



Neutral Citation Number: [2020] EWHC 3163 (Admin)

Case No: CO/4165/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 November 2020

Before :

Double-click to add the Judges name

Between :

Vasile Dragut
- and -
Westminster Magistrates Court
-and-
Crown Prosecution Service
-and-
National Crime Agency

Applicant
Respondent
First Interested
Party
Second
Interested Party

Mr Hawkes (instructed by **INT Solicitors**) for the **Applicant**
Ms Hinton (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 19 November 2020

JUDGMENT
(Approved by the court)

Mrs Justice Thornton:

1. This is an application for habeas corpus, pursuant to CPR r 87. The applicant is Vasile Dragut. His extradition has been requested by the Court of Mantova, Italy.
2. It is Mr Dragut's case that there has been a breach of section 4(3) Extradition Act 2003 because he was not brought before the Judge at Westminster Magistrates Court as soon as practicable and therefore it is mandatory to order his discharge under section 4(5) of the Act.
3. District Judge Zani, sitting at Westminster's Magistrates Court, refused an application to discharge Mr Dragut under section 4(5) Extradition Act. It is now common ground that the Judge was unwittingly misinformed about relevant facts by the CPS lawyer. The parties are therefore agreed that this Court should make the decision afresh.
4. Mr Dragut is represented by Mr Hawkes and the CPS is represented by Ms Hinton. I am grateful for their assistance. There were some connection issues during the Microsoft teams remote hearing (held due the Coronavirus lockdown restrictions) which lengthened the hearing. Nonetheless I am satisfied that Counsel were able to make all necessary submissions before me.

The writ of habeas corpus

5. Habeas corpus is considered to be the oldest of the prerogative writs. It has been described as 'probably the most cherished sacred cow in the British Constitution (Linnett v Coles [1987] QB 555).
"Authorising its issue in appropriate cases is regarded by all Judges as their first duty because we have all been brought up to believe, and do believe, that the liberty of the citizen under the law is the most fundamental of all freedoms"
(R v Secretary of State for the Home Department ex parte Cheblak [1991] 1 WLR 890 (Lord Donaldson MR))
6. A writ of habeas corpus will issue where someone is detained without any authority or the purported authority is beyond the powers of the person authorising the detention and so is unlawful.

The facts

The Applicant's arrest and detention

7. The Applicant is the subject of a conviction European Arrest Warrant (EAW) issued on 22 January 2020 and certified by the National Crime Agency on 19 May 2020. Extradition is sought in order to execute a sentence of imprisonment of one year (the entirety of which is to be served) for offences of handling stolen goods and possession of an offensive weapon on 28 March 2009. The conviction dates from 22 September 2014 and the domestic warrant was issued on 12 February 2019. The applicant did not appear in person at the trial but was summoned to attend.
8. The Applicant was stopped by police in his car in Muswell Hill at 16.10 on Saturday 7 November 2020. He was arrested at 16.19 and taken to Wood Green Police Station. His detention was authorized at 19.34. He appeared before Westminster Magistrates Court (DJ Zani) at 3pm on Tuesday 10th November 2020. This was approximately 70 hours after he had been arrested. In an application to discharge of the warrant, Mr Dragut's lawyers questioned why he had not been brought before the Court on Monday 9th November. During the course of the hearing it appeared

that DJ Zani was informed that Mr Dragut had been brought to Court on the Monday but access had been refused by the cells as they were full.. He rejected the application and remanded Mr Dragut on conditional bail. To date, Mr Dragut is unable to satisfy the conditions and remains in detention.

9. This application was made in writing on 11th November on the basis that DJ Zani had erred in his decision. Having reviewed the matter on the papers as the intermediates judge on Friday 13 November I adjourned the matter for a hearing. I directed the parties to seek further information on the impact of Covid on cell capacity at Westminster Magistrates Court. In response, the Court has been provided with the following additional information.

Additional information not before DJ Zani

10. A statement from DJ Zani explains that he sat all day on Monday 9th November with a busy list. At some point prior to the luncheon adjournment he was informed that the cells were full due to Covid restrictions. His recollection is that he was told by Counsel for the First Interested Party that the applicant had been brought to Court during the course of Monday 9th November but that access had been refused by the cells as they were said to be full. DJ Zani rejected the application to discharge the warrant on the basis that in all the circumstances the Applicant had been brought before him as soon as practicable.
11. An email from the Delivery Manager at Westminster Magistrates Court states that cell capacity at Westminster has been reduced from 40 to 25, due to the need for social distancing. There has also been a reduction in Serco staff. On Monday 9th November the capacity of the cells was 25 and the custody list that day listed 30 persons. Mr Dragut did not appear on the list. On Tuesday the cell capacity was 25 and the custody list consisted of 18 people. Mr Dragut did not appear on the list. He was produced to the cells at the Court at 13.08 on Tuesday 10th November.
12. A statement from the Custody Sergeant at Wood Green Police Station states that a request was made to Serco to transport Mr Dragut to Westminster Magistrates Court on Monday 9th November. The request was made at 00:43 hours on Monday 9th November 2020, ‘a normal time to request for transport giving SERCO plenty of time to organize their vehicles for the Monday morning’. The statement goes on to say:

“I now see that this male was not collected by SERCO on the Monday 9th November... this male was still here [Tuesday 10th November] awaiting collection...I see from the custody record on 10th November at 09:06 a call was made to Serco Control by DDO Manaz who spoke with a Chris from Serco asking about the collection of this male. Chris assured this DDO that Serco would attend shortly. Serco did arrive and the male left with them at 12:09 hours on 10th November... Why Serco did not send a crew to transport this male to court on the Monday is a matter for Serco or the courts as I believe that we have done everything correctly”
13. The custody record for Mr Dragut records at 19:54 on Monday 9th November that Mr Dragut had not been collected by Serco and taken to Westminster Magistrate’s Court.
14. Two emails from Neil Winter Incident Manager at Serco set out matters from Serco’s perspective:

“...Serco were notified by Wood Green custody suite at 00:31 on Monday 9th November to move Mr Dragut to Highbury Corner Magistrates This request was booked via the book a secure move notifications portal. The move was booked at 00:32 At 00:32 an amendment was made to the move request changing the destination from Highbury MC to Westminster MC. This move was booked at 00:42 This change of destination should have auto updated Serco systems but on this occasion failed. A vehicle was sent to Wood Green Police station to collect prisoners on Monday morning to move to Highbury MC. I cannot ascertain at this time what if any conversations or arrangements were made regarding Mr Dragut when the crew arrived. The Serco vehicle crew involved are on duty tomorrow morning at 06:30 and will ask them directly regarding any recollection they have of events at Wood Green when they arrived to collect prisoners. At 22:25 on Monday 9th November an amended move request was made by Wood Green custody to move Mr Dragut on Tuesday 10th November to Westminster MC and Mr Dragut was collected at 11:49 on Tuesday morning arriving at Westminster at 13:02 . I cannot ascertain at this time why he was not collected earlier in the morning for attendance at court for a 10am hearing.”
(email dated 17 Nov at 18.33 to the CPS)

“I spoke to the vehicle crew involved this morning and they have no recollection of events concerning Mr Dragut at Wood Green Police Station on Monday 9th November. To Clarify: Wood Green Custody initially booked the move with SERCO using the MoJ supplied portal initially to Highbury corner MC, within a minute the move was updated by the police to Westminster MC. The initial move request to Highbury was picked up by SERCO systems and planned but the subsequent amendments to the request were not auto updated onto SERCO systems for a reason I can't explain.”
(email dated 18 Nov at 13.26 to the CPS)

15. In further written submissions to the Court, Counsel for the First Interested Party accepts that:

“It is clear that District Judge Zani decided the case on the basis of misinformed submissions from the CPS lawyer.

The Respondent invites the Court to consider that the District Judge reached the right conclusion but is mindful that there is further evidence that was not before the Judge. The Respondent invites the Court to consider the matter de novo”.

The statutory framework

16. The statutory provisions, so far as material are as follows.
17. Part 1 of the 2003 Act provides for extradition from the United Kingdom to territories designated for this purpose (category 1 territories). Section 2 deals with the certification of an arrest warrant issued by a judicial authority of a category 1 territory seeking the arrest of a person accused, or convicted, of an offence or

offences in that country. Section 3 provides for the arrest of an individual subject to a certified arrest warrant.

18. Section 4 provides that:

“s. 4 Person arrested under Part 1 warrant

(1) This section applies if a person is arrested under a Part 1 warrant.

(2) A copy of the warrant must be given to the person as soon as practicable after his arrest.

(3) The person must be brought as soon as practicable before the appropriate judge.

(4) If subsection (2) is not complied with and the person applies to the judge to be discharged, the judge may order his discharge.

(5) If subsection (3) is not complied with and the person applies to the judge to be discharged, the judge must order his discharge.

(6) A person arrested under the warrant must be treated as continuing in legal custody until he is brought before the appropriate judge under subsection (3) or he is discharged under subsection (4) or (5).”

(underlining is the Court’s emphasis)

19. Thus; section 4 requires a requested person to be produced at court as soon as practicable following their arrest. A failure to do so compels the court, upon application to discharge the warrant and order the person’s release.

20. There is no right of appeal against an appropriate judge’s decision pursuant to s. 4 EA 2003; rather, the right of appeal is only pursuant to s. 26(1) EA 2003 against the decision of the judge to order extradition. Habeas corpus or judicial review are the only remedies in a s. 4 EA 2003 challenge: (Scott-Baker LJ in Nikonovs v Latvia [2005] EWHC Admin 2405 2 3 e.g. at [19]). The parties were agreed that the urgency meant that an application for habeas corpus was the appropriate remedy.

Was Mr Dragut brought before a judge as soon as practicable?

21. Whether or not Mr Dragut was brought before the appropriate Judge as soon as practicable is a question of fact. The criterion is *practicable* rather than the more elastic *reasonably practicable*. Second, the draftsman has chosen practicability rather than the more precise criterion of a specified period. There will no doubt be cases at the margins where views could reasonably differ whether the applicant was indeed brought before the appropriate judge as soon as practicable (see Nikonovs v Governor of Brixton Prison [2005] EWHC Admin 2405).

22. The parties are agreed that all expectations were that Mr Dragut would be produced at Westminster Magistrates Court on Monday 9th November. This is apparent from the custody record and the booking of an interpreter for Court on Monday. It is also apparent that Wood Green custody suite made a booking for Serco to take Mr Dragut to Court on Monday 9th November in the early hours of that morning – the usual process and timing. However, the booking erroneously stated that Mr Dragut was to go to Highbury Corner Magistrates Court, rather than Westminster Magistrates Court. The error was speedily corrected (within a minute) by the custody suite.

23. Unfortunately, a computer error with the MoJ supplied portal meant Serco’s systems failed to register the change of destination. Ms Hinton points to the glitch

as a mechanical error which had the unavoidable consequence that the error was not discovered until the next day. Mr Hawkes submitted that a computer error could not absolve responsibility for getting Mr Dragut to Court as soon as practicable. I accept Ms Hinton's submission that the nature of the error meant it could not feasibly have been discovered until the following morning when a Serco vehicle arrived to take Mr Dragut to the Highbury court and not the Westminster court.

24. Mr Dragut was not collected and remained at the police station. There are no records as to what, if any, conversations or arrangements were made once the error was realized or as to the time when the error was realized. From the information available to the Court, nothing then appears to have happened until that evening. There is a reference in the custody record at 19.54 to Serco not collecting Mr Dragut to take him to Westminster Magistrate's Court. At 22:25 an move request was made by Wood Green police station to move Mr Dragut on Tuesday 10th November to the Westminster court.
25. On the evidence before the Court administrative inertia appears to have set in during the day. Whilst Ms Hinton would not concede this, she accepted that there is no evidence before the Court of any efforts made to get Mr Dragut to Court that day, either by the police or Serco. Mr Hawkes criticises the police who must have realised, he says, that Mr Dragut had not been collected. The custody record shows they continued to review Mr Dragut during the day, as they were required to do, but failed to address their mind to the need to get him to Court as soon as practicable. Serco are unable to say that any efforts were made to get Mr Dragut to Court that day.
26. Nonetheless, Ms Hinton submitted that any fault in the conduct of those responsible for getting Mr Dragut to Court is not determinative of the assessment of practicability for that day. This is because of the evidence about the capacity of the cells at Westminster Court on the Monday. DJ Zani's evidence is that by lunchtime, at least, the cells were at full capacity. The delivery manager's evidence is that there were 25 cell spaces on the Monday and the custody list had 30 people on it. On this evidence Ms Hinton submitted it was not practicable for Mr Dragut to be produced at Court that day. The test of practicability is not determined by allocating blame. It is determined by looking at the circumstances in the round.
27. Ms Hinton relied on the case of Komendant v Circuit Court in Wroclaw Poland [2013] EWHC 2712, another case involving Serco. There, the applicant was arrested at 5.30pm on 20 March 2013 and produced 'not as is the usual practice' on the following day but on 22 March 2013 (the case report says 22 May but this is presumed to be a typo). In that case the custody officer contacted Serco at 7.18am to arrange collection of the applicant. Nothing happened that morning. The custody officer spoke twice to Serco before 2.18pm that day to chase up collection. Serco informed him that the Court had refused to accept the applicant as it was too late in the day. Consequently, he was not produced at Westminster Magistrates' Court until the following day in the morning. The Court was satisfied that the operative cause of the failure to produce the applicant at Court was the decision of the District Judge not to accept his case behind an already lengthy queue of cases on that day. Ms Hinton relied in particular on the following analysis in the Court's judgment, which Mr Hawkes did not dispute:

"The statutory test is not that it would have been possible for the claimant to have been produced earlier on that day, the statutory test is whether or not it was practicable to produce him any earlier than he was produced".

28. She submitted that, applying the passage to the facts of this case, it must be said that, once the computer glitch delayed Mr Dragut's arrival at Court it was not practicable to produce him that day because of the Covid related restrictions on cell capacity. She accepted she could not make the same submission about Tuesday given the Court was not at capacity. Mr Hawkes disputed the evidence about cell capacity being 25 suggesting that the evidence from the Court delivery manager indicated that this was an aspirational figure rather than a hard and fast rule.
29. Mr Hawkes sought to reply on Nikonovs v Governor of Brixton Prison. Mr Nikonovs was not brought before a Judge at Bow Street Court for nearly 66 hours after this arrest at Boston Police Station and some 74 hours after his arrest at his home. The Divisional Court granted the application for habeas corpus.
30. The Court found that the only reason why Mr Nikonovs was not brought before the court on Saturday 17 September was because GSL Court Services were under the mistaken impression that the Bow Street court was closed on that day:

“no one suggested it was not practicable to bring the Applicant to London from Boston, Lincolnshire that day. He could have been brought to Bow Street Magistrates.”
31. I accept that the computer glitch was undiscoverable until the Monday morning when the Serco van arrived to take Mr Dragut to the wrong Court. Once I accept this, the evidence about cell capacity at the Westminster court that day leads me to the conclusion that it was not practicable to produce Mr Dragut at court that day. Cell capacity was 25. There were 30 people on the custody list that day, not including Mr Dragut. Covid and the need for social distancing have created a number of practical difficulties for the criminal courts. In my view it is not for this Court to seek to go behind the evidence of the delivery manager at Westminster Magistrates Court. The statutory test is not what might have been possible. It might have been possible, as Mr Hawkes suggested, for room to be found in the cells for Mr Dragut if he arrived as the custody numbers were reducing as cases were dealt with. That is not however the statutory test. The Covid restrictions meant it was not practical to produce him that day once the computer glitch prevented a timely arrival at Court.
32. Alongside these events sits the apparent administrative inertia during the day on Monday where no effort appears to have been made to get Mr Dragut to Court. This inertia is regrettable on a human level, irrespective of the statutory test. Police cells are not designed to hold people for more than 24 hours. Nonetheless, in my view this conduct does not change my analysis of practicability. As Ms Hinton said frankly, 'Serco get away with it, by luck'. The difference between the case of Nikonovs and this case is that here it is suggested that it was not practicable to bring Mr Dragut to Court on the Monday, irrespective of conduct. In Nikonovs the only action preventing Mr Nikonov's production was the mistake by GSL Court Services.
33. Turning to events on Tuesday 10th November. Mr Dragut was collected at approx. 11.49 and arrived at Court at 13.02. He appeared before District Judge Zani at 3pm. Mr Hawkes questioned why Serco had not collected Mr Dragut in time for a court start time of 10am so that he could have been received earlier by the Court. Mr Hawkes emphasises the context in which this question arises, namely that Mr Dragut had been detained since Saturday afternoon by this point.

34. DJ Zani explains the details of the day's hearing in his witness statement. He was satisfied on his knowledge of the list that day and evidence before him that Mr Dragut had been produced as soon as practicable that day. This aspect of his decision is not tainted by the incorrect information provided in relation to events on Monday. I cannot identify anything Wednesbury unreasonable, irrational or procedurally unfair about his decision making. In any event, the question is not whether it might have been possible for Mr Dragut to have been delivered to the Court earlier on that day by Serco. The question is whether he was brought before DJ Zani as soon as practicable on Tuesday. I am satisfied that he was. The nature of the list that day meant that 4 out of the 5 extradition cases remained to be dealt with at lunchtime.

Conclusion

35. The application is refused for the reasons set out above.
36. I invite the parties to agree the terms of an order and email it to my clerk for the Court's approval.