Case No: CO/1430/2017

Neutral Citation Number: [2018] EWHC 579 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 March 2018

Before :

MR JUSTICE JULIAN KNOWLES

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Between :

MICHAEL CASH	**Appellant**
- and -	
COURT OF FIRST INSTANCE, STRASBOURG, FRANCE	**Respondent**

- -
- -

Judi Kemish (instructed by **TV Edwards LLP Solicitors**) for the **Appellant**
Richard Evans (instructed by **CPS**) for the **Respondent**

Hearing date: 13 March 2018

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Judgment

The Honourable Mr Justice Julian Knowles:

1. At the conclusion of the hearing on 13 March 2018 I allowed the Appellant's appeal and quashed the extradition order made by District Judge Grant on 15 March 2017. I did so on the grounds that it would be unjust and oppressive to extradite the Appellant because he is currently unfit to stand trial and is seriously mentally ill with paranoid schizophrenia, and thus the judge should have decided that extradition is barred by s 25 of the Extradition Act 2003 ('EA 2003'). I said I would put my reasons in writing, and this I now do.

The factual background

2. The Appellant is wanted to stand trial in France for 20 offences of fraud, attempted fraud and employing a minor obliged to attend school. The European arrest warrant ('EAW') issued on 28 January 2016 alleges that in 2014 the Appellant and others made contact with a number of individuals and companies in France saying that they had left over asphalt from building works. They would turn up at the complainants' premises, spread the asphalt around, and then demand payment, far in excess of the price initially agreed or indicated. Threats would be made if payment was not forthcoming.

3. In due course in December 2016 the Appellant was arrested in the UK and there was an extradition hearing under Part 1 of the EA 2003. Extradition was resisted before the district judge on a number of grounds which it is not necessary for me to explore in any detail in this judgment, except to say that one of the grounds relied on was s 25 of the EA 2003, which provides a bar to extradition where it would be unjust or oppressive to extradite the defendant by reason of his physical or mental health. The Appellant's mental illness was relied upon. The judge rejected the contention that extradition was barred by s 25, as he did the other bars which were relied upon, and he ordered the Appellant's extradition.

4. Following the making of the extradition order the Appellant's mental health unfortunately deteriorated further and he was voluntarily admitted to a psychiatric hospital in Guildford on 8 April 2017. Because of concerns about the risk of self-harm or suicide he was subsequently detained in hospital under s 2 of the Mental Health Act 1983.

5. On 26 May 2017 Whipple J granted permission to appeal on the ground of appeal that extradition was barred under s 25 of the EA 2003 by reason of the Appellant's mental illness. There was at that stage a psychiatric report dated 10 May 2017 from a consultant forensic psychiatrist, Dr Tim McInerny, which had not been before the district judge. He concluded that the Appellant was presenting with a serious mental illness that was likely to be paranoid schizophrenia. His symptoms included auditory hallucinations, thought control experiences and paranoid delusions. He was also presenting with fluctuating mood, distress and agitation and persistent thoughts of self-harm and suicide. His illness had not at that date responded to medication, despite him having been trialed on two antipsychotic medications. Dr McInerney regarded the Appellant's particular illness as being difficult to treat. His overall conclusion was that the Appellant was currently psychotic and extremely mentally

unwell. He was not fit to stand trial under the *Pritchard* criteria (*R v Pritchard* (1836) 7 C&P 303).

6. On 26 May 2017 the Appellant was found hanging from a patio door in the hospital and had to be cut down.

7. The appeal came on for hearing before Goss J on 25 July 2017. At that time the Appellant remained under section in a psychiatric hospital, and in the opinion of Dr McInerney he was then still very seriously ill and unfit to plead. Goss J adjourned the hearing to a date after 22 January 2018 and directions were made for updated medical evidence to be served in advance of the resumed hearing.

8. So it was that the matter came before me on 13 March 2018. There was an updated report from Dr McInerney dated 29 December 2017 and the doctor attended and gave evidence before me (for which I am grateful). By then the Appellant had been discharged and was being cared for in the community.

9. Dr McInerney's opinion remains that the Appellant is seriously unwell and that he is currently unfit to plead. The prognosis for his illness is poor and the doctor was unable to provide a timescale within which the Appellant might recover so as to become fit to plead, except that he will need many more months of treatment and also likely psychological intervention, to which the Appellant had been resistant to date. He explained to me that there is a family history of schizophrenia. The Appellant has been tried on various medications, with only limited success, and he is currently taking the maximum permissible doses of some of these drugs. Although following his treatment in hospital there was some evidence of partial recovery, the doctor felt that he had since deteriorated once more. So far as treatment in France is concerned, Dr McInerney told me there is little liaison between English and French psychiatrists. He said that although the drugs being used to treat the Appellant would likely be available in a French prison, he felt that his illness could not properly be managed there because of the separation of the Appellant from his family and because he does not speak French. His opinion is that the language barrier would hinder French clinicians' ability to communicate with the Appellant and their ability to monitor his mental state, which in the doctor's view will lead to a real risk that his mental health and suicide risk will not be safely managed.

Discussion

10. Section 25 of the EA 2003 provides:

> "25 Physical or mental condition
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> (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
>
> (2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him.
>
> (3) The judge must—

(a) Order the person's discharge, or

(b) Adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

11. In *Government of South Africa v Dewani* [2013] 1 WLR 82, the Court said at para 67 in relation to s 91 (which is the equivalent of s 25 in Part 2 of the EA 2003):

> "[67] The section uses the terms "unjust or oppressive" which were used in previous statutes. In *Kakis v Government of the Republic of Cyprus* [1978] 1 WLR 799, Lord Diplock, explained the terms in a well known passage in his speech at pp 782–783:"'Unjust' I regard as directed primarily to the risk of prejudice to the accused in the conduct of the trial itself, 'oppressive' as directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration; but there is room for overlapping, and between them they would cover all cases where to return him would not be fair."

12. Section 27 of the EA 2003 sets out the court's powers on an appeal against an extradition order:

"(1) On an appeal under section 26 the High Court may—

(a) allow the appeal;

(b) dismiss the appeal.

(2) The court may allow the appeal only if the conditions in subsection (3) or the conditions in subsection (4) are satisfied.

(3) The conditions are that—

(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge.

(4) The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge.

(5) If the court allows the appeal it must—

(a) order the person's discharge;

(b) quash the order for his extradition."

13. I may only allow an appeal on s 25 grounds if I consider that the district judge was 'wrong', in the sense which I explained in *Surico v Public Prosecutor of the Public Prosecuting Office of Bari, Italy* [2018] EWHC 401 (Admin), paras 25 – 31. However, where fresh evidence is relied upon, as it is in this case, I can make my own evaluation of the evidence in considering whether it would be unjust or oppressive to extradite the Appellant by reason of his mental health, and thus whether the judge should have decided that question differently: *Magiera v District Court Of Krakow, Poland* [2017] EWHC 2757 (Admin), para 30; *Olga C v. The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), para 26.

14. I have no doubt that it would be both unjust and oppressive to extradite the Appellant in circumstances where he is unfit to stand trial and the prognosis for when, if ever, he will become fit to stand trial is uncertain. As I have set out, the Appellant is currently a very sick man. I have to assume that he would be found unfit to stand trial in France. The overlap between unfitness to stand trial and the statutory health bars to extradition was considered in *Government of South Africa v Dewani (No 2)* [2014] 1 WLR 3220, para 51, where the court said that the extradition of a person who is unfit to stand trial and whose prospects of recovery are uncertain would be unjust and oppressive. Given the uncertainty of prognosis, this is a case for discharge under s 25, rather than just an adjournment.

15. In *Magiera*, supra, I observed at paras 32 - 36 that although there is a presumption that an EU Member State can provide adequate health care, there may be cases where the nature of the defendant's medical condition means that something more than that general presumption is required and there will need to be specific evidence addressing the defendant's health condition and what the foreign authorities will do to manage it. The Appellant's case is just such a case. Mr Evans, who appeared on behalf of the Respondent Issuing Judicial Authority, was unable to put any information before me as to what the position would be in France if the Appellant were to be extradited. He said that some information had been received but he was not in a position to deploy it, and he quite properly accepted that a further adjournment was not realistic.

16. It was for these reasons that I allowed the appeal at the conclusion of the hearing. I should make clear that in the event that the Appellant recovers – as I sincerely hope that he will – then it will be open to the Issuing Judicial Authority to re-commence extradition proceedings if it wishes to do so.