

THE HIGH COURT

[2022] IEHC 636

[2021 No. 150 EXT.]

BETWEEN

MINISTER FOR JUSTICE AND EQUALITY

APPLICANT

AND

ANTHONY KNOWLES

RESPONDENT

JUDGMENT of Ms. Justice Caroline Biggs delivered on the 27th day of July, 2022

1. By this application, the applicant seeks an order for the surrender of the respondent to The Kingdom of Great Britain and Northern Ireland pursuant to a Trade and Cooperation Agreement Warrant (“the TCA warrant”) dated the 19th of March 2021. The TCA warrant was issued by District Judge George Conner, sitting at Laganside Court, Belfast, as the issuing judicial authority.
2. The TCA warrant seeks the surrender of the respondent in order to prosecute him in respect of alleged Assault, Threats to Kill, Cruelty and Dangerous Driving-type offences.
3. The TCA warrant was endorsed by the High Court on the 9th of June 2021 and the respondent was arrested and brought before the High Court on the 9th of March 2022, on foot of same.
4. I am satisfied that the person before the Court, the respondent, is the person in respect of whom the TCA warrant was issued. No issue was raised in that regard.

5. I am satisfied that none of the matters referred to in ss. 21A, 22, 23 and 24 of the European Arrest Warrant Act, 2003, as amended (“the Act of 2003”), arise for consideration in this application and surrender of the respondent is not precluded for any of the reasons set forth in any of those sections.

6. I am satisfied that the minimum gravity requirements of the Act of 2003 have been met, and that each of the offences in respect of which surrender of the respondent is sought carries a maximum penalty in excess of twelve months’ imprisonment.

7. The decision on which the TCA warrant is based is detailed at Section B. The warrant is based upon the decision of 28 warrants of arrest issued on the 19th of March 2021 in respect of 28 offences. It is stipulated that this is an accusation warrant.

8. Section C of the TCA warrant identifies the potential sentences which may be imposed in respect of each of the offences:

- (i) Common assault – Contrary to Common Law and Section 47 of the Offences Against the Person Act, 1861 – a person is liable to a term of imprisonment not exceeding 2 years.
- (ii) Threats to Kill – A person is liable to a term of imprisonment not exceeding 10 years.
- (iii) Causing Grievous Bodily Harm – A person is liable to a term of imprisonment for life.
- (iv) Dangerous Driving – A person is liable to a term of imprisonment not exceeding 5 years.
- (v) Cruelty to Persons under 16 – A person is liable to a term of imprisonment not exceeding 10 years.

9. Section E details the offences for which the respondent is sought to be prosecuted. There are 28 offences in total.

- (i) In relation to Offences 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 15, 23, 25, 26, 27 and 28, correspondence can be established with the offence in this jurisdiction of Assault causing Harm, contrary to Section 3 of the Non-Fatal Offences Against the Person Act, 1997.
 - (ii) In relation to Offences 6, 7, 13, 16, and 24, correspondence can be established with the offences in this jurisdiction of Threats to Kill or Causing Serious Harm contrary to Section 5 of the Non-Fatal Offences Against the Person Act, 1997.
 - (iii) In relation to Offence 17, correspondence can be established with the offence in this jurisdiction of Dangerous Driving, contrary to Section 53 of the Road Traffic Act, 1961 (as amended).
 - (iv) In relation to Offence 18 and 22, correspondence can be established with the offence in this jurisdiction of Assault, contrary to Section 2 of the Non-Fatal Offences Against the Person Act, 1997.
 - (i) In relation to Offence 19, 20 and 21, correspondence can be established with the offence in this jurisdiction of Cruelty to Children, contrary to Section 246 of the Children Act, 2001.
- 10.** As surrender is sought to prosecute the respondent, no issue arises under Section 45 of the Act of 2003.
- 11.** Section H of the TCA warrant has not been completed; however, it is apparent that for the Offence of Causing Grievous Bodily Harm, the respondent is liable on conviction to imprisonment for life. The respondent will face two counts of this offence. Appropriate assurances were provided by way of a response to a Section 20 request. This Court was advised that the issuing judicial authority will review the penalty imposed on request after at least 20 years, and will encourage the application of measures of clemency, to which the

person is entitled to apply for under the law or practice of the issuing state, aiming at a non-execution of such penalty.

12. The respondent objected to surrender on the following grounds:

- The respondent awaits proof to the satisfaction of this Court in respect of all matters of law and fact to which the Court must make documentation prior to the making of an Order under Section 16 of the European Arrest Warrant Act 2003 (as amended).
- The respondent respectfully submits that his surrender in this matter is prohibited under Section 37 of the European Arrest Warrant Act 2003 (as amended) in circumstances where such surrender would be in breach of his right to respect for his private and family life and bodily integrity. It appears that the respondent is a vulnerable person who has been diagnosed with brain aneurysms which appear to be causing him profound cognitive issues. In this regard, the respondent will rely on various medical and psychiatric reports.

13. The respondent's solicitor swore an affidavit dated the 24th of March 2022 wherein he averred to the following:

- That on the 19th of March 2022, accompanied by Junior Counsel briefed in the matter, he attended Cloverhill prison where he had a consultation with the respondent.
- That at the outset of the consultation, the respondent informed him that he had been diagnosed with 3 brain aneurysms and was HIV Positive. He stated that he was seriously ill, and had been attending various hospitals - The Mater Hospital, St James' Hospital and Beaumont Hospital - for treatment for his various illnesses.
- That it quickly became apparent that the respondent appeared to suffer from a cognitive impairment insofar as he stated that he could not remember when he had

been so diagnosed, and that he could not remember the details of any medical practitioners who had been treating him. He also could not remember details such as how long he had resided at his address prior to his arrest, which he stated was the Ripley Court Hotel, Dublin 1.

- That respondent could not provide any details as to the manner in which he came into the care of the HSE, as he informed he was, except to say that he had full-time carer, who was a man called “Dean”. The respondent was unable to give clarity to any further details which were sought of him.
- That the respondent indicated that he was estranged from his mother and the rest of his siblings who reside in the Dublin 9 area, and he that he did not wish his solicitor to try to contact anyone on his behalf.
- That it was clear that throughout the consultation, the respondent's concentration levels were well below what could be normally expected.

14. Resulting from the above, the respondent’s solicitor was concerned about the cognitive ability of the respondent, his ability to engage with his legal advisors, his ability to comprehend the nature of the proceedings under the European Arrest Warrant procedure, his ability to make judgments in respect of same, and his ability to give appropriate instructions to his legal advisors.

15. This case was therefore adjourned to await expert reports in relation to the respondent’s ability to comprehend the proceedings, and to make judgments concerning various aspects of the proceedings and to give appropriate instructions.

16. The following reports were placed before the Court:

- (i) Psychological Assessment Report prepared by Hannadi Al Hassan, Assistant Forensic Psychologist and Dr. Patrick Randall, Director of Service, Forensic Psychological Services dated 28th of April 2022.

- (ii) Addendum to Psychological Report prepared by Dr. Patrick Randall, Director of Service, Forensic Psychological Services, dated 6th of May 2022.
- (iii) Psychiatric Report, prepared by Dr. Sally Linehan, Consultant Forensic Psychiatrist, National Forensic Mental Health Service, Central Mental Hospital, dated 4th of July 2022.
- (iv) Psychological Assessment Report prepared by Dr. Patrick Randall, Director of Service, Forensic Psychological Services, date unknown, however it is authored post Dr. Linehan's report.

17. In their initial reports dated the 28th of April 2022 and the 6th of May 2022, Ms. Al Hassan and Dr. Randall assessed the respondent as having an acquired brain injury and as meeting the criteria for a mild intellectual disability following a recent psychological assessment of the respondent, by them. Dr. Linehan was then engaged by the applicant to provide her own assessment on the respondent and comment of the findings of Dr. Randall and Ms. Al Hassan.

18. Dr. Linehan observed in her report dated the 4th of July 2022, as follows:

“16.1 Mr Knowles has a long history of alcohol and drug misuse. His general practice records reveal a history of excessive alcohol consumption and misuse of prescribed medications.

16.2 In my opinion, Mr. Knowles is an unreliable historian. I did not find any evidence to corroborate his account of having sustained a brain injury during an accident on a bus in 2016. His Emergency Department medical records pertaining to that incident reveal no evidence that he had sustained a head or brain injury at that time. A review of his medical records also reveals evidence of a discrepancy between the reported severity of his complaints and objective findings of medical staff on a number of occasions.

16.3 Mr Knowles was assessed as having an acquired brain injury and meeting criteria for a mild intellectual disability following a recent psychological assessment by Forensic Psychological Services. However, in the absence of any medical records supporting the diagnosis of an acquired brain injury, or any collateral information to support a diagnosis of an intellectual disability, it is my opinion that the conclusions reached by Dr. Randall and Ms. Al Hassan concerning Mr. Knowles' cognitive function and the possibility of malingering should be interpreted with caution. I would respectfully suggest that Dr. Randall and Ms. Al Hassan should be provided with a copy of Mr. Knowles' medical records to assist them with their assessment.

16.4 In my opinion Mr. Knowles does not suffer from a mental illness. I was satisfied that he did not require referral to prison in-reach psychiatry services at the time of my interviews with him.

16.5 I was satisfied at the time of my interviews with Mr. Knowles that he understands the nature and purpose of his legal proceedings. I was also satisfied that he has the capacity to comprehend the proceedings and to make judgments concerning the various aspects of the proceedings in respect of which his judgment is required. I am satisfied that he can understand the nature, effect and consequences of decisions made by him in the course of the proceedings. I am also satisfied that he is capable of giving appropriate instructions to his legal representatives.”

19. This Court directed that Ms. Al Hassan and Dr. Randall be furnished with the report from Dr Linehan dated the 4th of July 2022 and that they would provide a further report to the Court dealing with same. That updated report, from Dr Randall, though undated was furnished to the Court on 18th July 2022.

20. Having read this updated report, and the earlier report from Dr. Linehan, it is now

apparent that both Dr. Linehan and Dr. Randall agree that the respondent has the ability to comprehend the legal issues he faces, and that he has the ability to make judgments concerning various aspects of the proceedings in respect of which his judgment is required. Furthermore, it is clear that the respondent understands the nature, effects and consequences of the judgments made by him, and has the ability to express these and give appropriate instructions to his legal team.

21. The test to be applied in EAW cases dealing with issues of incapacity, is the civil test set out in *Nolan v. Carrick* [2013] IEHC 523. Dunne J., having reviewed both Irish and English authorities, and the presumption of capacity, set out the following test at para. 117; -

“[W]as the defendant’s cognitive ability impaired to the extent that he did not sufficiently understand with the assistance of such proper explanation from legal advisors and such experts as the nature of the case may have required, the issues on which his decision was likely to be necessary, the nature and effect of the decisions made in the course of the litigation, and the consequences of the decisions made by him for the litigation at that time?”

22. In this Court’s view, in circumstances where the respondent is an entirely unreliable historian, and in circumstances where the expert evidence is unequivocal, the respondent’s cognitive ability cannot be said to be so impaired.

23. I am satisfied that surrender of the respondent is not precluded by reason of Part 3 of the Act of 2003 or another provision of that Act.

24. It, therefore, follows that this Court will make an order pursuant to s. 16 of the Act of 2003 for the surrender of the respondent to The Kingdom of Great Britain and Northern Ireland.