Neutral Citation Number: [2022] EWHC 1508 (Admin)

Case No: CO/4326/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday 16th June 2022

Before:
MR JUSTICE FORDHAM

- -

Between :

JOHNSON OBOGO	**Appellant**
- and -	
GOVERNMENT OF THE UNITED STATES OF AMERICA	**Respondent**

- -
- -

George Hepburne Scott (instructed by Lansbury Worthington Solicitors) for the **Appellant**
Nicholas Hearn (instructed by CPS) for the **Respondent**

- -

Hearing date: 16.6.22
Judgment as delivered in open court at the hearing

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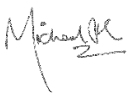
Approved Judgment

I direct that 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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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM :

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The sole ground of putative appeal that is advanced, with his characteristic conciseness, by Mr George Hepburne Scott raises the familiar, serious and important question of Article 3 ECHR and conditions in prison or detention. The hearing was in-person. The Appellant is a 28 year old Nigerian national, wanted for extradition to the United States in conjunction with alleged involvement between the ages of 18 and 23 in multiple complex internet-based frauds, which he denies. He had come to the United Kingdom to study in January 2020. After an oral hearing on 9 September 2021 at which he was represented by different Counsel, District Judge Branston ("the Judge") on 26 October 2021 referred the case to the Home Secretary who on 10 December 2021 ordered extradition. A considerable volume of material has been placed before the Court which Mr Hepburne Scott has assisted me in navigating. I also have the advantage of written submissions on behalf of the Respondent from Mr Nicholas Hearn. I am grateful to them both for the assistance that they have given to the Court.

2. The approach that was taken by the Judge in relation to Article 3 and prison conditions was a careful one. The discussion of that topic spanned nearly 30 paragraphs and 12 pages in the Judge's judgment. The Judge set out the law, extensively, by reference to a series of six authorities relating to Article 3 prison conditions and extradition. No complaint is made, rightly, about any failure to appreciate the applicable legal standards. The Judge then addressed the evidence that had been adduced on behalf of the Appellant. It included a report and oral evidence of the US attorney who was being put forward as an expert. There was also documentary evidence relating to various sorts of detention facility in Arizona, and more broadly, including documents discussed by the US attorney. The Judge then described the evidence adduced by the Respondent. This included evidence from the Warden of a particular pre-trial detention facility in Arizona (the Core Civil Central Arizona Florence Correctional Complex); evidence from a senior deputy assistant director in the correctional programs division of the Bureau of Prisons (BOP) relating to prisons more generally and, evidence from a regional physician describing medical services and the Covid response. There was also a letter dated 29 July 2021 from the Immigration and Customs Enforcement (ICE) Department relating to immigration detention. The Judge next set out a summary of the key submissions that had been advanced by the two parties. Finally, the Judge set out in a section – 4½ pages long – his analysis. The Judge's conclusion was that the evidence presented "did not even begin" to provide substantial grounds to suggest that the Appellant if extradited faced a real risk of being subjected to inhuman or degrading treatment as was being submitted.

3. Mr Hepburne Scott maintains the arguments advanced in writing but has focused his oral submissions on immigration detention. Before I turn to immigration detention I ought to address another principal topic advanced in writing (and maintained). What is said on the Appellant's behalf is that the Judge really only focused on arguments relating to the Covid pandemic and prison conditions and relating to actions of response or non-response to the pandemic. It is certainly the case that the pandemic was a principal theme in the Judge's analysis. That, however, is unsurprising given that, as the Judge recorded, Counsel who appeared before the Judge advanced oral submissions which were limited to Covid-related detention condition issues. But I agree with Jay J

who refused permission to appeal on the papers. Beyond reasonable argument, the Judge committed no error of approach. The Judge did plainly consider the bigger picture. This is clear throughout the judgment. For example, in the Judge's description of the Respondent's key points in response to the Article 3 arguments (only the fourth of the four of which was a point specifically relating to the pandemic). In my judgment, beyond argument, the Judge considered and reasoned out an assessment which dealt with the position regarding all of the relevant detention facilities that were being raised on behalf the Appellant. They included the Core Civil facility, the other BOP facilities (including CAR: criminal alien requirement imprisonment), the detention facilities in relation to immigration operated for ICE, which in turn included facilities involving Customs and Border Patrol (CBP). There was no arguable error as to the Judge's focus.

4. I can turn next to the point which is the focus of the oral submissions today. That concerns the evidence as to conditions of immigration detention. Mr Hepburne Scott submits that the District Judge arguably went off the rails – that is my phrase not his – in saying in relation to immigration detention that time spent in such a facility was a "long way off" and was "likely" only to form a "very small portion" of the time spent by the Appellant in detention in America, were he detained there. The Judge had earlier described evidence relating to the minimisation of time in immigration detention through the use of non-immigration detention centres in the cases of those with irregular immigration status, who may be facing immigration removal. The relevance of immigration detention is that there is the clear prospect in this case that one ultimate course that may be taken by the US authorities in relation to the Appellant, would involve immigration control and ultimate removal. That course could well involve detention in an immigration facility which could be in principle be anywhere in the United States. It is quite right that the Judge introduced his analysis on the question of immigration detention by making the observations about it being a "long way off" and "likely" only to form a "very small portion" of any time spent in detention in America. But, importantly, the Judge did not stop there and nor do I. The Judge went on, in terms, to deal with the evidence about immigration detention conditions as a matter of substance. The Judge made the point that the US Attorney's evidence in relation to immigration detention was – as was accepted on behalf of the Appellant – very generic. The Judge then explained that he considered that the material that had been put forward did not come close to showing a real risk specific to the Appellant that he would face treatment contravening as Article 3 rights. The Judge singled out, in that discussion, one of the reports that had been referenced and relied. This was a report by the Office of the Inspector General at the Department of Homeland Security, dated 30 March 2021, of a visit to a correctional centre in Arizona (the La Palma Correctional Center in Eloy). In that report, findings of concerns had been raised and recorded in the form of 8 specific recommendations. The Judge considered that material and plainly had in mind the other material on which reliance had been placed. Mr Hepburne Scott fairly accepted that the materials and the substantive points put forward in his skeleton argument before me closely reflects what had been advanced in the skeleton argument before the Judge. The Judge thought that one of the important features of the Inspector General's March 2021 report was that it reflected monitoring and supervision and actions being taken under what the Judge described as "robust systems" to address "areas of concern". That important point is very much the point which also arises from other materials on which reliance was and is placed. A good example is a judgment of an Arizona court (the US District Court) on 19 February 2020 (Case No. CV-15-00250-TUC-DCB). That judgment granted a request for a permanent injunction on the basis

of findings of fact set out in the judgment. Those findings, understandably, are relied on before this Court because of the nature of the concerns which they involve about CBP immigration detention facilities. I have read the key passages in those findings with care. But, in my judgment, much the same as the Judge said about the Inspector General's March 2021 report can be said about this material. In the first place, I do not accept that findings of fact in the February 2020 District Court judgment – even arguably – are of a nature which would cross the Article 3 threshold for the purpose of requiring the Respondent judicial authority a document in the nature of an "assurance". But secondly what the 2020 judgment – like the March 2021 report – illustrates is the recognition of legal standards and steps to enforce those standards.

5. In relation to immigration detention conditions in the United States, Mr Hepburne Scott has given the court a list of five features. In my judgment, beyond argument, the Judge cannot be criticised for not addressing these specifically as a list of five features, since this list was not put forward in the same way before him. They do have prominence in the argument before me. They are: (1) expired food (2) overcrowding (3) segregation issues (4) mouldy bathrooms and (5) undrinkable water. I considered each of these, with Mr Hepburne Scott's assistance, by reference to the materials that were before the Judge and are before this Court. It is necessary and appropriate to proceed with some caution in relation to the extraction of those five features from those materials. To give an example, the reference to "undrinkable water" in immigration detention – when interrogated – was a reference to a February 2018 report (Human Rights First, "Ailing Justice") regarding one detention facility in New Jersey where it was being said that water was running out and that the "water from the bathroom tap is undrinkable". If there were a problem in immigration detention centres of detainees being supplied with undrinkable water, I have no doubt it would be reflected in the other reports and materials that have been put before the Court. So, there are clear dangers in taking an example of that kind and in that way, understandable though it is that such a matter should have caused concern as it plainly did. Other matters from the list, including overcrowding, were clearly raised in the materials before the Judge. As to overcrowding, in my judgment, and beyond reasonable argument, there is no minimum floorspace Article 3 threshold crossed in the present case such as would call for an "assurance", nor is there by reference to floorspace when combined with other conditions. The references to expired food, segregation issues and mouldy bathrooms – when interrogated – are all references (given in the US Attorney's report) to a 2019 report of the Inspector General after four visits in 2018 to particular facilities. That material can be put alongside the more recent report of March 2021 to which I have referred. I unhesitatingly accept that there are materials which do raise real concerns, and substantial concerns, in relation to immigration detention facilities in the United States. But what I cannot accept is the submission that they cross the threshold, even arguably, for the purposes of Article 3 and extradition.

6. Mr Hepburne Scott submits that the ICE document before the Judge, and before this Court, does not constitute an "assurance" (or reassurance) specific to the Appellant. He described it, rather, as a "toothless regurgitation of generic procedures". By this, he was contrasting it with an Article 3 prison conditions "assurance". The answer in my judgment, beyond argument, is that this is not a case that calls for an Article 3 "assurance". What the ICE document does is to state that there is a "commitment" to ensuring that those in immigration custody reside in "safe, secure and humane environments" and under "appropriate conditions of confinement". There is then

reference to what is described as "an aggressive inspections program" to "ensure that applicable standards are followed". The Judge relied on that material, to that extent, and so do I. It needs to be put alongside the other materials, including materials which show the inspections programme and supervision of standards in action. By way of illustration, the most recent (March 2021) Inspector General report relating to the La Palma facility involved – as I have mentioned – 8 recommendations. Three of those were recognised in the report as being promptly implemented. Those which were promptly implemented included two recommendations concerned with medication. None of the 8 recommendations identified concerns or recommendations which match any of the 5 points raised in Mr Hepburne Scott's list. That in my judgment is a helpful, practical cross-check.

7. I have considered the material on these points and on all of the points that are raised in writing and orally on behalf of the Appellant. Article 3 human rights arguments are of the utmost importance and call for a careful consideration. I have posited in my mind this Court re-evaluating for itself, afresh, the question of Article 3 compatibility. Having done so I have reached – with a confidence beyond reasonable argument – the same conclusion as did the Judge, on all aspects of prison conditions and all aspects of Article 3 compatibility.

8. In those circumstances and for those reasons I will refuse the renewed application for permission to appeal.

16.6.22