



Neutral Citation Number: [2020] EWHC 1331 (Admin)

Case No: CO/5051/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 March 2020

Before :

THE HONOURABLE MR JUSTICE FORDHAM

Between :

KARL BOORMAN

Claimant

- and -

**JUZGADO DE INSTRUCCION NO.4 DE PALMA
DE MALLORCA**

Defendant

GEMMA LINDFIELD (instructed by **Saunders Solicitors**) for the **Appellant**
HANNAH HINTON (instructed by **CPS**) for the **Respondent**

Hearing date: 31 March 2020

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 for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. This is a renewed application for permission to appeal in an extradition case. The main application that has been made at this hearing has been for an adjournment. The appeal arises out of a ruling of the district judge on 20 December 2019 ordering the appellants extradition to Spain. Permission to appeal was refused on the papers on 3 March 2020 by Mrs Justice Steyn.

Telephone hearing

2. I want to deal first with the mode of hearing before me. This hearing was set up as a telephone hearing and the parties have attended through Counsel by telephone with Ms Gemma Lindfield on the half of the appellants whose instructing lawyer did not dial in because of other matters with which they were dealing. Miss Hannah Hinton counsel for the respondent and her instructing lawyer Rachel Edwards both joined the hearing. The appellant himself and did not attend in any manner. I am conscious that this is a hearing as it has to be under criminal procedure rules 50.17(1)(b)(iii). But the rules make clear in 50.17(3)(c)(i) that his prima facie right to be in attendance at this renewal hearing does not apply where he is in custody, as he is. I did not need therefore address any further consideration arising out of his position. I will come back to his adjournment application. So far as open justice is concerned this telephone hearing was listed, as was its timing, in the published cause list. Members of the press and members of the public were informed of the mode by which they can apply to participate if they wished to do so. Sian Harrison of the Press Association did precisely that and was able to dial in and listen to the proceedings and exit at such time as she wished. The hearing is also being tape-recorded through a facility on the BT conference call mode which I have activated. That recording can therefore be used for any necessary or appropriate access with permission of the court subsequently including the generation of any transcript. The parties very sensibly were agreed as to the telephone mode for this hearing. I am quite satisfied that it was necessary, justified and proportionate to take the course that we have to deal with this hearing in the interests of justice.

Adjournment

3. I turn then to the main matter for today: Ms Linfield's application that I should adjourn this hearing. She relies on the logistical difficulties that she and her instructing lawyer and her client have faced. She tells me they had hoped that material relevant to the appellant's medical situation would be forthcoming. That all relates to what he described in his proof of evidence for the district judge hearing, as arising out of his three tours in Afghanistan. He explained that he had been seeing a doctor about his mental health and the appellant said, so far as that doctor is concerned: "I am showing signs of PTSD and this can be all traced back to having served in Afghanistan and having witness[ed] some shocking events including losing close friends are in combat". The proof goes on and the appellant said in his evidence: "I feel that I now need professional help as I cannot continue to live like this".
4. Before the district judge at the hearing there was an application to adjourn, to obtain medical evidence as to the PTSD. There had been two previous such applications dated 21 November 2019 and 6 December 2019. All three of those applications were refused by the various district judges. Indeed, the district judge's refusal of an

adjournment at the hearing, from the perspective of both a human rights argument focusing on article 8 and mental health condition as an extradition bar under section 25, was the subject of two grounds of appeal that were put before this court in the application for permission to appeal. A third ground of appeal was that the district judge had been wrong in relation to proportionality and article 8. The district judge dealt with the application for an adjournment before him by explaining: “I decline to allow an adjournment for a psychiatric report on behalf of the RP. There was no proper basis for this application”. He described it as “an entirely speculative endeavour by the legal representative for the RP to try and find a bar to his extradition”. The district judge went on to explain “even given that it may be shown that he had issues relating to PTSD I was fully confident and had mutual respect that the RJA could and would be able to deal appropriately manage his condition”.

5. Returning to the application before me, for an adjournment, in her written and oral submissions Ms Linfield explained that there had been attempts which had failed for various reasons to visit the appellant, but that she and her solicitor had then attended on 3 March 2020 to take instructions. Pausing there, when the appellant’s solicitor emailed the court on 27 March 2020, inviting an adjournment of this case on the papers, reference was made to logistical difficulties that are preventing the proper preparation of Mr Boorman’s case “including being unable to meet with him at HMP Wandsworth to take his instructions”. That is not a matter that has been advanced before me. On the contrary, the court is now told that at it was possible both to meet with the appellant and to take his instructions and that that happened on 3 March 2020.
6. In written submissions the court was told that “the notes” had as yet been unavailable. An ambiguity, if that is what it was, has been clarified for me. I have been told that “the medical notes” themselves were available to counsel and solicitor after the meeting, later in the day, on 3 March 2020 and they still are available. Those notes have not been put before the court though I am told that what the medical notes record is the view that the appellant’s condition is appropriate for “treatment in the community”. What the appellant’s lawyers have been seeking to do since 3 March, I am told, and now seek this adjournment in order to continue to pursue, is to obtain “the notes” made by Mr Orr. As it was put to me, that is in order to ascertain whether “treatment in the community” is assessed as being urgently necessary so as to be something which could be relied as contra-indicating extradition and the incarceration envisaged in extradition both as a matter of remand prior to any trial and the serving of any sentence. So, therefore, the outstanding question on which the appellant’s team relies is whether there is some urgent imperative for “treatment in the community” that could be weighed in the balance either as a human rights consideration or from the perspective of an extradition bar. I am not prepared to adjourn for that purpose. In my judgment the description that the district judge gave at when he dealt with the application before him is entirely apt to the one that is made at before me. There is no proper basis. It is an entirely speculative endeavour. It does not justify an adjournment, particularly in circumstances where the merits of the substantive points as to the refusal to adjourn by the district judge are the subject of the grounds of appeal. If there were anything in them that could and would be advanced as such.
7. Finally, so far as the adjournment application is concerned, reliance was also placed on the circumstances now rising as a result of the coronavirus pandemic. What was

said on the appellant's behalf about that were two things. Firstly, in the light of current lockdowns and suspension of flights that there is a different and developing set of circumstances requiring to be explored so far as whether a lesser alternative may be acceptable to the Spanish authorities, or come to be unreasonably or unlawfully refused by it. As it was put, it 'may' be that the Spanish authorities would consider interviewing the appellant by video link, rather than extraditing him, in the context of a further section 21B request which it is envisaged could be made on his behalf. The second point that was made about the pandemic was that, given the current situation and the health risks and the uncertainties, there can be seen to be sufficient concerns about serving time in the Spanish prison estate as to warrant an adjournment for further information to be obtained and permission to appeal addressed in the light of it at a subsequent time, and not the present time when flights are being suspended.

8. I am quite satisfied that there is nothing in either of those aspects that could justify an adjournment in the interests of justice. I will return to article 2 and article 3 and risks on extradition when I make observations about the substantive appeal because that was the one point advanced in all submissions today in support of permission to appeal. But, so far as an adjournment is concerned, I am not persuaded that there is any proper basis for adjourning to allow the development of matters, or information about that to be put subsequently before this court. So far as section 21B and interviewing the appellant is concerned the district judge recorded in his judgment that the foreign authorities had 'already rejected the 21B request' and there was 'no possibility of the RGA taking a less coercive measure falling short of an extradition'. That was a matter before the district judge, because of the way that the case was being put. As it was put in this morning's note to me, on behalf of the appellant it was argued before the district judge that 'it would be disproportionate to extradite the applicant taking into account the less coercive measures available'. In my judgment, it wholly speculative and wholly insufficient for the appellant to say that in the current circumstances the Spanish authorities 'may' take a different course. On the state of the evidence before me there is no realistic prospect of that. All of the communications by the authorities reinforce the position as it was before the district judge. The latest dated 21st January 2020 confirms that surrender is 'absolutely necessary' and the urgency of that surrender. But even if there were anything in the point, so far as what the Spanish authorities 'may' in the current circumstances be willing to countenance, that is a matter for the Spanish authorities to consider in the circumstances where extradition flights are not taking place. There is no reason at all why I should adjourn this appeal with a view to their considering that matter. The idea that they might 'unreasonably' make a decision, which could then ground an appeal, is wholly insufficient as well as wholly speculative.
9. Therefore, and in all the circumstances of this case about which I will need to say a little more, I am quite satisfied that the this court needs to take the same robust approach to adjournment as was taken below by the various district judges.

Permission to appeal

10. That leaves the application for permission to appeal. There were three grounds of appeal, as I have I have identified. Ms Linfield was given various opportunities at this hearing to advance any submissions that she would wish to make in support of permission to appeal. She accepted that in relation to those grounds there was nothing

that she could properly put forward absent an adjournment and absent the supply of further evidence. So far as further evidence is concerned I repeat that the decision has been taken by the appellant's representatives not put the medical records that were available to them at the start of March before this court this hearing at the end of March.

11. One submission was advanced by Ms Linfield at this hearing, arising out of the current pandemic. She submitted that in an extraordinary and fast moving situation the court should be sufficiently concerned about the human rights article 2 and article 3 considerations as to grant permission to appeal on the basis that full argument on an appeal could then be advanced on the question of real risk of the relevant harm should the appellant be extradited into the Spanish custodial system under the current pandemic circumstances. I am quite satisfied that there is no proper basis for granting permission to appeal on that ground. It is a wholly new ground not the subject even an application to amend the grounds of appeal. But I do not refuse it for that reason. I would have wished anxiously to consider any truly viable article 2 or article 3 argument on its legal merits, subject to anything Miss Hinton managed to persuade me to the contrary on behalf of the respondent. But I have not needed to hear from her because, anxiously considering the human rights implications in relation to the position as it currently stands, I am quite satisfied that there is nothing that can be identified as a proper basis for a reasonably arguable ground of appeal.
12. Reference was made by Ms Linfield to the power of which the court has to reopen an appeal under criminal procedure rules 50.27. I mention it so as to record that I have taken into account that, in a situation where it is necessary because of some new development to reopen a decision to avoid a real injustice in circumstances which are exceptional, that is a course which is open.
13. Turning then to what this case was to be about, the application for permission to appeal that was made and then renewed for this hearing raised the grounds that the district judge had erred in refusing the requested adjournment for medical evidence to be elicited or had erred in relation to the article 8 proportionality balance. Permission to appeal was refused, as I have said, on the papers. In the light of the position taken at this hearing by Ms Linfield, who does not seek to advance any further submission nor is any submission developing any of these grounds to be found in any document, it suffices for me to say this:
14. This is an urgent and troubling case. An accusation warrant dated 26 September 2019, relating to an incident on 4 September 2019, constitutes an urgent request for the surrender of the appellant. Two co-defendants have already been returned, they having been located in Bulgaria. The courts of this jurisdiction have been told by the requesting judicial authorities that the appellant's 'physical presence' is 'urgently needed'. This is because a trial is envisaged of all three co-defendants and the other two are currently in Spain and on remand. I have already described the circumstances, so far as the applications for an adjournment is concerned.
15. I am quite satisfied that there is no reasonably arguable ground of appeal that the district judge was wrong to refuse to adjourn the hearing before him. I am also satisfied that the district judge dealt properly and lawfully, and indeed correctly, with the position so far as what medical evidence as to PTSD would and could have shown in the circumstances of the present case. I am also satisfied that there is no reasonably

arguable ground for impugning the district judge's assessment of article 8 proportionality and justification. He recorded that the balance 'fell heavily in favour of ordering extradition' in this case. He recognised the impacts that extradition would necessarily cause. He carried out the necessary balancing required by the article 8 case law. For all those reasons I am satisfied that there is no reasonably arguable ground on the legal merits.

Respondent's Notice

16. That leaves one short remaining point. That is that permission was refused on the papers for a respondent's notice put in and out of time. This court has been provided with a witness statement to explain the circumstances in detail that led to that respondent's notice being put it when it was and not earlier. The respondent canvassed this court reopening the question of whether time should be extended for that respondent's notice. In the circumstances, it is not necessary for me to deal with that application or reopen that matter.

Conclusion

17. For all these reasons the application for the adjournment is refused and the application for permission to appeal is dismissed.

Directions

18. Ms Linfield made a consequential application that I should direct that the CPS or NCA give two forms of notification to her instructing solicitors. First, 48 hours' notification of removal. Second, notification of any application to the magistrates for an extension of time. She relies on the Human Rights Act and says notice would not be onerous and that it is appropriate in the circumstances, where there are risks and logistical problems. I am not satisfied that this court, having dismissed an application for permission to appeal, has the power to make directions of this kind. The statutory scheme is one which deals expressly with matters such as extensions, with a limited power in the relevant court in section 36(3)(b), being a power that involves an agreement is an extension with the requesting state and which doesn't arise in this case. The rules also deal expressly with reopening of appeals and 50.27. I am not persuaded by Ms Linfield, and her invocation of the Human Rights Act, that I have powers to make directions of this kind. If she is right and there is some Human Rights Act breach, arising out of the liaison between her solicitors and the public authorities concerned, then that is a matter that can be raised as and when such a problem that has arisen, before a court which clearly has jurisdiction to deal with it. I accept, as Miss Hinton submits, that the appellant's representatives can liaise both with their client and with the CPS in relation to next steps. But nor am I satisfied, even if I have the jurisdiction, that it is either necessary or appropriate to make directions of this kind in the circumstances of this case. I have no reason to suppose that there is a real risk of a human rights breach. Nor is there any basis that persuades me that as a matter of routine or course courts should be insisting on particular notification periods across the board. As I have said, and as Miss Hinton has submitted, this is a matter that can be raised by the appellant's solicitors in their liaison with the CPS. It is not a matter in relation to which I'm prepared to make any order, still less on the information and material that are before me. I will leave it to counsel to have carriage of the order and

I expressed my gratitude to them and to those who instruct them for their preparation and presentation of the argument at this hearing.

Approved by Fordham J for release to the parties

1.4.20