities of daily living. Due to the prisons being quite populous, she could be housed alongside prisoners with mental disorders and drug addictions and noise could be a problem in terms of sleep. In his opinion, while the prisons were unpleasant, they were not dangerous for the persons therein. In his opinion and experience, the respondent would be provided with a defence attorney and she would receive a fair trial.

22. In light of the contents of the affidavit of Mr. Lucas, I dismiss the respondent's objections to extradition based upon a perceived risk of breaches of her fundamental rights if surrendered, and in particular her claim that she would be subjected to torture, inhuman or degrading treatment, or that she would be denied legal representation.

23. I also dismiss the respondent's objections to extradition based upon a perceived breach of her right to a private and family life. It is inherent in the extradition process that considerable disruption to the life of the requested person is likely to occur. The respondent has not adduced cogent evidence to show that the inherent disruption to her private and/or family life by her surrender to the USA is of such an exceptional nature that would justify this Court in preventing her surrender. Prior to the alleged commission of the offence, the subject matter of this request, the respondent, was ordinarily resident in the USA. Her minor children have been returned to the USA. She arrived in Ireland sometime after February 2019 and within approximately seven months of arrival, she was brought before this Court on foot of the extradition request. The application herein was adjourned from time to time. Any decisions made by the respondent as regards her private life since October 2019 have occurred in the full knowledge on her part that she was the subject of an extradition request.

### **Correspondence**

24. As regards the issue of correspondence, the applicant submits that the corresponding offence in this jurisdiction is that of parental child abduction contrary to s. 16 of the Act of 1997 which provides:-

- "(1) A person to whom this section applies shall be guilty of an offence, who takes, sends or keeps a child under the age of 16 years out of the State or causes a child under that age to be so taken, sent or kept—*
- (a) in defiance of a court order, or*
  - (b) without the consent of each person who is a parent, or guardian or person to whom custody of the child has been granted by a court unless the consent of a court was obtained.*
- (2) This section applies to a parent, guardian or a person to whom custody of the child has been granted by a court but does not apply to a parent who is not a guardian of the child.*
- (3) It shall be a defence to a charge under this section that the defendant—*
- a) has been unable to communicate with the persons referred to in subsection (1)(b) but believes they would consent if they were aware of the relevant circumstances; or*
  - (b) did not intend to deprive others having rights of guardianship or custody in relation to the child of those rights.*
- (4) A person guilty of an offence under this section shall be liable—*
- (a) on summary conviction to a fine not exceeding [€2,500] or to imprisonment for a term not exceeding 12 months or to both, or*
  - (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 7 years or to both.*
- (5) Any proceedings under this section shall not be instituted except by or with the consent of the Director of Public Prosecutions."*

25. The applicant submitted that on the facts as alleged in the extradition request, the actions of the respondent would amount to an offence contrary to s. 16 of the Act of 1997, and in particular the 'keeping' of a child under 16 years of age out of the state in defiance of a court order and/or without the consent of the father.

26. The respondent relied upon the decision of the High Court in *The Attorney General v. K.M.E. and T.K.E.* [2010] IEHC 203, [2010] 4 I.R. 285, in which Peart J. refused extradition to the USA in respect of a charge of parental abduction under the Texas Penal Code due to a lack of correspondence with an offence in this jurisdiction. He rejected the

proposed correspondence with s. 16 of the Act of 1997. I have considered the judgment of Peart J. at some length and it appears to me that the decision in *K.M.E and T.K.E.* turns very much on its own facts and, in particular, the precise wording of the indictment. At para. 62, Peart J. set out the indictment which charged as follows:-

"[62] ...

*'That [K.M.E./T.K.E.] hereinafter called defendant on or about the 3rd April, 2005, in said county and State, did then and there intentionally and knowingly retain [children], younger than eighteen years of age, when the said defendant knew that said retention violated the express terms of an order of a court disposing of the children's custody...'* (emphasis added by Peart J.)

27. Peart J. considered that the indictment effectively required the court only to take into account the actions of the defendant on that single day, and only alleged retention on that single day as constituting the offence. There was no allegation that the children had been removed from the jurisdiction on that day. In fact, it appeared that the children were removed subsequently from the jurisdiction.

28. In the present case, the indictment alleges:-

*"On or about August 7, 2018, and continuing to the date of Indictment, in the Northern District of Mississippi and elsewhere in and outside the Northern District of Mississippi, [MCTW], defendant, did retain two minor children outside the United States, with the intent to obstruct the lawful exercise of another person's parental rights, in violation of Title 18, United States Code, Section 1204."*

29. The offence alleged in the indictment is a continuing offence, from 7th August, 2018 to the date of the indictment (4th December, 2018) of retaining the children outside of the jurisdiction to obstruct the lawful exercise of another's parental rights. Would such alleged action on the part of the respondent constitute an offence under s. 16 of the Act of 1997? It seems clear to me that it would, as it would consist of "keeping" the children, who were under 16 years of age at the relevant time, out of the State during that *period "in defiance of a court order"*, as the lawful exercise of the other person's parental rights derived from a court order in this instance. Moreover, it might also be regarded as "keeping" the children out of the State *"without the consent of each person who is a parent"*.

30. I should also point out that while it is not necessary for the Court to look beyond the indictment in this case, I am not convinced that the Court could not consider the summary of the evidence provided in the extradition request in order to determine the issue of correspondence between the offence alleged in the indictment and an offence under the law of this State. In *KME and T.K.E.*, Peart J. expressed the view that the court should not look to the documents furnished other than the indictment in order to find correspondence between an offence in this jurisdiction and an entirely different offence from that charged in the indictment preferred against the respondent. I do not consider

this Court would be precluded from considering the summary of evidence provided in respect of the offence charged in the indictment in order to determine whether that offence corresponds with an offence under the law of this State.

31. I dismiss the respondent's objection to surrender based upon a lack of correspondence.

**Decision of Denmark not to Prosecute**

32. I find no merit in the objection to surrender based upon a decision by the Danish authorities not to prosecute the respondent in respect of the removal of the children from Denmark. In fairness to counsel for the respondent, this point was not pursued with any vigour.

**Lack of Public Interest in Surrender**

33. Similarly, I find no merit in the objection to surrender based upon an alleged lack of public interest in the surrender of the respondent. The removal of children from one jurisdiction to another in breach of parental rights or court orders is a matter of important public interest in this State as in many others. This State has entered into an international convention in respect of same. Such conduct is criminalised in this jurisdiction. The USA and many other states have also entered into international agreements in that respect and have also criminalised such conduct. Clearly, such matters are matters of legitimate and significant public interest. Moreover, Ireland has entered into extradition arrangements with the USA and there is a clear and significant public interest that Ireland should abide by, and give effect to, its international obligations. It is in the public interest that extradition arrangements between this State and other states are properly adhered to.

**Delay**

34. I am satisfied that there has been no culpable delay on the part of the requesting state in seeking the surrender of the respondent or in the prosecution of these proceedings as could possibly justify this Court in refusing the order sought.

**Defects in the Documentation**

35. Although not specifically set out as a point of objection in the notices of objection filed, at hearing, counsel on behalf of the respondent relied upon what were described as defects in the documentation before the Court as a ground for refusing the order sought. I dismiss that submission/objection to surrender.

36. It was submitted that the copy of the USA arrest warrant furnished did not bear a seal authenticating its origin or authenticity, or a certification that it was a true copy. However, the copy does in fact contain a certification as follows: "*I hereby certify that the foregoing is a true copy of the original thereof now in my office*", and the certification is signed and dated. The respondent maintained that because the certification stamp was at the top of the document and not at the bottom, it effectively did not certify anything of relevance. Issue was also taken with the signature. I reject these points. I am satisfied that in certifying the copy of the arrest warrant, the deputy clerk intended to, and did in fact, certify the entire contents of the copy of the warrant.



37. It was submitted that the "swearing clause" of the affidavit of Parker S. Kline dated 11th October, 2019 contained no reference to exhibits or to the exhibits being true copies of originals. The body of the affidavit contains references to each exhibit being attached to the affidavit and the affidavit was duly sworn before a judge. I am satisfied that the exhibits were attached to the affidavit as stated therein when sworn before the US Magistrate Judge.
38. It was submitted that as set out in the order of the High Court dated 7th October, 2019, there is reference to a US arrest warrant issued on 31st October, 2018, whereas the affidavit of Parker S. Kline at paragraph 9 refers to a criminal complaint of that date at para. 7 and refers to an arrest warrant of 4th December, 2018. I am satisfied that the reference to an arrest warrant of 31st October, 2018, in the order of the High Court dated 7th October, 2019, is a mistake and that the only arrest warrant contained within and referred to in the documentation before the Court was the arrest warrant of 4th December, 2018. Counsel on behalf of the respondent did not suggest any other arrest warrant had been issued.
39. It was submitted that according to the affidavit of Parker S. Kline, once a criminal complaint is filed, the case for an indictment must be presented to a grand jury within 30 days. It was further submitted that as the criminal complaint was made on 31st October, 2018 and the grand jury did not return the indictment until 4th December, 2018, the 30-day period had not been complied with. In fact at para. 4 of his affidavit, Parker S. Kline states that once the criminal complaint is filed and the defendant becomes aware of it, the government has 30 days to present the case to the grand jury. There was no suggestion from the respondent that she was aware of the criminal complaint at such time so as to render the 30-period operative and expired prior to 4th December, 2018. Furthermore, it may be that the complaint was first presented to the grand jury on a date prior to 4th December, 2018, or it may be that under USA law that period may be extended or that a warrant issued outside that period may still be effective. Certainly, the time period within the making of the criminal complaint and the return of the indictment was not regarded as a bar to the grand jury returning the indictment. The legal expert retained by the respondent has not commented upon same. It is not the function of this Court to act as a court of judicial review as regards the USA warrant. On its face, the warrant appears to be in order and I reject the respondent's objections as regards the legality of the arrest warrant.
40. For the purposes of completeness, I should state that as regards the various issues raised by the respondent in respect of alleged defects in the documentation, I am satisfied that any such defects fall within the ambit of s. 29(2) of the Act of 1965, and that no injustice will be caused to the respondent by making an order under s. 29(1) of the Act of 1965, despite the existence of any such defects.

### **Conclusion**

41. Having dismissed the respondent's objections to surrender, being satisfied that there is no bar to the making of the order and being satisfied that the requirements for the making of an order have been met, 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 her extradition to the USA.