



SUPREME COURT



Record No:

Application for Leave to Appeal

Part I

The information contained in this part will be published. It is the applicant'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. Date of Filing: 18th day of April 2019

2. Title of the Proceedings:

THE HIGH COURT
2017 273 EXT

IN THE MATTER OF PART II OF THE EXTRADITION ACT 1965

Between:

THE ATTORNEY GENERAL

APPLICANT

-v-

DANIEL MULLAN

RESPONDENT

3. Name of Applicant: Daniel Mullan

What was the applicant's role in the original case: Respondent

4. Decision of Court of Appeal (where applicable):

Record No: 2018 498 [2019] IECA 114

Date of Order: 12th April 2019 Perfection Date: 15th April 2019

Date of Judgment: 12th April 2019

Names of Judges: Birmingham P., Whelan and McCarthy JJ.

5. Decision of the High Court:

Record No: 2017 No. 273 EXT [2018] IEHC 721

Date of Order: 14th December 2018 Perfection Date: 14th December 2018

Date of Judgment: 14th December 2018

Names of Judge(s): Donnelly J.

Where this application seeks leave to appeal directly from an Order of the High Court has an appeal also been filed in the Court of Appeal in respect of that Order?

N/A

Yes No

6. Extension of Time:

Yes No

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

N/A

7. Matter of general public importance:

If it is contended that an appeal should be permitted on the basis of matter(s) of general public importance please set out precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance justifying appeal to the Supreme Court.

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

An Appeal should be permitted as a matter of general public importance because:-

1. As the Court of Appeal expressly noted, at para 15 of its judgement, the fact that Ireland is a signatory to an international agreement with the United States means that there is always a degree of public interest in facilitating the putting of an individual on trial. The Court of Appeal further noted that the extent of that public interest is not constant, but will vary from case to case. In that light, it is of general public importance that this Honourable Court should entertain an appeal from an Irish citizen in advancing years who is afflicted by a myriad of health complications in order to definitively, conclusively and finally determine the proportionality and lawfulness of any such extradition.
2. In *Minister for Justice and Equality -v- McPhillips* [2015] IESC 47 this Honourable Court recognised that it “is self-evident that proceedings which concern the surrender of persons, particularly citizens and residents, to another country for the purposes of being prosecuted for criminal offences, can give rise to important issues of law concerning their liberty and other fundamental rights. Some of those issues may be of grave importance to the person whose surrender is sought, or even of public importance” but perhaps not reaching the threshold of “*of exceptional public importance*”, that was in issue there but not here.
3. It is also of general public importance that Irish citizens who are involuntarily compelled to become parties to litigation, by reason of their arrest for extradition at the behest of another state, are not obliged to pay the costs of the proceedings to which they have been subjected, either by reason of rules of court that mandate that ordinarily costs should follow the event, and/or otherwise. That general public importance of a consideration by this Honourable Court of the matter is enhanced the relevant extradition treaty, concluded on behalf of the public, appears to provide to the contrary. Article XVII of the Treaty on Extradition between the United States of America and Ireland applies here but the issue transcends the particular facts of this case and the issue has applicability *inter alia* to all U.S. extradition cases.

8. Interests of Justice:

If it is contended that an appeal should be permitted on the basis of the interests of justice, please set out precisely and concisely, in numbered paragraphs, the matters relied upon.

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

An appeal should be permitted in the interests of justice because:-

- (i) An elderly Irish citizen suffering from an inter-woven tapestry of medical complications and health difficulties should not be extradited from this State to face trial and imprisonment in another state, for matters that are prosecutable here, unless such extradition has been considered by and is deemed proportionate by this Honourable Court and the entire Court Order is in accordance with law. It is therefore in the interests of justice that it be so considered.
- (ii) It is in the interests of justice that proper consideration and effect is given to provisions of extradition treaties and agreements, and that persons, including Irish citizens, who are compelled to become parties to litigation by reason of their arrest for the purposes of extradition and the consequent associated court process, are not then obliged to pay the court costs incurred by the State in those court proceedings.
- (iii) In circumstances where Irish law envisages the determination of extradition requests by way of a *sui generis*, quasi-inquisitorial procedure, and where, after his arrest, the Appellant, when compelled to do so, sought to engage with that proceedings and to advance reasons why he should not be extradited, it is in the interest of justice that the costs of so doing should not be awarded against him.
- (iv) It is in the interests of justice that there should be certainty in the law and, as this Court held in *McPhillips*, a decision on costs is an intrinsic part of the court's decision, such that, in the absence of any detailed discourse in the lower courts on this novel legal issue, an appeal should be permitted.

Word count - 280

9. Exceptional Circumstances: Article 34.5.4:

Where it is sought to apply for leave to appeal direct from a decision of the High Court, please 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 300 words and the word count should appear at the end of the text.

N/A

10. Grounds of Appeal

Please set out in the Appendix attached hereto the grounds of appeal that would be relied upon if leave to appeal were to be granted.

11. Priority Hearing:

Yes

No

If the applicant seeks a priority hearing please set out concisely the grounds upon which such priority is sought.

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

The Applicant is 79-year old Irish citizen who is in ill-health and is in custody solely in relation to this matter.

Word count – 21

12. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union please identify the matter and set out the question or questions which it is alleged it is necessary to refer.

Signed: _____

Cahir O'Higgins and Company Solicitors

Kingsbridge House

17-22 Parkgate Street

Dublin 8

(Solicitor for) the Applicant

Dated this 18th day of April 2019

To be served on: The Chief State Solicitor,
 Osmond House,
 Little Ship Street,
 Dublin 2.

(Solicitors for) Respondent(s)

Please file your completed form in:

The Office of the Registrar of the Supreme Court
The Four Courts
Inns Quay
Dublin 7

together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.

Appendix
Notice of 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

Between:

THE ATTORNEY GENERAL

APPLICANT

-v-

DANIEL MULLAN

RESPONDENT

2. **Grounds of Appeal:**

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

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| <p>i. The Court of Appeal failed to engage in any comprehensive analysis of the issues raised by the Applicant, and/or it failed to give an adequately reasoned judgement.</p> <p>ii. In particular, but without prejudice to the foregoing, the Court of Appeal failed to have proper regard to the cumulative effect of all of the Applicant's circumstances, and, in particular to the myriad of health complications from which he suffers. Furthermore, or in any event, the Court of Appeal's determination that there is no reason whatever to believe that the US Federal prison system would not be able to cope as well as the Irish prison system wherein the Applicant has been detained for some time, represents an insufficient appraisal to justify upholding the High Court order.</p> |
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iii. The Court of Appeal erred in relation to costs and, more particularly, so erred in awarding costs against the Applicant. In particular that Court failed to properly consider and/or interpret the Treaty on Extradition between the United States of America and Ireland wherein Article XVII provides for the expenses that arise:-

1. The Requesting State shall bear all expenses arising out of the translation of documents and the transportation of the person sought from the place of the extradition proceedings to the Requesting State. Notwithstanding any law to the contrary, the Requested State shall bear all other expenses arising out of the request for extradition and the proceedings.

2. The Requested State shall make no pecuniary claim against the Requesting State arising out of the arrest, detention, extradition proceedings and surrender of a person sought under this Treaty.

iv. Without prejudice to the generality of the foregoing, the Court of Appeal erred in its determination that Article 17 of the Treaty between the United States of America and Ireland only apportions responsibility between the contracting parties and, thus, that Article 17 has no relevance to how a Court should deal with an application for costs of proceedings before it. In that regard the Court failed to have proper regard to the fact the Treaty renders possible the extradition of Irish citizens. Where the Treaty expressly disappplies, any law to the contrary, (which must include Order 99 of the Rules of the Superior Courts) in respect of all expenses, including the expenses of the proceedings, it must properly be interpreted and concluded that it was incumbent upon the Attorney General to bear the costs of the court proceedings, and, it was not appropriate for him to seek or for the High Court and/or the Court of Appeal to order costs against the Applicant. The Applicant was not a willing participant in the extradition proceedings; he was was obligated by his arrest to participate

in the proceedings, and, in all of the circumstances, the Court of Appeal erred in concluding that ordinary rule is that costs follow the event.

- v. Further to the foregoing, the Court of Appeal further fell into factual error in upholding the High Court order that granted the Attorney General the costs of the extradition proceedings by reference to unsuccessful judicial review proceedings brought by the Applicant in the High Court. The costs of those judicial review proceedings had already been awarded against the Applicant, without issue, and this did not form any part of the High Court's rationale for awarding the costs of the extradition proceedings against him.
- vi. As so found by this Honourable Court *inter alia* in the *McPhillips* case, a decision on costs is an intrinsic part of the court's decision. Accordingly, if, as here, that issue appears to have been determined *contra legem*, the Order should not be allowed stand.

3. Order(s) sought

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

Orders allowing the appeal and thereby setting aside the Orders of the High Court and the Court of Appeal, together with an Order for the Applicant's costs.