

THE HIGH COURT

RECORD NUMBER 2020/063/EXT

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

MERZA ABDUL RAHMAN AHMAD

RESPONDENT

Judgment of Mr Justice Paul Burns delivered on the 10th June 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 18th of December 2019 ("the warrant") issued by District Judge Curtis as the issuing judicial authority.
2. The warrant was endorsed by the High Court on 2nd March 2020 and the respondent was arrested and brought before the High Court on 25th May 2020.
3. I am satisfied that the person before the court is the person in respect of whom the warrant was issued. This is not put in issue by the respondent
4. I am satisfied that none of the matters referred to in sections 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 UK seeks the surrender of the respondent for the purpose of prosecuting him in respect of two offences being an offence of sexual assault which carries a maximum penalty of 10 years imprisonment and an offence of failing to surrender which carries a maximum penalty of one year imprisonment. I am satisfied that the minimum gravity requirements of the Act of 2003 are met.
6. I am satisfied that correspondence exists between the offences in respect of which the surrender of the respondent is sought and similar offences in this jurisdiction. Such correspondence was expressly conceded on behalf of the respondent.
7. The respondent delivered points of objection to his surrender on 4th June 2020. He objected to his surrender on account of the delay that had occurred between the date of the alleged offence and the seeking of the warrant. It was submitted that the court should seek further information from the issuing judicial authority to explain this period of delay. It was also suggested that this court seek an undertaking from the United Kingdom that he would not be deported to France.
8. At the hearing Counsel on behalf of the respondent indicated at the outset that he only had one substantial point to argue, namely the substantial delay which had occurred. The issue re deportation to France was not pursued.
9. On behalf of the respondent it was submitted that there had been a very significant delay between the date of the alleged offence and the date of issue of the warrant such that

this court should refuse surrender or seek an explanation for same from the issuing judicial authority. No particular prejudice was relied upon by the respondent and no affidavit was filed by on behalf of the respondent in respect of the points of objection.

10. On behalf of the applicant it was submitted that delay in itself was not a reason for refusal of surrender and that in addition to egregious delay the respondent would have to establish some particular breach of his rights under the European Convention on Human Rights or the Constitution. It was submitted he had not done so. It was further submitted that it was only in truly egregious and exceptional cases would refusal of surrender take place on grounds of delay.

11. In the recent Supreme Court decision in *Minister for Justice and Equality v. Vestartas* [2020] IES C 12, at paragraph 89, McMenamin J. stated:

"Unless truly exceptional or egregious, delay will not alter the public interest [in surrender], although there may come a point where the delay is so lengthy and unexplained as to constitute an abuse of process, or to raise other constitutional or ECHR issues."

12. In the present case the applicant is alleged to have committed the offence of sexual assault between 11th of January and 11th February 2011. He was arrested and interviewed in respect of same. A decision to charge him was made on 20th May 2011 and in due course he appeared at Grimsby magistrates court where his case was sent to the Crown Court sitting at Grimsby. At the first hearing date in the Crown Court on 9th August 2011 the respondent failed to appear. Thus he effectively absconded in the course of the UK proceedings for that offence. In the course of a bail hearing in this matter evidence was given that the respondent had been in France for some of the period since absconding and had applied for asylum in France. Evidence was also given that on his arrest in this jurisdiction he was in possession of a Ukrainian driving licence. There was also evidence of the use by the respondent of aliases. The respondent has failed to set out any particular prejudice or peculiar circumstances which might bring this matter within the realm of being truly exceptional or egregious. In the circumstances I do not feel it is necessary to make a request to the issuing judicial authority for additional information and in particular for an explanation as to any delay.

13. I am satisfied that given the circumstances of this matter any lapse in time in this matter is not such as would justify this court in refusing to make an order for the surrender of the respondent and I dismiss the respondent's sole objection in that respect.

14. I am satisfied that the surrender of the respondent is not prohibited by the provisions of part 3 of the Act of 2003.

15. It follows from the foregoing that this court would make an order, pursuant to s.16 of the Act of 2003, for the surrender of the respondent to the UK.