



Neutral Citation Number: [2022] EWHC 199 (Admin)

Case No: CO/2878/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

1st February 2022

Before :

MR JUSTICE FORDHAM

Between :

ANTHONY EDWARD GEORGE CATTLE

Appellant

- and -

SPANISH JUDICIAL AUTHORITY

Respondent

George Hepburne Scott (instructed by Bark & Co) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 1.2.22

Judgment as delivered in open court at the hearing

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 hearing was in person. The Appellant is aged 40 and is wanted for extradition to Spain. That is in conjunction with an accusation Extradition Arrest Warrant issued on 13 May 2021 and certified on 3 June 2020. He is wanted to stand trial for being a member of an international criminal organisation, being involved in the transportation and distribution of cannabis from Spain to the United Kingdom, with a 10 year maximum prison sentence. The Appellant is said to have escaped and avoided arrest after planning, arranging and loading more than €1m worth of drugs in October 2017. He came back to the United Kingdom aged 36 in October 2018, having been here as a child in the 1990s but having been in Spain from about 1999 onwards. District Judge Clews (“the Judge”) ordered his extradition on 20 August 2021 after an oral hearing on 16 July 2020. At that oral hearing the Judge had the advantage of hearing oral evidence from the Appellant, from his mother, from his sister, from his former partner, and from Dr Green a clinical psychologist whose report was before the court. The bars relied on to extradition under the legislative framework were rejected by the Judge. Sir Ross Cranston, on the papers on 9 December 2021, concluded that there was no reasonably arguable ground of appeal. Two grounds are advanced before this Court.

Section 25

2. The first is section 25 of the Extradition Act 2003: the question whether the Appellant’s mental health condition is such that it would be unjust or oppressive to extradite him. Mr Hepburne Scott emphasises the report from Dr Green describing the diagnoses of generalised anxiety disorder and major depressive disorder, and the description of the condition of hopelessness giving rise to difficulty in the Appellant managing a trial and to a risk of suicide were he extradited. Dr Green recorded his “fears that were [the Appellant] to be extradited, or put in a position where he could not otherwise call on the resources that might otherwise be available from others in order to stabilise and maintain his emotional equilibrium, he could decompensate significantly and that “such an acute stress reaction would carry with it the risk of suicide”.
3. Mr Hepburne Scott submits that it is at least reasonably arguable that the Judge’s conclusion on section 25 was wrong. He emphasises the propositions set out in Turner v USA [2012] EWHC 2426 (Admin) at paragraph 28, and applied in subsequent cases. They include Turner proposition (4): that “the mental condition of the requested person must be such that that it removed his capacity to resist the impulse to commit suicide, otherwise it will not be the mental condition but a voluntary act which would put him at risk of dying and if that were the case there is no oppression in ordering extradition”. Then there is Turner proposition (6), which involves asking whether “appropriate arrangements [are] in place in the prison system of the country to which extradition is sought so that those authorities can deal properly with mental condition and the risk of suicide”. Mr Hepburne Scott submits that the “very nature” of the “mental conditions” in this case would be such as to “remove the Appellant’s capacity to resist the impulse to commit suicide” satisfying Turner proposition (4). He submits that in the present case the evidential vacuum on “arrangements in place”, were the Appellant extradited, ought to have led to a conclusion that Turner proposition (6) was not satisfied and that the Judge ought not to have relied on a “presumption” of appropriate arrangements

being in place. In all the circumstances, and in particular by reference to those considerations, Mr Hepburne Scott submits that the “oppression” test is satisfied. He also submits that the evidenced difficulty in managing the trial satisfies the “injustice” limb of section 25. He emphasises, for the purposes of today, that the question is one of reasonable arguability.

4. In relation to “injustice” and “difficulty in managing” the trial, the Judge found – unassailably in my judgment – that the Appellant was not “unfit to stand trial”. Indeed, that was put to Dr Green at the hearing, who said: “I can’t directly say that he is unfit to stand trial anywhere in Europe”. As to the absence of evidence on the arrangements in place (Turner proposition (6)), it is in the absence of direct evidence that presumptions operate, unless those presumptions are rebutted by evidence. In my judgment, beyond reasonable argument, the Judge was entitled to identify and rely on an applicable presumption of suitable arrangements being made. There is also this point, as to Turner proposition (4). Having considered all the evidence in the case, and for reasons which were carefully explained, the Judge specifically and unassailably found: “there is no basis for me to find that if the requested person attempted to commit suicide it would be the result of his mental condition rather than a voluntary act”. Referring to Turner proposition (4), the Judge explained: “that is not the case here”. In those circumstances and for those reasons there is no reasonably arguable section 25 ground in this case.

Article 8

5. Turning to the second ground of appeal – Article 8 ECHR – Mr Hepburne Scott emphasises a number of factors which weigh in the balance against extradition. The Appellant is a British citizen of good character. He is mentally very unwell; and his mental condition is likely to significantly worsen if extradited; and there is the suicide risk identified by Dr Green. The alleged offence is almost 5 years old and involves cannabis supply albeit in large quantities. There is ‘significant evidence’ that could have been deployed and which has been lost through the passage of time. The Appellant provides vital support to his mother who herself has serious mental health difficulties. He also provides emotional and practical support for his children. Mr Hepburne Scott submits that it is reasonably arguable that, applying the approach in Love v United States [2018] EWHC 712 (Admin) at paragraph 26, this Court “stepping back” would conclude that the overall evaluation in this case was wrong: the way that crucial factors were weighed in the balance should lead this Court to the conclusion that the ultimate overall question in the case “should have been decided differently”, and so that the appeal should in consequence be allowed.
6. The Judge conducted the requisite “balance-sheet” exercise and identified the relevant features of the case counting both against, but also in favour of, extradition. The Judge specifically considered the features identified on behalf of the Appellant by Mr Hepburne Scott, and set them out with care. He also explained, having heard the live evidence, why he was not convinced that the state of dependence on the Appellant of his mother was “as deep-seated as had been portrayed”. The Judge analysed, with care, the evidence relating to the children, including evidence from the ex-partner. If I take the most generous position to the Appellant, for the purposes of this application for permission to appeal, I posit this Court evaluating for itself – in the light of the Judge’s findings and the reasoning he expressed and the documents in the case – the question of Article 8 proportionality. This is a case where, as the Judge rightly recognised, there

are strong public interest considerations in favour of extradition. The Judge concluded that those matters decisively outweighed those factors weighing against extradition. In my judgment, that evaluative conclusion was plainly correct. There is no realistic prospect that this Court at a substantive appeal would reach a different overall view. For those reasons, the second ground of appeal under Article 8 is not reasonably arguable, and the consequence is the application renewed before me for permission to appeal must be dismissed.

Extending the 10 day period

7. Mr Hepburne Scott has invited the Court to order that the 10-day period within which extradition must be effective shall start to run in this case from 16 February 2022. The basis of that application, which invokes a power which this Court has, is that Mr Hepburne Scott tells me – and I accept – that he has seen from his client evidence of a second Covid jab which the Appellant is due to receive in this country on 16 February 2022 and is (understandably) anxious to obtain. This was not a matter of that has been raised with the Respondent. I am persuaded that it would be appropriate to provide the Appellant the reassurance of knowing that he can attend that appointment; and that, on the face of it, there is no significant prejudice arising from a further brief period of time while that takes place, viewed against the timeline in this case. But I will include in my order liberty to apply so that the Respondent can in writing and on notice apply to this Court to vary or discharge the order which I have just described, should it be regarded as appropriate to bring some matter to the attention of the Court and invite such a course. I am satisfied that those arrangements are necessary and appropriate in the interests of justice and that they protect the legitimate interests of all parties.

1.2.22