Neutral Citation Number: [2022] EWHC 194 (Admin)

Case No: CO/1194/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 02/02/2022

Before:

MR JUSTICE CHAMBERLAIN

- -

Between:

STEPHEN BULLMAN	**App**
- and –	
HIGH COURT IN DUBLIN (IRELAND)	**Respo**

- -

- -

Saoirse Townshend (instructed by **Taylor Rose MW**) for the **Appellant**

Stefan Hyman (instructed by the **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 19 January 2022

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Approved Judgment

Mr Justice Chamberlain :

Introduction

1
The appellant Stephen Bullman appeals pursuant to s. 26 of the Extradition Act 2003 ("the 2003 Act") against a decision on 26 March 2021 by District Judge Ezzat ("the judge"), sitting at Westminster Magistrates' Court. The judge ordered the appellant's extradition to the Republic of Ireland under a European arrest warrant ("EAW") issued on 16 March 2020 seeking his surrender for trial on an indictment containing three counts of rape.

2
Because the appellant was arrested on 13 May 2020, before the end of the implementation period in the Withdrawal Agreement between the EU and the UK, the provisions of Council Framework

Decision 2002/584/JHA apply: see Polakowski v Westminster Magistrates' Court [2021] EWHC 53 (Admin), [2021] 1 WLR 2521.

Reporting restrictions

3
The appellant is sought for offences of rape. If the proceedings were in this jurisdiction, s. 1 of the Sexual Offences (Amendment) Act 1992 ("the 1992 Act") would prohibit the publication of any matter likely to lead members of the public to identify the complainant during her lifetime. As the proceedings are in Ireland, there is no such prohibition. However, in Short v Falkland Islands [2020] EWHC 439 (Admin), [2020] 4 WLR 68, the Divisional Court (Irwin LJ and Lewis J) held at [6] that an order could be made protecting the identity of a complainant in an extradition case involving a sexual offence. Such an order could be made under the Human Rights Act 1998 to avoid unjustified interference with the complainant's rights under Article 8 ECHR.

4
The judge below made an order restricting publication of the name of the complainant or any other information by which she may readily be identified. I consider that he was right to do so. Parliament has recognised the public interest in protecting the anonymity of those making criminal complaints of rape or sexual assault in this jurisdiction. The legislature of the Republic of Ireland has done the same for proceedings in Ireland in s. 7(1) of the Criminal Law (Rape) Act 1981 ("the Irish Act of 1981"), subject to a power to lift the restrictions in limited circumstances. In my judgment, there is a powerful public interest in the English court making an order which would accord the same protection to a rape complainant as she would have in English or Irish proceedings for the same offence. I will therefore extend the order made by the judge below. The order will adopt the formula in s. 1 of the 1992 Act. It will therefore prohibit the publication of any matter likely to lead members of the public to identify the complainant during her lifetime.

5
The name of the appellant has not hitherto been the subject of any reporting restriction. Nevertheless, at the hearing of this appeal, a representative of the press raised the possibility that publication of the name of the appellant could lead indirectly to the identification of the complainant (given that the offences in this case were rapes said to have taken place in the context of a relationship). This prompted an application by Saoirse Townshend, who appears for the appellant, for an order restricting publication of the name of the appellant as well.

6
An order restricting publication of the name of an appellant in extradition proceedings would be an unusual derogation from the principle of open justice. I indicated that I was prepared to make such an order on an interim basis, but invited Stefan Hyman, for the respondent, to file further submissions on this question, having taken instructions from the Irish authorities.

7
On the basis of Mr Hyman's submissions, made on instructions from the Director of Public Prosecutions in Ireland, it appears that Irish law accords anonymity not only to complainants but also to persons accused of rape and sexual offences, subject again to a power to lift the anonymity in limited circumstances: s. 8 of the Irish Act of 1981. In this respect, the law of Ireland differs from that of England and Wales. In Short , the Divisional Court rejected an application to restrict publication of the identity of the appellant, saying this at [4]:

“it would only be in exceptional circumstances that reporting restrictions should be imposed preventing the identification of a person accused of crimes: see In re Press Association [2013] 1 WLR 1979. We take a similar approach in relation to extradition proceedings. The policy restrictions which determine that criminal defendants should be identified save in very exceptional circumstances must be taken to apply with equal force to those sought for extradition to face criminal charges.”

8

Short was not a case in which the law of the requesting state accorded anonymity to a defendant as of right. The Divisional Court’s judgment does not, therefore, deal with a question which potentially arises in this case: whether it would be proper for an English court to make an order giving effect to the Irish public policy that defendants in rape and sexual assault cases should be anonymous. I say that the issue arises “potentially” because Mr Hyman’s and Ms Townshend’s application for an order anonymising the appellant in this case was made on the basis of the risk of indirect identification of the complainant, rather than to protect the appellant’s own right to anonymity under Irish law. Nonetheless, I should explain why I do not consider that the general right accorded by Irish law to defendants in rape and sexual assault cases provides any basis for restricting publication of the appellant’s name here.

9

The current extradition proceedings are before a court in England. They are quite separate from the proceedings before the courts of the requesting state. I am determining a dispute between the requested person and the requesting state, not acting as agent for the latter. In this jurisdiction, there is no general principle that those accused of crimes are entitled to anonymity. Those subject to extradition proceedings can, in general, expect to be named. Short establishes that there is jurisdiction to restrict publication of an appellant’s name, but also that the jurisdiction is to be used sparingly. Special justification would have been shown to justify a derogation from the principle of open justice. The fact that the requesting state routinely affords anonymity to persons accused of the species of offence with which the requested person is charged would not suffice to justify such a derogation in this case.

10

The basis on which the application to restrict publication of the appellant’s name is pursued, both by Mr Hyman and Ms Townshend, is that such publication would risk indirectly identifying the complainant. There are, no doubt, many cases in which the identification of a person accused of the rape or sexual assault of a complainant with whom he was at the time in a relationship would indirectly identify the complainant. The paradigm case is where the requested person and the complainant were married. Even if they are no longer married, publication of the name of the appellant might allow identification of the complainant. Cases where the requested person and complainant were in a relationship might also give rise to the risk of identification, depending on the risk that members of the public would know of such a relationship.

11

Mr Hyman submitted, on instructions, as follows:

“The Gardaí have concerns that, if the requested person’s name was published, that could lead to members of the public identifying the complainant... That is the case as the requested person and complainant are former partners and the complainant’s children are aware of that relationship.”

12

I accept that this is the bona fide assessment of the Gardaí. In my judgment, however, it does not establish a risk of indirect identification that is sufficient to justify a derogation from the ordinary principle that appellants in extradition proceedings are named.

13
First, there will always be some risk that the publication of a judgment in extradition proceedings will enable some members of the public to identify a complainant. Even if the appellant and complainant were both anonymised, those who know the complainant well may be able to guess the identity of the complainant from the facts recorded in the judgment. If it were necessary to avoid any risk of identification of the complainant, it would be impossible to report much, if any, of the facts of the case. Deciding which elements of the facts to exclude involves an exercise of judgment on the part of those reporting the case and on the part of the Court too. By analogy with the case law under s. 1 of the 1992 Act, what is required is – at minimum – a "real risk", "real danger" or "real chance" that the information disclosed will lead to the identification of the complainant by members of the public: see e.g. O'Riordan v DPP [2005] EWHC 1240 (Admin), [29]; NCL v MME [2020] EWHC 2594 (QB), [22].

14
Second, one concern of the Gardaí appears to be that identification of the appellant might enable the complainant's children to identify her. No further detail is given about how much the complainant's children already know. Even assuming that they do not know about the complaint or the criminal proceedings, it seems likely that other aspects of the factual background contained in the judgment would enable them to identify the complainant as their mother. The exiguous information given by the Irish authorities is, in my judgment, insufficient to justify the inference that publication of the appellant's name will make a real difference to the ability of the complainant's children to identify her.

15
Third, so far as other members of the public are concerned, the appellant and complainant were never married. The appellant's evidence is that their relationship lasted "for a couple of years" and ended in 2001, more than 20 years ago. In those circumstances, I am not satisfied that there is a real risk that publication of the name of the appellant would lead indirectly to the identification of the complainant.

16
Fourth, and in any event, even if the risk of indirect identification were in principle sufficient to restrict publication of the appellant's name, no such order was in fact sought or made at first instance. The proceedings before the judge below took place in public. There was nothing to restrict publication of the appellant's name. I have no information about whether the proceedings or judgment were reported, but they might have been. Against that background, a very compelling justification would be required for an order restricting publication at this stage. No such justification has been advanced.

The grounds of appeal

17
The appeal proceeds with the permission of Dove J on three grounds. The appellant contends that the judge was wrong to find: that it would not be unjust or oppressive in terms to extradite the appellant (s. 14 of the 2003 Act – ground 1); that extradition would not be a disproportionate interference with the appellant's rights under Article 8 ECHR (s. 21A of the 2003 Act – ground 2); and that extradition would not be oppressive on mental and physical health grounds (s. 25 of the 2003 Act – ground 3).

The alleged offences and the investigations in Ireland

18
The three alleged rapes are said to have been committed between 1 May and 28 July 2001 against a woman with whom the appellant was then in a relationship. It is apparent that the complainant was a woman who at various times had complex physical and mental health issues. She disclosed the alleged rapes in the first instance to her social worker and then, on 2 August 2021, to the Garda Siochána. She said that the rapes took place over two days, that the appellant had penetrated her vagina and anus with his penis and that he had used significant violence, which she described in some detail. On the third occasion this included kicking her in the back and ankle, punching her in the face and strangling her.

19
The appellant was arrested and interviewed about these allegations on 11 August 2001. According to the EAW, he admitted having vaginal and anal intercourse with the complainant without her consent, but was released without charge while investigations continued. He then travelled to the United Kingdom.

20
At some point in the autumn of 2001 the complainant moved to another part of the same county. The Gardaí lost contact with her. In November 2001, she suffered a serious fall and was admitted into intensive care at the local hospital, where she was comatose for some time. When she recovered consciousness, she could not remember the fall or making the complaint about the rapes in August. She was interviewed again at the Gardaí Station in 2002, but could not remember having been there before or having made a complaint or meeting the officer in the case.

21
On 28 May 2002, the officer in the case sent a file to the DPP. On 31 December 2002 charges were approved in principle, but a decision was taken that charges should not be laid unless and until the complainant's memory improved. The Health Service Executive ("HSE", Ireland's equivalent of the NHS) undertook to inform the Gardaí if this happened. It appears that there was no further communication between the HSE and the Gardaí until 2015.

22
In 2015, the DPP undertook a review of unresolved sexual offence cases. The officer in the case resubmitted the appellant's file to the DPP. The Gardaí were instructed to make contact with the complainant. In November 2015, specialist officers located and interviewed her and took a further statement. The investigation continued and on 17 July 2017 the complainant made a third statement in which she reaffirmed her original allegations and gave details of another. The Gardaí sought her medical records, but these were not provided for a further 14 months. The DPP directed on 17 June 2019 that the prosecution should proceed. As I have said, the EAW was issued on 16 March 2020.

The appellant's evidence

23
The appellant relied on evidence from two experts.

24
The first expert was an Irish barrister and academic, Shane Costelloe SC, who noted that there had been "excessive delay" between 2002 and 2015. This delay was attributable to the prosecution and there was no reasonable explanation for it. There was a real and substantial risk of an unfair trial if the prosecution were to proceed. It could not be definitively stated whether the Irish courts would

prevent the trial from proceeding, but there was “a strong reason to suggest that they would”. Mr Costelloe relied, among other things, on the appellant’s extremely low intellectual ability, his other cognitive problems and memory issues and the fact that one of the Gardaí who had interviewed the appellant in August 2001 had since died and the social worker to whom the complaint was first made was now in her 70s.

25
The second expert was a forensic psychologist, Mrs Deborah McQueirns. She submitted two reports. She said that the appellant had experienced life-long difficulties with his cognitive ability and falls into the extremely low part of the range for cognitive functioning. He had a complex personality pattern which included the presence of pervasive, persistent and problematic personality traits amounting to personality disorders. In addition, there was a very clear presence of depression, adjustment disorder with mixed anxiety and depressed mood and alcohol use disorder. These features were aggravated by an array of physical health problems. Meningitis ten years ago had had some lasting impact on his hearing and sight. Various other ailments could be associated with his experience of stress and anxiety. Mrs McQueirns said that the appellant would need an intermediary and procedural adaptations if he were to be tried.

26
In her addendum report, Dr Queirns updated her opinion in the light of the appellant’s relationship with his new partner. It was commendable that he had ceased to use alcohol and had begun a relationship with a woman who did not drink. However, he remained an alcoholic and the appellant was already somewhat dependent on his partner. If the relationship were to break down, he would quickly revert to using alcohol.

27
Dr Queirns was now of the view that the appellant's adaptive functioning was significantly impaired and his need for support more apparent than previously stated. It was likely that removal from his supported accommodation, support network and known environment would cause him significant stress and anxiety. The risk of self-harm and suicidal ideation were likely to be heightened.

28
In addition to the expert reports, there were two statements from the appellant himself and a statement from the appellant’s then partner, with whom he had at that stage been in a relationship for some three months. The appellant said that he did not recall admitting the offences but he had been confused and panicked at the time. He did not think that he had been asked if wanted to have a lawyer present.

The judge’s decision

29
The judge noted at [23] that it was unclear when the complainant’s memory had returned. It might have been shortly before being spoken to by police in 2015 (in which case the delay between 2002 and 2015 was not culpable) or shortly after 2002 (in which case it was) or at some other time between 2002 and 2015. The judge said this:

“24. There have been failings in this case. A failing in monitoring the complainant’s ability to participate in proceedings and once it was established that she could participate, a failing in providing the medical evidence in a timely manner.

25. If any blame is to be apportioned for the delay in this case, it should be to the HSE and the Irish police, not the [requested person].”

30
The judge considered first whether the delay would give rise to injustice. At [27] he said that Mr Costelloe’s evidence showed that the Irish courts were “well equipped to ensure that a fair trial takes place”. At [28]-[29], the judge noted that the appellant was said to have made admissions in interview in 2001 and said that, if there were a guilty plea, it was difficult to see where the injustice would lie. At [30]-[32], he said that, if the matter were to be contested, the key evidence would be that of the appellant and the complainant. The death of one of the officers who took the appellant’s statement would not affect the fairness of the proceedings, since “[i]f the Irish courts took the view that the inlcusion of the interview was prejudicial they could exclude it”. The fact that the social worker was in her 70s would not prevent her from giving evidence.

31
At [32], the judge said this:

“The RP is effectively inviting this court to conclude that the Irish courts will be unable or unwilling to ensure that the RP receives a fair trial. There is no basis for me to reach such a conclusion. The Irish courts are more than capable of dealing with any proper concerns raised with regards to the fairness of proceedings. The RP can consider Judicially Reviewing the decision to charge him with the offences and can also look at applying to stay proceedings.”

32
The judge then turned to the question whether the delay made extradition oppressive. At [33] he noted that the appellant had continued with his life for the past 20 years in the UK not expecting or even thinking about the possibility of being returned to Ireland to face these allegations. He had established a life in the UK, had not committed offences while here and after many years had managed to secure sheltered accommodation, which would likely be lost if he were extradited. He was in relationship and had friends who supported him. He had complex needs that were being met by engagement with various healthcare professionals. However, given the overlap, these issues were considered under the rubric of Article 8 ECHR.

33
As to Article 8, at [45], the judge directed himself in accordance with the relevant authorities: Norris v Government of the USA (No. 2) [2010] UKSC 9, [2010] 2 AC 487, HH v Italy [2012] UKSC 25, [2013] 1 AC 338 and Celinski v Poland [2015] EWHC 1274 (Admin), [2016] 1 WLR 551. The question was whether the interference with the appellant’s private and family life was outweighed by the public interest in extradition.

34
The factors in favour of extradition included the constant and weighty public interest in extradition. This was of particular importance given that the offences for which the appellant was sought were “at the highest end of the spectrum in terms of seriousness”.

35
Against extradition, the judge bore in mind that the appellant had established a family and private life in the UK and had a partner here with whom he had been in a relationship for several months. In addition, there had been considerable delay, the alleged offences were 20 years old and the appellant was now 61. He would find a return to Ireland and a custodial sentence very difficult adjustment. He

had found his initial remand in custody very difficult to cope with, spending little time out of his cell because of his mental and physical difficulties. The appellant had daily contact with his disabled brother by telephone and would be unable to maintain such a level of contact if extradited. There was also a strong likelihood that he would lose his accommodation, which would have a significant emotional impact on him as well as causing obvious practical difficulties.

36
The judge said this:

"57. The RP's circumstances are complex. He is a 61-year-old and other than a conviction in 1998 has not troubled the courts in the U.K. or any other country. The RP has suffered poor physical and mental health which has been exacerbated by years of alcohol dependency.

58. The RP has had a lot to overcome and he appears to have made good progress in doing so. He has stopped drinking, he has secured supported accommodation and while it is a relatively new relationship, he has embarked upon a romantic relationship with a partner who offers him support.

59. Extradition is likely to pose a significant interference with the RP's life. The impact for him mentally as well as practically will be substantial.

60. The offences for which the RP is sought are now 20 years old. If the offences were not of the gravity that they are, then it would be highly unlikely that I would order extradition."

37
At [62] he set out how the complainant had described the third alleged rape in her statement in August 2001 and at [63] he concluded as follows:

"Given the nature and seriousness of the offence despite the accepted impact that it will have on the RP, the RP's article 8 rights do not outweigh the honouring of international agreements."

38
As to oppression, the judge held at [64] that, although the lapse of time was regrettable, the appellant had been aware of the allegation when he came to the UK. Given the gravity of what he was accused of he could not reasonably have expected that matters would just go away. He had established a life in the UK during the period of delay, but that had to be balanced against the allegations that he faced. Taking everything into account, extradition would not be oppressive.

39
At [69]-[72], the judge turned to the appellant's physical or mental condition. He took into account Dr Queirns' two reports. However, the Irish authorities would be aware of his difficulties and would have experience dealing with prisoners with challenging needs. The prison would be fully informed of his conditions. There was no basis to conclude that the care that would be afforded to him in an Irish prison would be any worse than the care he received whilst on remand at HMP Wandsworth.

Fresh evidence

40
On the day before the hearing of the appeal, the appellant filed an application notice seeking permission to rely on an addendum proof of evidence, which provides updated information as to his health and current circumstances. I have read that document de bene esse . It explains that, since the extradition proceedings, the appellant has been struggling to cope. He barely leaves the house. His anxiety and depression have worsened and the medication he receives for these conditions has been

increased. This has not helped. The appellant's eyesight has also worsened. He walks using a white stick. He has not drunk since March 2021. His neighbours assist him wish shopping and other daily tasks. The relationship described in his previous statement is now over, but he remains friends with his former partner, who helps him.

Ground 1 (oppression) and ground 2 (Article 8 ECHR)

41
Section 14 of the 2003 Act bars extradition where, by reason of the passage of time since the appellant is alleged to have committed the extradition offence, it would be "unjust or oppressive" to extradite him. In Kakis v Republic of Cyprus [1978] 1 WLR 779, at 782H, Lord Diplock noted that "unjust" was directed primarily to the risk of prejudice in the conduct of the trial, whereas "oppressive" was directed to hardship to the accused resulting from changes in his circumstances during the relevant period. In La Torre v the Republic of Italy [2007] EWHC 1370 (Admin), at [37], Laws LJ said that this test required "an overall judgement on the merits... unshackled by rules with too sharp edges."

42
The authorities make clear that test will not be easily satisfied and that the seriousness of the offence is relevant: Gomes v Government of the Republic of Trinidad and Tobago [2009] UKHL 21, [2009] 1 WLR 1038, [31], [39]. So is any effect on family life: Kovac v Czech Reupblic [2010] EWHC 1959 (Admin), [14].

43
For the appellant, Ms Townshend submitted that the judge ought to have found, on the balance of probabilities, that extradition would be unjust to the appellant. He is said to have made admissions in an interview conducted without a lawyer or appropriate adult present. The officer who interviewed him is now dead and there is no recording of the interview. It would be unfair to try the appellant for these offences now, some 21 years after they were committed, when both the complainant and the appellant have suffered memory problems.

44
Ms Townshend further submitted that the judge should have found that extradition would be oppressive, given the very long period of culpable delay on the part of the Irish authorities, the impact of delay on the appellant's serious and deteriorating health problems and his private life and the likelihood that an application to stay the proceedings for abuse of process would succeed.

45
For the Irish judicial authority, Mr Hyman submitted that the appellant's complaints amount to a re-run of the arguments below. The judge considered those arguments. There is nothing to suggest that he applied the wrong test. He was right to say that the Irish courts could be relied upon to intervene if persuaded that the delay gave rise to prejudice to the appellant. Indeed, Mr Costelloe's report showed that there were two means by which this question could be brought before the Irish courts: the appellant could seek judicial review of the DPP's decision to prosecute him or could rely on the delay as supporting a submission before the trial judge that the proceedings should be stayed as an abuse of the process of the court. Mr Costelloe's view was that the second route would have better prospects of success.

46

Mr Hyman points out that the judge did not assume the appellant would plead guilty. Rather, he said that if the appellant pleaded guilty the delay would not prejudice him. If, on the other hand, the appellant contested the charges, the Irish courts would be well placed to decide if and to what extent the delay gave rise to prejudice and whether, in all the circumstances, the prejudice was such as to amount to an abuse of process.

47

On the question of oppression, Mr Hyman submits that the judge was right to regard the seriousness of the charges as a highly material factor. It was for him to decide whether that factor outweighed the Irish authorities' culpable delay and the effect of that delay on the appellant. The judge's decision on that point cannot be regarded as "wrong".

48

In my judgment, it is important to start with the question whether the delay will give rise to injustice. As Lord Brown pointed out in Gomes at [35], states which are parties to the European Convention on Human Rights can generally be assumed to be capable of protecting accused persons against an unjust trial. That applies with particular force to Ireland, which has a common law-based judicial system similar to our own. Mr Costelloe's evidence shows that the abuse of process jurisdiction in Ireland operates in a similar way to the jurisdiction in England and Wales. Moreover, the Irish courts will be much better equipped than was the judge below, or am I, to decide on the degree of prejudice to which the delay has given rise. They will have the benefit of seeing all the evidence in the case and of detailed submissions from the prosecution and defence. They will not be limited, as the judge was and I am, to the necessarily exiguous information in the EAW and the further information supplied by the respondent for the purposes of these extradition proceedings.

49

There are two specific respects in which it is said that the delay will render any trial unfair. The death of the officer who interviewed the appellant could make it unfair for the appellant's statement to be received in evidence, but that is likely to depend on what other evidence there is of the precise circumstances and terms in which the alleged admission was made. The Irish courts will be much better placed than the judge was, or I am, to assess that. They will have the power to exclude the statement if they decide that it would be unfair to admit it.

50

The fact that the social worker to whom the complainant first mentioned the offences is now in her seventies does not necessarily mean that her evidence will be unreliable. If there are specific circumstances that make it so, those circumstances will no doubt be considered by the Irish courts.

51

Ms Townshend submitted at one stage that the judge must have accepted Mr Costelloe's assessment that an application for abuse of process would be likely to succeed. I do not read his judgment as containing any such finding. There is a real difficulty about reaching an assessment of the likelihood of success at this stage. As I have said, the information on which an application to stay would be made in the Irish court would be considerably fuller than was available to the judge or is available to me. On the information currently before me, despite the firm conclusions reached by Mr Costelloe in his report, I am unable to say that it is more likely than not that the application to stay the proceedings on abuse of process grounds would succeed.

52

The structure of the judge's judgment makes clear that he understood that extradition could be barred by delay under s. 14 of the 2003 Act even in a case where it could not be said that the delay gave rise to injustice. He considered the question of oppression separately. He proceeded on the basis that the Irish authorities were culpable for the unexplained delay between 2002 and 2015. He said at [23] that this was the "greatest period" of delay, implicitly recognising – correctly in my view – that there had been at least some further significant unexplained delay between the DPP's review in 2015 and the decision to charge in 2019.

53
The judge recognised the factors which might in principle point in favour of oppression: the fact that the RP had managed to establish a life in the UK; had not committed offences while here; had managed to secure supported accommodation which would likely be lost if he were extradited; and had a new relationship and a network of friends to support him.

54
As Ms Townshend accepted, it is impossible to identify any factor which the judge should have taken into account but did not. It is not suggested that he was wrong to consider the issue of oppression together with the question whether extradition would be disproportionate in terms of Article 8 ECHR.

55
As to that, the judge again directed himself according to the relevant case law. He had well in mind the likely effect on the appellant of extradition. But the extent of the effect on his private and family life should not be overstated. This was not a case where the appellant had a relationship with children (whether dependent or not). It was not a case in which he had a settled relationship with a wife or long-term partner. The judge did take into account his the current relationship, but this was a relatively new relationship, which had begun a matter of weeks before the hearing. It is in any event no longer continuing.

56
Extradition would, the judge accepted, be likely to impact on the frequency of the appellant's contact with his disabled brother, but since this contact was by telephone, it would not preclude that contact altogether. Extradition would undoubtedly impact on the support networks which the appellant had built up and would cause anxiety and distress, but this was not a case where a very substantial private and family life had been built up during the period of delay for which the requesting state was culpable.

57
Against this, the judge placed great weight on the fact that rape is a serious offence. The EAW here seeks the appellant's surrender for not one but three offences of rape. The manner of these alleged rapes, as described by the complainant, placed them near the top of the spectrum of seriousness for that offence. As Ms Townshend accepted, the circumstances of the third alleged rape, in particular, were very serious. There is increasing evidence of the ease with which strangulation can lead to brain injury or death. (This evidence has led in this jurisdiction to legislation which will introduce a new criminal offence of non-fatal strangulation or suffocation: see s. 70 of the Domestic Abuse Act 2021.) It is plain from the authorities in this jurisdiction that strangulation is a factor capable of aggravating an offence of rape significantly: see e.g. R v Hartley [2021] EWCA Crim 1142. Where an allegation of strangulation is made, this serves markedly to increase the already powerful public interest in a trial taking place. The judge was accordingly entitled, and correct, to proceed on the basis that there was a very high public interest attaching to extradition in this case.

58
Having considered all the matters which Ms Townshend has skilfully marshalled on the appellant's behalf, I am not persuaded that the judge was wrong to conclude that extradition would not represent a disproportionate interference with the appellant's Article 8 rights and would not be either unjust or oppressive for the purposes of s. 14 of the 2003 Act. The judge had to undertake a multifactorial evaluation. The conclusions he drew were properly open to him.

59
I have considered carefully whether the matters set out in the addendum statement affect this conclusion. Whilst they appear to show a deterioration of the appellant's physical and mental health and underscore the extent to which the appellant is dependent on friends and neighbours for his living needs, they do not in my judgment affect the outcome of the balancing exercise performed by the judge for the purposes of Article 8 ECHR or for the purpose of assessing whether extradition would be oppressive.

60
I would therefore dismiss grounds 1 and 2.

Ground 3 (ill health)

61
Section 25 of the 2003 Act precludes extradition where the physical or mental condition of the appellant is such that it would be unjust or oppressive. The application of that test will be fact sensitive: Republic of South Africa v Dewani [2012] EWHC 2426 (Admin), [2013] 1 WLR 82, [73].

62
In this case, the judge had already considered evidence adduced by the appellant about prison conditions in Ireland, in support of a submission that extradition would be contrary to Article 3 ECHR. He had rejected that submission and permission to appeal was refused on that point by Dove J and has not been renewed. The concise terms in which the judge dealt with the s. 25 point must be understood with that in mind.

63
In my judgment, the judge made no error in concluding that the physical and mental difficulties referred to in Dr Queirns' reports were matters which the Irish prison authorities would be well able to deal with. Although there was evidence that the appellant had found his two weeks' in custody in HMP Wandsworth "challenging", he had coped. This was not a case in which there was cogent evidence of a significant self-harm or suicide risk, far less one that could not be addressed by appropriate protective measures.

64
I have again considered the material in the addendum statement. Although it suggests a deterioration of the appellant's mental health and eyesight, there is nothing to suggest that the Irish prison authorities would be unable to provide proper treatment for anxiety and depression, conditions from which many prisoners will suffer. I accept that the appellant also has cognitive difficulties and personality disorders, but these too are far from unusual in prison. Even allowing for the cumulative effect of the appellant's constellation of mental health problems, there was nothing to rebut the presumption that, as an ECHR contracting state, the Republic of Ireland would be willing and able to provide appropriate medical care for these conditions.

65

The appellant’s impaired vision is undoubtedly likely to cause problems in prison, but this is also something the Irish prison authorities will be used to dealing with. There is nothing to indicate that assistance will not be available to the appellant with any daily tasks which he cannot complete on his own.

66

I would therefore dismiss ground 3.

Conclusion

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The appeal will therefore be dismissed. Because it would not have affected the outcome of the appeal, I would refuse the appellant permission pursuant to s. 27 of the 2003 Act to rely on the evidence contained in his addendum statement.