Neutral Citation Number: [2020] EWHC 2832 (Admin)

Case No: CO026252019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/10/2020

Before :

MRS JUSTICE WHIPPLE

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Between :

Carol Lloyd	**Appellant**
- and -	
Government of Canada	**Respondent**

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- -

Joel Smith (instructed by **Oracle Solicitors**) for the **Appellant**
Adam Payter (instructed by **Crown Prosecution Services**) for the **Respondent**

Hearing date: 14 October 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MRS JUSTICE WHIPPLE

Whipple J :

Introduction

1. This is an appeal by Mrs Lloyd against the judgment of the Senior District Judge, District Judge Arbuthnot, handed down on 26 April 2019. The SDJ decided to send the Appellant's case to the Secretary of state for consideration. The Secretary of State ordered the Appellant's extradition on 24 June 2019.

2. This appeal against the SDJ's judgment is with the leave of the Single Judge.

3. The appeal is on two grounds:

    i) first, that the SDJ was wrong to reject the submission that extradition would be oppressive by virtue of the Appellant's mental and physical condition, relying on s 91 of the Extradition Act 2003; and

    ii) secondly, that the SDJ was wrong to reject the submission that conditions of detention for women at the Calgary Remand Centre and Edmonton Institution for Women presented a serious risk of degrading and inhuman treatment, particularly in light of the Appellant's mental and physical health problems, relying on Article 3 ECHR and s 87 of the 2003 Act.

4. Before the SDJ and by Notice of Appeal to this Court, the Appellant argued three grounds: the two outlined above, and a third, namely that extradition would constitute a disproportionate interference with her Article 8 rights. She no longer pursues the Article 8 ground.

Facts

5. The Appellant is a British citizen aged 61. Her extradition is sought for her to stand trial for offences of fraud committed between 1 June 2014 and 30 November 2015 in Calgary, Alberta. At that time, the Appellant was living in Calgary. It is alleged that she defrauded her employer of 1.8 million dollars (CAD), which is roughly £1 million. The maximum sentence for the offence is 14 years imprisonment (the minimum is 2 years imprisonment). The SDJ found as a fact, on the basis of evidence adduced by the Appellant at the hearing, that the likely sentence for this offending is in the region of 2-3 years following trial, 18 months on a plea.

6. The Requesting State alleges that the Appellant dishonestly diverted funds from her employer by setting up a company with a similar name to that of a legitimate contractor and organising payments to be made by her employer to her own company.

7. A Canadian arrest warrant was issued on 15 December 2015. A request for extradition was issued on 27 November 2017. That request was certified on 11 December 2017. An English arrest warrant was issued on 22 December 2017. The Appellant was arrested at her home address in the UK on 15 May 2018. She was granted bail at an initial hearing and has been on bail since. She does not consent to extradition.

SDJ's Judgment

8. The SDJ rejected the Appellant's arguments based on ss 91 and 87 of the 2003 Act. In the judgment, the SDJ noted that the hearing was adjourned to allow the Appellant to receive treatment for a hammer toe and for a further report to be provided on her long-standing neurological condition. A further adjournment for further investigation of the Appellant's medical condition was refused, and the SDJ noted that at that stage the Appellant had a "working diagnosis of multiple sclerosis" (adopted by Dr Larmer, treating neurologist). The SDJ noted that Canada had provided details of the care which would be provided to someone with the mental and physical issues the Appellant suffers from, and that an important question in the hearing was the extent to which the Appellant and her family could be believed when they gave accounts of the Appellant's medical needs.

9. The SDJ made adverse credibility findings against the Appellant and members of her family who had given evidence at the hearing. At paragraph 11, the SDJ said that the Appellant had misrepresented to the Court but also to her own expert consultant neurologist certain aspects of her history. In a section of the judgment headed "Credibility" (paragraphs 49-67), the SDJ pointed out a number of contradictions in the Appellant's evidence and her daughter's account too (her daughter gave evidence at the hearing). The SDJ found that the Appellant had misled Ms Hall, who provided an expert report, as to the extent of her physical disability (para 62), she had exaggerated her mental health issues (para 63), the evidence offered about her past suicide attempts was unconvincing, because these suicide attempts had not even been mentioned in contemporaneous notes (paras 63-66). The SDJ concluded:

> "I find [the Appellant] told the court a number of lies. I find that Mr Lloyd [Appellant's husband] and more clearly Ms Danielle Lloyd [Appellant's daughter] supported the [Appellant] in her effort to mislead the court. Inevitably these lies have meant it is much more difficult for the court to work out which part of the defendant's evidence in relation to her physical and mental health issues is true and which is exaggerated or false."

10. The SDJ conducted a detailed review of the medical evidence. She had before her a number of reports from a treating consultant neurologist; she also had extensive medical records and notes detailing various investigations. The SDJ heard oral evidence from the Appellant herself, from her daughter, from Dr Joliffe (psychologist) and written evidence from Ms Hall (occupational therapist). The SDJ's conclusions are set out at paragraphs 126 to 141 of the Judgment.

11. So far as physical health is concerned, the SDJ accepted that the Appellant had long-standing problems covered by a working diagnosis of multiple sclerosis. She had osteoarthritis, fibromyalgia, carpel tunnel syndrome, hammer toe deformity and sporiartic arthritis. She had some mobility issues. The SDJ concluded that the Appellant had exaggerated the extent of her physical disability. The SDJ rejected the Appellant's case that she required extensive care, concluding that she was a carer of her grandchildren more than someone who needed care.

12. As to her mental health, the SDJ accepted that she had anxiety and depression dating back some years; she may well have had bulimia; there may have been a history of

abuse by her first husband. But the SDJ found that the Appellant had not encountered difficulty in concentrating during the extradition hearings and complaints that she could not concentrate were exaggerated. The SDJ concluded that the Appellant was being adversely affected by the fear of extradition to Canada. So far as the risk of suicide was concerned, the SDJ found that the Appellant had not attempted suicide in 2015 (as she claimed), and she did not have PTSD as a result of threatened abuse by drug dealers in Canada (contrary to her expert's view). The SDJ found that the Appellant had fled Canada to avoid investigation and prosecution. The Appellant had not been abused by her son as she argued had occurred, this was not compatible with the fact that her son had been allowed to live with her in the UK, although the SDJ was unable to get to the truth of her son James' role in the fraud as he had not given evidence and the Appellant's own evidence was unreliable. The SDJ concluded:

> "[141] I concluded that Mrs Lloyd gets depressed and is very anxious about going to prison. I accept Mrs Lloyd holds a genuine fear of being returned to Canada. I noted though the defendant's daughter Danielle's view that she was more concerned about how her mother would cope physically rather than mentally in prison. Having read about the defendant extensively and watched her giving evidence, having seen the lengths she has been willing to go to to avoid extradition I have concluded that she will find a strength and a determination which will help her to get through a relatively short prison sentence in Canada. Her experiences in Canada will not be nearly as bad as she fears."

13. On the evidence about prison conditions in Canada, discussed at paragraphs 142-172, the SDJ found that the Appellant was likely to be held in the Calgary Remand Centre pre-trial, where there was sufficient space per prisoner. If the Appellant were to be convicted, she would be sent to the Edmonton Institution for Women or, if she had mental health issues, she would be held in a Structured Living Environment or at worst held in segregation for her own protection or hospitalised. Evidence on this aspect of the case was adduced for the Appellant from Tom Engel, a lawyer in Canada who specialised in prison litigation in Alberta, Baraket Amer a male prisoner at Calgary Remand Centre and Kiray Jones-Mollerup who was employed by the Canadian Association of the Elizabeth Fry Societies which has a role of visiting federal prisons for women across Canada. The latter two gave evidence in person. It was answered by a series of letters from Mr Tony Bell, Crown Prosecutor and employee of the Attorney General for the Province of Alberta, who is familiar with this case and the issues raised in it.

14. The SDJ concluded that the evidence "does not begin to suggest that the [Appellant] if extradited will be held in conditions which are inhumane or degrading" (paragraph 197). She held that there was no evidence at all that the two prisons concerned were overcrowded, were at overcapacity or that the Appellant would not be treated in a humane and sensitive way (paragraph 199). Further, prisoners with mental health problems received adequate and appropriate treatment (paragraph 201). Women at risk of suicide might be segregated for their own protection; essential healthcare was always provided while non-essential healthcare takes a little longer (paragraph 201).

The Appellant would be able to manage notwithstanding her mobility and other physical problems (paragraph 202). In summary, the SDJ held that:

> "[205] The evidence suggested that a female prisoner with Mrs Lloyd's medical issues will be provided with the right sort of care whether it is for her physical or mental health problems. Essential healthcare is provided in a timely manner, there is more of a wait for the non-essential.
>
> [206] I do not find a prospective breach of Article 3 in this case. There are no grounds for believing that Mrs Lloyd would face a real risk of being subjected to inhumane and degrading treatment and punishment when detained in Canada."

The appeal

15. There is agreement as to the approach this Court should take on appeal. The Court's powers are set out at s 104 of the 2003 Act. In this case, the question for me is whether the SDJ ought to have decided any question before her at the extradition hearing differently, such that she should have ordered the Appellant's discharge. I further note the guidance in *Love v USA* [2018] EWHC 172 (Admin) per Lord Burnett, LCJ):

> "[25] … Extradition appeals are not re-hearings of evidence or mere repeats of submissions as to how factors should be weighed; courts normally have to respect the findings of fact made by the district judge, especially if he has heard oral evidence. …. The true approach is more simply expressed by requiring the appellate court to decide whether the decision of the district judge was wrong …"

16. The crux of the case before the SDJ, and before me, is the extent of the Appellant's physical and psychological disability. The Appellant's case is that the combination of her problems, both physical and psychological, mean that it would be oppressive to extradite her (ground 1), alternatively that she would face inhumane and degrading treatment in the Canadian prison estate (ground 2).

17. The SDJ made clear findings about the extent of the Appellant's problems. In so doing, she rejected the Appellant's own account, and that offered by her family, as dishonest and misleading. The SDJ also rejected the Appellant's expert evidence to the extent that it was, itself, based on an exaggerated and fabricated account given to the experts by the Appellant.

18. Despite Mr Smith's best efforts, I am not persuaded that the SDJ was wrong to reach the conclusions that she did in relation to credibility, or indeed in relation to the crux issues of the extent of the Appellant's physical and mental disability. The SDJ was entitled to take an adverse view of the Appellant's credibility. Mr Smith argues that the adverse view was underpinned by the SDJ's findings on two issues, namely, (i) the Appellant's failure to mention in evidence, initially, that her son had been living with her (something that she corrected in later (unsworn) evidence where she accepted that she had not told the truth), and (ii) the fact that she had shortly abandoned the wheelchair she had purported to need at the beginning of the hearing. Certainly, these

were two important matters on which the SDJ reached conclusions adverse to the Appellant, and which fed into her overall conclusion that the Appellant had lied. I do not accept that the SDJ erred in reaching her conclusions on these matters or in attaching weight to them when she came to consider her overall view on the cogency of the Appellant's case. Specifically, it is not surprising that the SDJ rejected the Appellant's late and unsworn account of why she had lied about her relationship with her son.

19. But there were many other shortcomings noted by the SDJ, which led the SDJ to her adverse credibility finding. So, as examples, the SDJ found that there was an inherent contradiction in the Appellant's case as to whether she was cared for or a carer (paragraph 128), that the Appellant had lied to Ms Hall (paragraph 129), that the Appellant's daughter had lied about her mother's care needs (paragraph 130), that there was an inconsistency between her account about difficulty in concentrating by reason of her mental health problems and her evident ability to follow the court case (paragraph 135), that there was no clear account or record of her alleged suicide attempt in 2015 (paragraph 137), that there was a lack of coherent evidence about the involvement of the Appellant's son (paragraph 139).

20. In addition, as the SDJ noted, the Appellant's performance in the TOMMs test conducted by Dr Joliffe suggested that the Appellant was not motivated to perform to the best of her ability. In light of these results, Dr Joliffe said that the overall findings in her case should be treated "with caution". So, even the Appellant's own expert offered evidence that the Appellant was exaggerating her symptoms.

21. The SDJ formed the clear impression that the Appellant was lying (or at the very least exaggerating). Her conclusion is not open to challenge on appeal. It is a finding of fact with which this Court will not interfere.

22. Mr Smith took me to many of the original sources of information in an effort to persuade me that I should find the SDJ's adverse credibility finding to be wrong. He said that Ms Hall's evidence was reliable notwithstanding the false reports which the Appellant had given about the extent of her physical disability; he argued that Dr Joliffe had already taken into account the possibility of malingering so that Dr Joliffe's view should not be discounted further; he said that the SDJ had placed too much weight on one or other of the shortcomings outlined above. But this is not an appeal by way of rehearing; it is an appeal under the statute, and the issue is whether SDJ got this wrong. I do not think she did. Far from it. There was plenty of evidence before the SDJ to justify her conclusion that the Appellant had misled the Court and was exaggerating her health problems.

23. Really, that is the end of this appeal. The grounds cannot succeed in the light of the SDJ's conclusion on the crux issues; and the SDJ's conclusion on those issues cannot be said to be wrong, once accepted that the Appellant's contrary case was rejected as untruthful. Nevertheless, I will now turn to the two grounds advanced.

Ground 1

24. On the first ground of appeal, the issue is whether the Appellant's condition is such that it would be oppressive or unjust to extradite her.

25. There is no dispute on the applicable law: each case must involve a careful evaluation of the risk to the person and the extent of danger that extradition will involve, it is an intensely fact-specific exercise (see *Warren-Hewitt and Andrew Woodward v Spain* [2009] EWHC 2158 (Admin), and *Magiera v Poland* [2017] EWHC 2757 (Admin)). So far as the risk of suicide is concerned, the question is whether, on the evidence, the risk of the appellant succeeding in committing suicide, whatever steps are taken, is sufficiently great that extradition would be oppressive; the mental condition of the person must be such that they lack capacity to resist the temptation to commit suicide otherwise it will not be his mental condition but his own voluntary act which puts the person at risk of death in which case there would be no oppression in extradition; the court must consider whether there are appropriate arrangements in place in the receiving state to cope with the risk of suicide (see *Turner v USA* [2012] EWHC 2426 (Admin).

26. The Appellant argues that this case depends on the cumulative effect of her mental health problems (bulimia, PTSD, suicidal ideation) combined with her physical problems (mobility issues, neurological problems including debilitating headaches with aura), making the Appellant vulnerable. It is suggested that the offending is not at the upper end of the scale, that her protective factors of family support will be removed if she is extradited and that the Canadian prison system will provide inadequate care. There is expert evidence to show that she has these various physical and psychological impediments to her functioning, and the SDJ should not have reached her own conclusion on the extent of her problems but should instead have accepted that evidence at face value; if she had, she would have decided that it was oppressive to extradite this Appellant.

27. Mr Smith took me through the recent medical notes. The working diagnosis of multiple sclerosis is now abandoned. In its place is clinically isolated syndrome, or "CIS", a form of inflammatory disease in the brain (see the letter from Dr Davies, her more recent treating neurologist, dated 25 March 2020). In addition, she has headaches with aura, and hardening of the arteries, leading to an increased risk of stroke. I was also shown more recent medical notes where the Appellant is recorded as maintaining a desire to kill herself and threatening to do so if she is extradited, suggesting that this hearing and its outcome is the cause of heightened anxiety for her.

28. The Respondent opposes ground 1. He says that the Appellant is, in essence, inviting the Court to re-evaluate all the evidence heard by the SDJ, which is contrary to the guidance in *Love.* Mr Payter argues that the SDJ has considered all the evidence and her conclusions are not amenable to appeal. They are not wrong. But to deal with the points now advanced, he says that this offending was serious because the Appellant is accused of manufacturing 99 different false invoices to obtain substantial amounts by fraud. Further, he says that the Canadian authorities have engaged closely in responding to the various points raised by or on behalf of the Appellant and that Mr Bell for the authority has given clear evidence that the Appellant would receive proper care if she was extradited. Further, the Appellant has recently received therapy which has reduced the risk of suicide; but still it is possible to see the Appellant exaggerating in the accounts given to her health professionals (for example, a recent note that she has said she will serve 13 years in prison when she knows that the likely term is only 2-3 years, part of which is likely to be served on parole). The recent medical notes do not suggest a deterioration in her mental health.

29. Mr Payter is right, I should not re-evaluate all the evidence which was before the SDJ. I follow the course set in *Love* and ask myself whether the SDJ's conclusions were wrong, accepting her findings of fact at face value. The SDJ was entitled to conclude that the Appellant was exaggerating her physical problems. She was entitled to conclude that the Appellant had mental health issues which were manageable in prison. Even now, with updated evidence about suicidal intent, there is no evidence to suggest the Appellant lacks capacity or that her suicidal ideation has intensified significantly or that she is experiencing any sort of "irresistible impulse"; indeed, the SDJ's finding, on the Appellant's own concession, was that the risk of suicide was low once established that the likely sentence if convicted was only 2 years or so (para 225) . None of the physical or psychological conditions identified is severe or particularly serious. The Canadian prison system has at least adequate healthcare provision.

30. Extradition would not be oppressive on grounds of her physical or mental condition.

Ground 2

31. There is agreement on the relevant test. The issue is whether there were substantial grounds for believing that there was a real risk of article 3 breach.

32. This is the test outlined by the SDJ at paragraph 194. I reject the submission that she went wrong in law by looking for an international consensus to rebut the presumption of state compliance, by reference to *Krolic v Polish Judicial Authority* [2013] 1 WLR 2013 (paragraph 195); rather I accept Mr Payter's submission that she was simply dealing here with a point raised in argument.

33. Mr Smith argues that at Calgary there is a risk of triple bunking, of limited time outside the cell, and lack of adequate toilet facilities. If she was convicted, she would be held at Edmonton, in relation to which he submits there is a great deal of troubling evidence from the Elizabeth Fry Institute, documenting problems experienced by prisoners, including prisoners being responsible for care of other prisoners, unprofessional staff, those on suicide watch being segregated and inadequate healthcare. He argues that Mr Bell, for the Requesting Authority, has failed to engage with the specifics and has offered only bland generalisations by way of answer. He argues that Covid-19 would impose an additional burden on the Appellant which did not factor in the SDJ's Judgment (which predates the pandemic). Finally, he says the SDJ should have considered what would happen to the Appellant if she was held in maximum security.

34. The Respondent resists this ground too. Mr Payter argues that the SDJ's findings of fact relating to the Appellant's state of health are central: she is not seriously or severely unwell. The Canadian prison authorities will be able to offer adequate medical care. The evidence of Mr Bell was careful, thorough, and specific to this Appellant. The SDJ considered all the evidence before her and came to conclusions which are not wrong. Canada can plainly manage prisoners in the midst of a pandemic so there is nothing in the point made about Covid-19.

35. The second ground of appeal is linked to the Appellant's health. Here too the SDJ's findings are clear and determinative against the Appellant. The SDJ concluded that the Canadian prison system was not overcrowded and that the Appellant would have sufficient space. Further, as already noted, she found that it did offer a reasonable level of healthcare, including safeguarding provision in the event that she had suicidal ideation.

36. The SDJ was entitled to conclude that the Appellant would probably be held in medium or low security and therefore there was no "real risk" that she would be exposed to any of the problems suggested as attaching to the maximum security prison estate in Canada. It was not necessary for the SDJ to examine what would happen if she was held in maximum security conditions.

37. The issues of triple-bunking and healthcare provision were addressed: paragraphs 200 and 201. The Appellant's own evidence (from Ms Jones-Mollerup) was that double bunking was only seen in maximum security units for men (para 171), and Mr Amer could only speak about the male maximum security prison estate (para 204).

38. The SDJ was entitled to conclude that there are no substantial grounds for believing that there is any real risk that the Appellant will be subject to inhuman or degrading treatment if she is held in detention in Canada, even taking account of her mental and physical disabilities, such as the SDJ found them to be. The risk of suicide was indeed low, on the Appellant's own concession at the hearing. In any event, that risk and the Appellant's other health needs can be managed within the Canadian prison estate. I have been shown no evidence to suggest that the Appellant's medical condition has changed in any way which is material to the outcome.

39. Extradition would not breach Article 3.

Anonymity

40. Mr Smith invites me to make an anonymity order in relation to the Appellant and other family members. In order to permit free discussion of the issues at the hearing, I directed that no report of that hearing should be made which revealed the Appellant's identity or that of family members. That temporary order was not opposed by any person present at that hearing. I said I would review the position in light of my decision on the appeal.

41. The basis for seeking an anonymity order is set out in Mr Smith's skeleton dated 6th May 2020 (paragraphs 9 and 10, in particular). The Respondent is neutral on whether there should be an anonymity order, but helpfully reminds me of the applicable principles (see Mr Payter's skeleton argument dated 4 September 2020, paragraphs 5-13).

42. In the event, I have rejected this appeal, and I have done so in terms which do not touch on the point which gave rise to the application for anonymity. I therefore reject the application for anonymity, on the grounds on which it was advanced by Mr Smith.

43. I have considered whether the discussion of the Appellant's medical condition is sufficient to warrant anonymity pursuant to Article 8. However, I am not persuaded that a derogation from the principle of open justice is warranted in light of those details alone. The details of the Appellant's health are obviously private to her, but not of such sensitivity that anonymity might be justified.

44. In any event, and further, I note that there was no anonymity at first instance, and that it would be unusual for there to be an anonymity order imposed at the appeal stage (see *R (Press Association) v Cambridge Crown Court* [2012] EWCA Crim 2434 at paragraph 18.

45. I reject the application for anonymity.

Conclusion

46. This appeal is dismissed. The Appellant must be extradited to Canada.