

No. 2

O. 58, r. 18(1)



SUPREME COURT



Record No:

2019/78

Respondent's Notice

Part I

The information contained in this part will be published. It is the respondent's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court

1. Title of the Proceedings:

THE HIGH COURT

2017 273 EXT

IN THE MATTER OF PART II OF THE EXTRADITION ACT 1965

The Attorney General

-v-

Daniel Mullan

2. Name of Respondent: The Attorney General

3. Application to extend time:

Yes

No

If an application is being made to extend time for the filing of this Notice, please set out concisely the grounds upon which it is contended time should be extended.

4. Do you oppose the applicant's application to extend time: N/A

Yes No

If an application by the applicant to extend time is being opposed please set out concisely the grounds on which it is being opposed.

5. Do you oppose the applicant's application for leave to appeal:

Yes No

6. Matter of general public importance:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance.

This section should contain no more than 500 words and the word count should appear at the end of the text.

1. The decision sought to be appealed from is no more than the application of well understood and elementary principles of extradition law to the facts of the case. The reference by the Applicant to the existence of a public interest in extraditing the Applicant and putting him on trial is wholly irrelevant to such a consideration and it cannot be conflated with the public interest required by Article 34.5.3 of the Constitution.

2. Similarly the reliance on the age and ill health of the Applicant and his Irish citizenship are no more than factual aspects of the case. They do not elevate the significance of the decision to the level of one of general public importance.
3. The Supreme Court has recently pronounced authoritatively on the correct approach to be taken in such cases in AG v. Davis [2018] IESC 27. The principles set out in that case were applied by the High Court and Court of Appeal. The Applicant has never suggested that those principles are in need of refinement nor that they were incorrectly applied. The Applicant has made no attempt to identify why a further appeal to the Supreme Court dealing with the same issues is necessary or appropriate.
4. The point argued by the Applicant before the Court of Appeal in relation to costs and Article XVII of the Treaty is tendentious and absurd. The relevant provision is manifestly directed towards the costs incurred by the contracting states in their discharge of treaty obligations and could not conceivably be regarded as speaking to manner in which the costs of extradition proceedings should be determined as between the parties. Moreover, the Court of Appeal considered that the manner in which Mr Mullan had conducted the proceedings and related judicial review proceedings (see *Mullan v DPP & AG* [2018] IEHC 585) where the High Court was not made aware of patently relevant authority necessarily militated against any argument he might make. It follows that even if there is an issue of importance here the Applicant is in a uniquely poor position to advance it.

Word count – 346

7. Interests of Justice:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not

opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

1. The principles concerning the extradition of a person suffering ill health are well understood. They were recently restated by the Supreme Court in AG v. Davis [2018] IESC 27. The Applicant has never contended that the principles identified in that case were either wrongly applied or in any need of modification.

2. The judgment AG v. Davis [2018] IESC 27 is also of considerable significance in relation to its discussion of the limitation of the right of appeal in Section 29(5) of the Extradition Act, 1965. In the present case the Applicant made little attempt to so much as articulate a point of law for the purpose of the appeal to the Court of Appeal. That Court had significant reservations as to whether the appeal fell within the scope of Section 29(5) but, nonetheless, went on to determine the substance of the issues de bene esse. In circumstances where the statutory scheme expressly limits an appeal to one on a point of law only it cannot be in the interests of justice to permit a further appeal where no point of law has actually been identified.

Word count – 187

8. Exceptional Circumstances Article 34.5.4.:

Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended that there are exceptional circumstances justifying such an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

N/A

Word count -

9. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please set out in the Appendix attached hereto the Respondent's grounds of opposition to the Grounds of Appeal set out in the Appellant's Notice of Appeal.

The following are the Respondent's grounds of opposition – these are repeated at the appendix below.

- i. The Court of Appeal did engage in a comprehensive analysis of the issues raised and provided a judgment that is clear and adequately reasoned. The ground of appeal articulated by the Appellant in this regard does not amount to an appeal on a point of law as required by Section 29(5) of the Extradition Act, 1965.
- ii. The Court of Appeal had proper regard to the cumulative effect of the Applicant's circumstances and was correct in its determination that there was no reason whatsoever to believe that the the US Federal Prison system would not be able to cope as well as the Irish prison system wherein the Applicant had been detained for some time. The Court of Appeal had regard to all the evidence presented in the High Court in reaching its conclusion. The ground of appeal articulated by the Appellant in this regard does not amount to an appeal on a point of law as required by Section 29(5) of the Extradition Act, 1965.
- iii. The Court of Appeal was correct in its interpretation of Article XVII of the Treaty on Extradition between the United States of America and Ireland. Having regard to all the circumstances of the case, the Court of Appeal was correct in upholding the decision of the High Court in respect of costs.
- iv. The Court of Appeal was correct in determining that Article XVII had no relevance as to how the Court should deal with the issue of costs between the parties. The Court of Appeal applied correct legal principles in determining the issue of costs. The provisions of Article XVII amount to no more and no less than an indemnity as between the contracting states. It cannot be regarded as giving rise to an immunity to costs as regards a respondent to extradition proceedings who is not party to the Treaty.

- v. The Court of Appeal was entitled to take into consideration the manner in which the extradition was contested in determining the issue of costs and there was no error in law. In particular the Court of Appeal was entitled to have regard to the course of related litigation (see *Mullan v DPP & AG* [2018] IEHC 585) in considering the overall manner in which the Appellant approached the proceedings.
- vi. The Court of Appeal did not determine any issue “*contra legem*”.

10. Cross Application for Leave:

If it is intended to make a cross application for leave to appeal please set out here precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance or the interests of justice justifying a cross appeal to the Supreme Court.

If it is sought to make a cross application for leave to appeal direct from a decision of the High Court, please also set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 500 words and the word count should appear at the end of the text.

N/A

Word count -

11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal

Please set out in the Appendix attached hereto any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court and / or the grounds of cross appeal that would be relied upon if leave to appeal were to be granted.

12. Priority Hearing:

Yes

No

If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.

This section should contain no more than 100 words and the word count should appear at the end of the text.

Given that these are Extradition proceedings the Respondent is anxious that the litigation in respect of same is concluded as soon as possible.

Appendix
Grounds of Opposition (and Cross Appeal)

1. Title of the Proceedings: *{As in the Court of first instance}*

THE HIGH COURT
2017 273 EXT
IN THE MATTER OF PART II OF THE EXTRADITION ACT 1965

The Attorney General

-v-

Daniel Mullan

2. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please list concisely in numbered paragraphs, the Respondent's ground(s) of opposition to the grounds of appeal set out in the Appellant's Notice of Appeal.

- i. The Court of Appeal did engage in a comprehensive analysis of the issues raised and provided a judgment that is clear and adequately reasoned. The ground of appeal articulated by the Appellant in this regard does not amount to an appeal on a point of law as required by Section 29(5) of the Extradition Act, 1965.
- ii. The Court of Appeal had proper regard to the cumulative effect of the Applicant's circumstances and was correct in its determination that there was no reason whatsoever to believe that the the US Federal Prison system would not be able to cope as well as the Irish prison system wherein the Applicant had been detained for some time. The Court of Appeal had regard to all the evidence presented in the High Court in reaching its conclusion. The ground of appeal articulated by the Appellant in this regard does not amount to an appeal on a point of law as required by Section 29(5) of the Extradition Act, 1965.
- iii. The Court of Appeal was correct in its interpretation of Article XVII of the Treaty on Extradition between the United States of America and Ireland. Having regard to all the circumstances of the case, the Court of Appeal was correct in upholding the decision of the High Court in respect of costs.

- iv. The Court of Appeal was correct in determining that Article XVII had no relevance as to how the Court should deal with the issue of costs between the parties. The Court of Appeal applied correct legal principles in determining the issue of costs. The provisions of Article XVII amount to no more and no less than an indemnity as between the contracting states. It cannot be regarded as giving rise to an immunity to costs as regards a respondent to extradition proceedings who is not party to the Treaty.
- v. The Court of Appeal was entitled to take into consideration the manner in which the extradition was contested in determining the issue of costs and there was no error in law. In particular the Court of Appeal was entitled to have regard to the course of related litigation (see *Mullan v DPP & AG* [2018] IEHC 585) in considering the overall manner in which the Appellant approached the proceedings.
- vi. The Court of Appeal did not determine any issue "*contra legem*".

3. Additional grounds on which the decision should be affirmed:

Please set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court.

N/A

4. Cross Appeal

Please set out in numbered paragraphs the Grounds of Cross Appeal relied upon if leave to cross appeal were to be granted.

N/A

5. Order(s) sought

Please set out in numbered paragraphs the order(s) sought if the Cross Appeal were to be successful.

N/A