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Supreme Court of Ireland Decisions

Judgment Title: Sweeney -v- Governor of Loughan House Open Centre & ors

Neutral Citation: [2014] IESC 42

Supreme Court Record Number: 105/2014

High Court Record Number: 2012 270 JR

Date of Delivery: 03/07/2014

Court: Supreme Court

Composition of Court: Denham C.J., Murray J., Hardiman J., Clarke J., MacMenamin J.

Judgment by: Clarke J.

Status of Judgment: Approved

THE SUPREME COURT

[Appeal No: 2014/105]

Denham C.J.
Murray J.
Hardiman J.
Clarke J.
MacMenamin J.

Between/

Vincent Sweeney

Appellant/Applicant

and

The Governor of Loughan House Open Centre, The Minister for Justice and Law

Reform, Ireland and the Attorney General

Respondents

Judgment of Mr. Justice Clarke delivered the 3rd July, 2014.

1. Introduction

1.1 A system for the transfer of sentenced prisoners has existed since the enactment of the Transfer of Sentenced Persons Act, 1995 ("the 1995 Act"). That Act involved the implementation in Ireland of the Council of Europe Convention on the Transfer of Sentenced Persons ("The Convention"). The Convention was ratified by Ireland following the passing of the 1995 Act.

1.2 This appeal involved an important but very net question as to the proper way in which the provisions of the 1995 Act (as amended) should apply. In passing it should be noted that the 1995 Act has been amended by the Transfer of Sentenced Persons (Amendment) Act 1997 ("the 1997 Act"). The appellant/applicant ("Mr. Sweeney") was sentenced in the United Kingdom. It will be necessary to turn to the precise terms of his sentence in due course. That sentence was imposed by the Crown Court of England and Wales sitting at Canterbury as a result of the conviction of Mr. Sweeney for significant drugs offences. Mr. Sweeney requested a transfer to Ireland for the purpose of serving the balance of his sentence. In accordance with the regime under the 1995 Act, his request having been successful, an application was made by the second named respondent ("the Minister") to the High Court for a warrant authorising the bringing of Mr. Sweeney into the State and his custody thereafter. This is the statutory basis on which a transferred prisoner may continue to be lawfully detained in this state subsequent to their transfer. The relevant warrant was issued on the 22nd October, 2008. While it will be necessary to consider in more detail the regime which currently applies in England and Wales in relation to sentencing, it can be said that there is now statutory provision (the U.K. Criminal Justice Act, 2003 ("the 2003 Act")) whereby prisoners sentenced to periods over 12 months serve 50% of the overall period in custody and are then automatically released on licence for the remaining 50% of the period. There are circumstances in which it is possible that a person may have to return to custody during that second period. The net legal issue which arose in this case has as its starting point the fact that the sentencing system in Ireland is different. In this jurisdiction, in the absence of the sentencing court suspending part of a sentence, a sentenced person is liable, in one sense, to serve the entire period of imprisonment imposed but does have an entitlement to remission of one quarter of the sentence period subject to the risk of losing some of that remission in the event of being in breach of prisoners' obligations while in prison.

1.3 The overall sentence imposed on Mr. Sweeney was one of 16 years. It follows that, as a matter of United Kingdom law, he would have served eight years in custody prior to being released and, thereafter, served a further eight years in the community on licence subject to recall. If he had been sentenced to a 16 year sentence simpliciter in Ireland, he would have expected to have earned four years remission and been released after 12 years. The fact that there is an undoubted difference between the two regimes in that regard lies at the heart of this case. The term of eight years actual imprisonment as originally imposed by the Crown Court had expired by the time this appeal came to be heard. On the other hand, taking a sentence of 16 years and making an appropriate allowance for remission both in respect of any period of remission said to have been earned as a result of imprisonment in England and such further periods as have been or will be earned as a result of imprisonment in Ireland, Mr. Sweeney would not be due for release for some time yet. The Minister took the position that Mr. Sweeney was, on that latter basis, not entitled to be released. Mr. Sweeney, on the former basis, argued that he was entitled to be released. That was the issue in the case. The High Court found for the Minister in a decision of Keane J dated 7th February, 2014 (*Sweeney v. Governor of*

Loughlan House & Ors. [2014] IEHC 150). Mr. Sweeney appealed to this Court.

1.4 In substance the warrant from the High Court on foot of which Mr. Sweeney was imprisoned is in a form which purports to potentially justify his imprisonment for a period of 16 years (although that period would, of course, be subject to remission in the ordinary way). Thus, provided that the warrant was valid, Mr. Sweeney's continued imprisonment would have been lawful. The substance of the case which he brought before the High Court was, therefore, designed both to seek that the warrant be quashed and that he be immediately released.

1.5 The appeal before this Court was heard on the 28th May, 2014. When the Court had an opportunity to deliberate, immediately after the hearing, on the arguments put forward, the Court indicated that it would allow the appeal, quash the relevant warrant and direct that Mr. Sweeney be immediately released. The Court further indicated that reasons for making those orders would be given in due course. The purpose of this judgment is to set out the reasons why I supported the Court's view in that regard. In those circumstances it is necessary to turn first to the relevant provisions of Irish legislation and the Convention.

2. The Statute and the Convention

2.1 The relevant section of the 1995 Act, is s.7, as amended by s.1 of the 1997 Act, which states:

> *"(1) Where the Minister consents to a request for a transfer under section 6 of this Act, he or she shall apply to the High Court for the issue of a warrant authorising the bringing of the sentenced person concerned into the State from a place outside the State and the taking of the person to, and his or her detention in custody at, such place or places in the State as may be specified in the warrant.*
>
> *(2) Where an application is made to the High Court under subsection (1) of this section that court shall, if it is satisfied that the requirements specified in paragraphs (a), (b), (d), (e) and, where applicable, (c) of section 6 (3) of this Act have been fulfilled and that the Minister consents to the transfer concerned, issue a warrant authorising the bringing of the sentenced person into the State and the taking of the person to, and his or her detention in custody at, such place or places in the State as are specified in the warrant.*
>
> *(3) The High Court may specify, in a warrant under subsection (2) of this section, any place or places to which the court would have jurisdiction to commit the sentenced person concerned if the sentence in respect of which the person is being detained by the sentencing state was imposed by the court at the time of the issue of the warrant.*
>
> *(4) Subject to subsections (5) to (7) of this section, the effect of a warrant under this section shall be to authorise the continued enforcement by the State of the sentence concerned imposed by the sentencing state concerned in its legal nature and duration, with due regard to any remission of sentence accrued in the sentencing state, but such a warrant shall otherwise have the same force and effect as a warrant imposing a sentence following conviction by that court.*
>
> *(5) (a) On an application to the High Court under subsection (1) of this section, if the sentence concerned imposed by the sentencing state concerned is by its legal nature incompatible with the law of the State, the Court may adapt the legal nature of the sentence to that of a sentence prescribed by the law of the State for*

an offence similar to the offence for which the sentence was imposed.

(b) The Minister may, in his or her absolute discretion if he or she thinks it appropriate to do so, include in an application to the High Court under subsection (1) of this section an application that the Court adapt the duration of the sentence concerned imposed by the sentencing state concerned to that of a sentence prescribed by the law of the State for an offence similar to the offence for which the sentence was imposed and, if the Minister does so and the sentence concerned imposed by the sentencing state concerned is by its duration incompatible with the law of the State, the Court may adapt the duration of that sentence as aforesaid.

(6) (a) The legal nature of a sentence adapted under paragraph (a) of subsection (5) of this section shall, as far as practicable, correspond to the legal nature of the sentence concerned imposed by the sentencing state concerned and shall not, in any event, either—

(i) aggravate it, or

(ii) exceed the maximum penalty prescribed by the law of the State for a similar offence.

(b) The duration of a sentence adapted under paragraph (b) of subsection (5) of this section shall, as far as practicable, correspond to the duration of the sentence concerned imposed by the sentencing state concerned and shall not, in any event, either—

(i) aggravate it, or

(ii) exceed the maximum penalty prescribed by the law of the State for a similar offence."

2.2 Section 1 of the 1995 Act provides definitions for relevant terms: a "sentence" 'means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a limited or unlimited period of time on account of the commission of an offence,' and the '"administering state," in relation to a sentenced person, means the Convention state to which the person has been transferred under s.5 of the 1995 Act or in relation to which an application under s.4 of that Act has been made by or on behalf of the person.'

2.3 Article 2 of the Convention states that the transfer of sentenced persons to a contracting party must take place in accordance with the provisions of the Convention. Article 9 of the Convention sets out the effect of a transfer for the administering State:

"(1) The competent authorities of the administering State shall

(a) Continue the enforcement of the sentence immediately or through a court or administration order, under the conditions set out in Article 10, or

(b) Convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11

….

(3) The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate

decisions."

Article 10 of the Convention deals with continued enforcement of the sentence and provides as follows:

> *"(1) In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.*
>
> *(2) If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State."*

2.4. Some points concerning those provisions of the Convention are worthy of note. First, Article 9 allows for two methods whereby a sentence may be served in the host or administering State. Article 9(1)(a) permits continued enforcement of an existing sentence under the conditions specified in Article 10. Article 9(1)(b) allows for the conversion of a sentence. It is clear that s.7 of the 1995 Act adopts the continued enforcement model for Ireland. Second, there is the possibility, under Article 10, for the host or administering State to adapt a sentence which is "by its nature or duration" incompatible with the law of that State. Section 7(5) and s.7(6) of the 1995 Act provide for such adaptation in the Irish context. No such adaptation was applied for or granted in this case. However, it is clear from s.7(6) that any such adaptation cannot aggravate a sentence. Also there is an important distinction to be found in both the legislation and the Convention between the legal nature of a sentence imposed and the administration of that sentence after transfer. This is a point to which it will be necessary to return.

2.5. Certain other current or potential international instruments also need to be mentioned. The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders entered into force on 22nd August 1985, but has neither been signed nor ratified by Ireland or the United Kingdom. Council Framework Decision 2008/909/JHA (on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union) ("the Framework Decision"), while drafted to replace the Convention, has not been given effect in Irish Law to date.

2.6. Before going on to analyse the effect of those provisions, it is important to emphasise that none of the relevant measures currently in force and effecting the legal position of Mr. Sweeney are matters of European Union law. There is no doubt that other, non European Union, international treaties are not directly effective in Irish law. These matters are governed by Article 15.2.1 and Article 29.6 of the Constitution (See *Re Ó Laighléis* [1960] IR 93). On the other hand, it is likewise well established that, in seeking to interpret Irish statutes which have been put in place so as to enable Ireland to comply with obligations under international treaties, the courts will strive, if possible, to ensure that Irish implementing legislation is interpreted in a manner consistent with the international law obligations undertaken by Ireland by entering into the treaty concerned (See for example, I(*H) v MG* [2000] 1 IR 110).

2.7. It follows that, in interpreting the 1995 Act, the courts should endeavour, if possible, to give it a meaning which conforms with Ireland's obligations under the Convention.

However, that is the only effect of the Convention on the legal rights and obligations which arise in this case. The Convention is not part of Irish law. There are no relevant European Union measures which affect the rights and obligations which arise in this case.

2.8. Counsel for the Minister suggested that the Framework Decision was relevant in determining what, as a matter of European law, might properly be regarded as an aspect of the legal nature of a sentence, on the one hand, as opposed to an aspect of the enforcement or administration of a sentence, on the other hand. While it is true that the Framework Decision may be designed to replace the Convention, the fact remains that the Framework Decision is not, in itself, part of Irish law (including European Union law applicable in Ireland) at present. Furthermore, as already pointed out, the Convention itself is only relevant to these proceedings insofar as it may have an affect on the proper interpretation of the 1995 Act. The Convention was long since in place before the Framework Decision came into being. Whatever may be the current policy view inherent in the Framework Decision as to the boundary between what may properly be regarded as part of the legal nature of a sentence as opposed to part of its enforcement or administration, there is no real basis on which such a view can be said to effect the existing meaning of the Convention let alone the proper interpretation of the 1995 Act.

2.9. The Convention is, therefore, relevant only to the extent that it may affect the proper interpretation of the 1995 Act. Save for that qualification, the issue which was before this Court was, essentially, a question of Irish, and not international, and most certainly not European, law. On that basis, I now turn to an analysis of what seemed to me to be the key issue which arose.

3. The Key Issue

3.1 As noted earlier it is clear that the 1995 Act, following closely on from the language of the Convention, makes a distinction between what is described in Article 10 of the Convention and s.7(4) of the Act as the legal nature of a sentence, as opposed to what is described as the enforcement of a sentence in Article 9(3) of the Convention. The distinction is important, for the sentence to be served in the host or administering country is required, subject to certain exceptions not relevant to this case, to be of the same legal nature as that imposed in the sentencing country. In other words, the sentence and its legal nature are matters solely for the sentencing country. On the other hand, it is equally clear that questions concerning the proper enforcement or administration of a sentence are to be determined in accordance with the law of the host or administering country. In that regard s.7(4) of the 1995 Act requires that the effect of a warrant is the same as a warrant imposing a sentence following conviction in an Irish court.

3.2 The reason for this distinction is obvious. The relevant prisoner will be serving a sentence in the host country. He will be incarcerated in a prison which is being run in accordance with the law of that host country and the regime concerning his imprisonment, it logically follows, must be that of the host country. I did not understand there to be any difference between counsel as to that broad principle. The sentence, including its legal nature, is for the sentencing country. Sentence administration and enforcement is for the host country.

3.3 It was further accepted that a system, such as the remission of sentence which applies in this jurisdiction, is, fundamentally, a matter of the enforcement or administration of a sentence. It follows that the transfer of a prisoner from a country which has a more generous remission system to one with a less generous regime in that regard, may lead to a prisoner legitimately spending more time in prison. That such a regime and such a consequence (at least if it is not too extreme) does not amount to a breach of the European Convention on Human Rights ("ECHR") is clear from such cases as *Szabo v Sweden* (App. 28578/03) Decision, 27th June, 2006 and *Veermae v Finland* (App. 38704/03) Decision 15th March, 2005. Thus it was, in my view quite properly, conceded by counsel for Mr. Sweeney that, if there existed today in England and Wales a regime of

remission which was similar to that which applies in Ireland save that the normal remission was one third of sentence rather than the one quarter as applies in Ireland, Mr. Sweeney could have no legal complaint about the fact that a transfer to Ireland would carry with it a shorter period of remission and, thus, a longer period of actual imprisonment.

3.4 That leads to what was the key point of difference between counsel at the hearing of this appeal and the key point which required to be determined in order to resolve the issues which arise. What is the proper way to characterise the legal nature of the sentence imposed by the Crown Court in England and Wales on Mr. Sweeney? In particular, what is the proper way to characterise his statutory entitlement to be released at the mid-point of his sentence on terms and subject to the possibility of being recalled? Is it proper to characterise that arrangement as being one in which there is a sentence of 16 years imprisonment with a statutory entitlement to something akin to remission or conditional release. If so, it was argued that the English release system simply goes to the enforcement or administration of sentence and has no relevance to the regime to be imposed in respect of Mr. Sweeney once he has transferred to Ireland. If, on the other hand, the true characterisation of his sentence is one which imposes a custodial period of only eight years with a further period on licence subject to recall, then it is possible to view the legal nature of the sentence itself as incorporating the requirement for release during the second half of the overall period and, thus, view that period of release as forming part of the legal nature of the sentence itself rather than being an aspect of the enforcement or administration of the sentence. In that eventuality, it would not be possible to impose on Mr. Sweeney a sentence in Ireland which exceeded the eight years of actual custody imposed on him in England, for the remaining eight years would not, properly characterised, be a sentence in respect of which he was to be imprisoned.

3.5 It follows, it seemed to me, that the answer to the important issue raised in this case turned on that very net question. How is it appropriate, for the purposes of the implementation of the 1995 Act as a matter of Irish law, to characterise the sentence imposed on Mr. Sweeney. Is the second eight year period simply an aspect of the enforcement or administration of a 16 year prison sentence which is supplanted by the equivalent Irish provisions of one quarter remission? Alternatively, does the fact that the second half of the sentence is not, as a matter of English law, to be served in prison (absent a recall), mean that the proper characterisation of the legal nature of the sentence is one of eight years imprisonment, so that the imprisonment of Mr. Sweeney for any period beyond eight years in this jurisdiction is not justified. I, therefore, turn to that question.

4. What is the proper characterisation of the English sentence?

4.1 The Minister placed before the High Court an affidavit of laws sworn by David Perry, Q.C. That affidavit concerned the applicable laws in England and Wales. In the course of that affidavit Mr. Perry, under the heading "The Legal Nature of a Prison Sentence", states, at paragraph 48 of his affidavit, the following:-

> *"I say that the sentence passed is not simply a statement of the period of time that an offender must spend in prison. A determinate sentence of imprisonment of 12 months or more has two parts. The first part is the custodial period. This comprises one half of the sentence. The second part of the sentence is to be served in the community. The offender is then subject to licence conditions for the entirety of that period. The entitlement to release on licence is automatic. A failure to release a prisoner on licence will result in further imprisonment being unlawful. During the licence period the Secretary of State may recall the offender to prison as explained above."*

4.2. Some other features of the affidavit evidence of Mr. Perry should also be noted. Mr.

Perry stated that, in respect of sentences which exceed 12 months, the law of England and Wales no longer makes any provision for the imposition of a suspended sentence. Mr. Perry also set out, at paragraph 33 of his affidavit, the basis on which a prisoner can be recalled by the Secretary of State during the second half of a sentence. The relevant provisions are to be found in s.254 of the 2003 Act. The section in question confers on the Secretary of State a discretion to revoke a licence. In the event of the Secretary of State exercising that discretion, the relevant prisoner must be told of the reasons for the recall and of his right to make representations. His case must be referred to the Parole Board and, if that Board recommends release, the Secretary of State is required to give effect to that recommendation. In coming to a view as to whether or not to make such a recommendation, the Parole Board must consider whether the relevant prisoner's continued liberty presents an unacceptable risk of a further offence being committed and/or whether any failure to comply with licence conditions suggests that the objectives of supervision had been undermined.

4.3. So far as the actual facts of Mr. Sweeney's case are concerned attention was drawn to the fact that the warrant on foot of which Mr. Sweeney was, at the time of the hearing before this Court, imprisoned was one which specified that the sentence imposed by the sentencing state was "16 years imprisonment, with 252 days on remand taken into consideration". The warrant authorises that Mr. Sweeney be lodged in Mountjoy Prison "to serve his sentence there". The warrant is consistent with the order for imprisonment from the Crown Court sitting at Canterbury, a copy of which was also exhibited in the papers before the High Court. That order specifies that the defendant "be sentenced to 16 years imprisonment" and that the period on remand should count towards that sentence. Likewise, the documentation supplied by the authorities in England and Wales to the Minister on the occasion of Mr. Sweeney's transfer referred to his sentence in the same terms.

4.4. It is clear, therefore, that the relevant documents do specify a period of 16 years imprisonment. That terminology is consistently used both in the original order for imprisonment in England and Wales, the documents which passed between England and Wales and the Minister on transfer and in the warrant made by the High Court in connection with that transfer.

4.5. However, it seemed to me that the real question which needed to be addressed was not as to whether a sentence of 16 years imprisonment was actually imposed but rather as to the true legal nature of such a sentence of 16 years imposed in England and Wales since the 2003 Act came into force. It is in that context that it is necessary to return to the evidence of Mr. Perry, Q.C. which was in the same terms as evidence which had been filed on behalf of Mr. Sweeney from a Mr. Kenneth Carr (Solicitor Advocate and Recorder).

4.6. The 1995 Act, as I have pointed out, uses the phrase "legal nature" of a sentence. That phrase is also used in the Convention. But, for the reasons which I have already analysed, the term is essentially one used in an Irish statute and must be interpreted as a matter of Irish law subject to the obligation to attempt to ensure that the interpretation of an Irish implementing measure does not render Ireland in breach of its international law obligations.

4.7. As a matter of Irish law, the law of any foreign jurisdiction is a matter of fact to be established by evidence. It is, of course, true that different considerations apply in respect of European Union law although, for the reasons already set out, no European Union law issues arise in this case. Likewise, for the purposes of the European Convention on Human Rights Act, 2003 ("The ECHR Act"), the Irish courts are, by virtue of s.4, entitled to take judicial notice of decisions of the European Court of Human Rights ("ECtHR").

4.8. But this Court was not referred to any direct authority on the meaning of "legal nature" insofar as it relates to a regime such as applies in England and Wales at the

moment. The issue which arose before the ECtHR in both *Szabo* and *Veermae* was as to whether the adverse effects of a transfer in both of those cases amounted to a deprivation of rights under the ECHR. Those cases were not concerned with the proper interpretation of the Convention as such. Both cases proceeded on the basis that, in accordance with the respective laws of the host States involved, the actual effect of the relevant transfers was to lead to a greater period of actual incarceration.

4.9. In those circumstances it did not seem to me that the issue with which this Court was concerned was materially affected by the judgments of the ECtHR in those cases.

4.10. So far as Irish law itself is concerned it must be recalled that, for the purposes of the 1995 Act, a sentence means a punishment or measure involving deprivation of liberty. It is hard to see how that term could mean anything other than imprisonment in one form or another. The whole regime of the 1995 Act is designed to facilitate the transfer of persons who are actually incarcerated in the sentencing country. As noted earlier in the course of this judgment, there is a separate convention on the supervision of conditionally sentenced or conditionally released offenders to which neither the United Kingdom nor Ireland are parties. It seemed to follow that the Convention is concerned with persons who remain in custody and who have not yet been conditionally released or, indeed, have not even been conditionally sentenced. Likewise, it seems that the 1995 Act is solely concerned with persons who are, prior to transfer, currently serving a period of actual imprisonment in the sentencing country. If, for example, Mr. Sweeney had, having served 8 years incarceration, been released to serve, as Mr. Perry, Q.C. puts it, the balance of his sentence in the community on licence and subject to recall, then it is difficult to see how he could have been the subject of a transfer under the Convention at all. If it were proposed or desired to impose measures designed to permit him, post release, to be subject to the terms of his "service of that period in the community" in Ireland, then such measures could clearly arise only under the convention relevant to conditionally released offenders which, as has been pointed out, has no application as and between the United Kingdom and Ireland.

4.11. On that basis I was satisfied that the term sentence as used in the 1995 Act refers to a period of actual imprisonment.

4.12. In the light of the clear evidence of Mr. Perry, Q.C. it seems to me that the legal nature of the sentence imposed on Mr. Sweeney was one of 8 years imprisonment (in that sense) together with a further 8 years of supervision in the community subject to recall. As Mr. Perry, Q.C. pointed out, a failure to release Mr. Sweeney after 8 years had expired, would have rendered his continued imprisonment unlawful. He could, of course, have been recalled and, unless the Parole Board were satisfied to recommend his release, might have served some or all of the second half of his overall period of 16 years in prison.

4.13. However, it seemed to me that there is a material difference in the legal nature of a sentence which, on the one hand, operates as a matter of binding law as one of 8 years actual imprisonment followed by 8 years in the community subject to terms and recall and, on the other hand, a sentence of 16 years imprisonment with the possibility of remission, even where that remission may amount, as in the Irish case, to an entitlement under the Prison Rules (S.I. No. 252/2007 - Prison Rules 2007, Rule 59) to that remission but subject to loss of remission in appropriate cases. The form and legal nature of the position in England and Wales is a sentence which is, by operation of law, in two halves. The form and legal nature of a sentence in Ireland is a single sentence, with the possibility of remission.

4.14. For those reasons, I was satisfied that the legal nature of the sentence imposed on Mr. Sweeney in England and Wales was one which provided for 8 years imprisonment followed by 8 years in the community on terms and subject to recall. In the light of the

evidence, it does not seem to me to be possible to construe that sentence as being one of 16 years imprisonment in the sense in which that term is used in the 1995 Act, even though that is the way in which the sentence was described in the various documents to which reference has been made. To describe the sentence as one of 16 years imprisonment without any form of qualification would, in my view, fly in the face of the uncontested evidence before the High Court.

4.15. I was, therefore, satisfied that the legal nature of the sentence imposed on Mr. Sweeney was one which only permitted his imprisonment for 8 years. Any additional period of imprisonment, for it to be lawful, would have required significant further steps to be taken. Given that the relevant 8 year period had elapsed by the time of the hearing in this Court, it seemed to me that Mr. Sweeney was entitled to be released. Insofar as the warrant of the High Court, on which his continued detention was said to be justified, specified a period of 16 years imprisonment, then I was satisfied that that warrant was incorrect. On that basis I agreed with the court's conclusion that the warrant should be quashed and Mr. Sweeney's immediate release ordered.

5. Conclusions

5.1. For the reasons which I have sought to analyse I was, therefore, satisfied that the true legal nature of the sentence imposed on Mr. Sweeney by the Crown Court sitting at Canterbury was one which, in itself, involved a sentence of two parts being a sentence of 8 years imprisonment with a further 8 year period served in the community under licence and subject to recall. On that basis I was satisfied that the only term of imprisonment, in the sense in which that term is used in the 1995 Act, which was imposed on Mr. Sweeney was one of 8 years imprisonment. In that regard, it followed that the High Court warrant which gave effect to the transfer of Mr. Sweeney to this jurisdiction was incorrect in specifying that he was to serve a term of 16 years imprisonment. It followed that, in my view, the warrant ought to be quashed.

5.2. In those circumstances, and having regard to the fact that, by the time the appeal before this Court came to be heard, Mr. Sweeney had already served a period of 8 years in prison, it also seemed to me to follow that his immediate release should be directed. If, and to the extent that it is desired, while the law remains as it is, that persons sentenced to periods in excess of 12 months in England and Wales are to be subject to some form of supervision in Ireland, then it seems to me that this can be achieved, if at all, only by means of seeking an appropriate adaptation in accordance with the provisions of s.7 of the 1995 Act. I would leave to a case in which an application for such adaptation was actually made, a detailed consideration of whether, and if so in what way, any such adaptation can or should be made.