

Judicial Communications Office

21 June 2022

COURT DISMISSES CHALLENGE TO EXTRADITION WARRANT

Summary of Judgment

Mr Justice Colton, sitting today in the High Court in Belfast, held that a warrant to extradite Robert Duffy from the Republic of Ireland to Northern Ireland to serve the remainder of a life sentence imposed in 1996 is lawful.

Robert Duffy (“the applicant”) was sentenced to life imprisonment in July 1996 following conviction for murder (he was involved in a planned IRA assassination of a director of a building company who undertook construction work for the security services). He served four years of that sentence before being released on licence in July 2000 pursuant to section 6 of the Northern Ireland (Sentences) Act 1998 (“the 1998 Act”) which was introduced as part of the early release arrangements under the Belfast/Good Friday Agreement. One of the conditions of his release was that he did not become a danger to the public.

On 14 January 2008, the applicant pleaded guilty at the Central Criminal court in Dublin to attempted murder and possession of a firearm relating to an altercation in a bar in Dundalk in March 2007. He was sentenced on 1 April 2008 to life imprisonment. Following that conviction, the Secretary of State for NI suspended his licence in this jurisdiction on the basis that he believed the applicant had become a danger to the public and his case was referred to the Sentence Review Commissioners (“SRC”) for consideration under section 9(3) of the 1998 Act. On 7 February 2012, the SRC revoked the applicant’s licence.

The applicant is due for release from prison in the Republic of Ireland in the near future. On 8 April 2022 a District Judge sitting at the Magistrates’ Court in Belfast issued a warrant for the extradition of the applicant from the Republic of Ireland to Northern Ireland under section 142 of the Extradition Act 2003 (“the 2003 Act”) for the purpose of serving the remainder of sentence imposed in 1996 in respect of the murder offence. The applicant challenged the warrant arguing that in exercising his discretion under section 142 of the 2003 Act the District Judge failed to take into account public law obligations. The challenge was based on the following arguments:

- The warrant should not have been granted without the District Judge making further inquiry as the revocation decision was made 10 years ago on the basis of an assessment of risk at that time and that the authorities in the Republic of Ireland deemed it safe to release the applicant;
- The delay in bringing the application for the warrant constituted an abuse of process and a breach of the applicant’s article 6 ECHR rights.

Counsel for the applicant relied on the decision in *Hughes’ (Andrea) Application* [2021] NIQB 113 where the court reinforced the general obligations on persons exercising judicial functions in the issuing of warrants (in that case a search warrant) by stating: “Lay Magistrates must fearlessly interrogate applications presented to them in such a manner as the particular context dictates. Slavish, unquestioning acceptance of everything presented to them both in writing and orally by the applying police officer would entail dereliction of their solemn judicial duty”. Counsel submitted

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that the District Judge should therefore have made further enquiries about whether the applicant remained a risk to the public in light of the intervening 10 years and the fact that the authorities in the Republic of Ireland considered he was safe to be released.

The court said the starting point was section 142 of the 2003 Act. In exercising his power whether or not to issue a warrant the District Judge must look at the statutory criteria set out in subsection (2A) namely the conditions that:

- the person has been convicted of an extradition offence by a court in the UK;
- his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or another form of detention imposed in respect of the offence; and
- either a domestic warrant has been issued in respect of the person or the person may be arrested without a warrant.

The court said it was clear from the application, and was not in dispute, that all of the conditions in subsection (2A) had been met: “By signing the warrant, the District Judge was adopting the content [of the application for the warrant] as reflecting his reasons”. The court then considered whether it could be said the District Judge had acted unlawfully or ultra vires given that the statutory criteria were clearly met. Counsel for the applicant contended that the District Judge should have made further inquiry in light of the delay and, in particular, should make some attempt to establish whether or not the applicant was still considered a risk to the public. The court said this conflated two different statutory schemes:

“It is not the function of the District Judge to make any assessment on risk. This is the role of the Sentence Review Commissioners under the Northern Ireland (Sentences) Act 1998 and the role of the Parole Commissioners when a tariff is set for the applicant’s life sentence. It will be seen that the issues raised by the applicant in terms of whether he remains a risk to the public are precisely of the kind he will be permitted to argue before the SRCs pursuant to this rule.”

The court considered that the applicant clearly fulfilled the conditions set out in the section 142(2A) of the 2003 Act, which allowed for the warrant to be issued. It said the warrant had not been granted on an “out of date risk assessment” but on the basis of a lawful decision of the SRC, endorsed by High Court in an earlier judicial review application of that decision. The court also considered that there would be no statutory basis for making the enquiries suggested by counsel for the applicant and said they were clearly impractical and unrealistic.

The court concluded that there was no merit in any of the grounds of challenge and that the issuing of the warrant was perfectly lawful and in accordance with the statutory provisions. It said the warrant was made on the basis of a comprehensive application, addressing all the statutory criteria necessary for the issuing of the warrant and in the court’s view was clearly lawful:

“In light of this the proper procedure now is for the applicant to be extradited to this jurisdiction in accordance with the warrant where he can exercise his statutory rights to apply for release should he be minded to do so. The application for a judicial review is therefore refused.”

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NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

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