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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT  
[2020] EWHC 208 (Admin)



No. CO/2430/2019

Royal Courts of Justice

Thursday, 23 January 2020

Before:

MR JUSTICE HOLMAN

B E T W E E N :

CERCI

Applicant

- and -

SLOVAKIAN JUDICIAL AUTHORITY

Respondent

\_\_\_\_\_

MISS ABIGAIL BRIGHT (instructed by Lansbury Worthington) appeared on behalf of the applicant.

THE RESPONDENT was not present and was unrepresented.

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**J U D G M E N T**  
**( A s a p p r o v e d b y t h e j u d g e )**

MR JUSTICE HOLMAN:

- 1 This is listed as a renewed application for permission to appeal from an extradition order made by District Judge Marie Mallon on 17 June 2019, after permission to appeal was refused on paper by Sir Wyn Williams on 10 September 2019.
  
- 2 The essential facts are that on 16 January 2008 the applicant committed an offence in Slovakia of driving while disqualified. Subsequent to that, he moved to live in the United Kingdom in 2011. In September 2013, in Slovakia, he was convicted of that offence and sentenced to one year's imprisonment.
  
- 3 The district judge gave, if I may respectfully say so, an extremely thorough and meticulously careful judgment, at the end of which, after correctly addressing herself as to the law, she performed the well known *Celinski* balance and decided that the applicant should be extradited to serve his sentence. It was integral to her decision that she found that the applicant had deliberately absented himself from his trial, and accordingly, in performing the balance, she treated him as a fugitive. It was in relation to that finding that he had deliberately absented himself from the trial that this appeal was mounted. As I have said, in September Sir Wyn Williams took the view that an appeal on that ground was very unlikely to succeed and, accordingly, refused permission to appeal.
  
- 4 However, events have moved on and the circumstances have fundamentally changed. This appellant had been arrested in relation to this matter on 17 February 2019 and has been remanded in custody ever since. Today is Thursday, 23 January 2020 and he remains in custody. Accordingly, he has now been in custody for almost the full year of his sentence, less only about three weeks. It is well established that in deciding whether or not a person should be extradited the court must, and does, take into account the extent to which he has,

in fact, already served the term of the sentence by a period in custody during the extradition process.

5 The reality is that this applicant has now substantially served the sentence which was imposed upon him for the offence committed as long ago as January 2008. Indeed, if this had been an all English case he would have been released long ago. This represents a significant change in circumstances since the case was considered and dealt with by the district judge in June 2019. I wish to stress that I make no criticism whatsoever of any aspect of her judgment, which, as I say, I regard as meticulous. But in the circumstances as they now are, it would be completely disproportionate now to extradite this applicant.

6 This position is, as I understand it, effectively accepted by the CPS here, and in the last few days they have been seeking to obtain instructions from the Judicial Authority in Slovakia such that there could now be a consent to the extradition order being discharged and the applicant released from custody. As of yesterday, those instructions were not yet forthcoming. There was a suggestion yesterday that this hearing should accordingly be adjourned for a period to enable those instructions to be obtained. That did not seem right to me. It would merely increase costs, add to delays for this court, and, most significantly, have the effect that the applicant remained longer in prison when, having read the papers, I had already formed the provisional view that he should now be released.

7 So, for all those reasons, not in any way based on any consent from the respondent judicial authority, but as a matter of my own discretion and judgment, I now grant permission to the applicant to appeal from the extradition order made on 17 June 2019. I allow the appeal. I quash the order for extradition that was made on 17 June 2019 and I order the discharge and release from prison forthwith of the applicant, Adrian Cerci.

MR JUSTICE HOLMAN: Will you, Miss Bright, very kindly draft up an appropriate order to that effect and lodge it with today's associate?

Now, do I have to sign any particular form to obtain his release from prison today? Or is it just sufficient that it is all on the face of the order? Do you know, Mr Associate? This man should be released from prison today. (After a pause) Well, patently it needs a sealed order, then.

ASSOCIATE: Yes.

MR JUSTICE HOLMAN: We cannot just ring up the prison.

ASSOCIATE: No, no.

MR JUSTICE HOLMAN: No, there has to be a sealed order. So, if it is all contained in the order that is sufficient.

ASSOCIATE: As far as I am aware.

MR JUSTICE HOLMAN: Miss Bright, the associate thinks as long as it is all contained in the order that is sufficient.

MISS BRIGHT: Yes.

MR JUSTICE HOLMAN: But patently, no prison governor is going to release him until he has got a copy of the sealed order of the court. So, the sooner you can do this the better. Have you got electronic equipment with you here?

MISS BRIGHT: Yes, my Lord, I have.

MR JUSTICE HOLMAN: Right. If you can deal with that.

MISS BRIGHT: Yes.

MR JUSTICE HOLMAN: Email it to the associate and bob back in as soon as it is ready----

MISS BRIGHT: Yes.

MR JUSTICE HOLMAN: -- and let me see it, because I would just like to read the wording myself.

MISS BRIGHT: Certainly.

MR JUSTICE HOLMAN: It will then be sealed and your client will be released.

MISS BRIGHT: Thank you.

MR JUSTICE HOLMAN: So, it is grant permission to appeal.

MISS BRIGHT: Yes.

MR JUSTICE HOLMAN: It is appeal allowed. It is extradition order quashed. Order for his  
immediate discharge and release from prison.

MISS BRIGHT: Yes, my Lord. Thank you so much.

MR JUSTICE HOLMAN: And probably public funding of your costs. All right?

MISS BRIGHT: Thank you.

MR JUSTICE HOLMAN: Well, I am very sorry to have kept you from your other case but I think  
that with that you have done a good day's work, or good half a day's work.

MISS BRIGHT: My Lord, I respectfully agree. I am very grateful.

MR JUSTICE HOLMAN: Thank you very much indeed. I will keep these papers because there  
will have to be a transcript of the judgment because that is a substantive appeal by the end of  
it.

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**CERTIFICATE**

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This transcript is subject to Judge's approval.