



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2023] HCJAC 50
HCA/2023/20/XM

Lord Justice Clerk
Lord Malcolm
Lord Armstrong

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in

APPEAL

by

NICHOLAS ROSSI

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Party

Respondent: Cameron, KC.; Stephen; the Crown Agent

14 December 2023

Introduction

[1] The appellant is the subject of two extradition requests under Part 2 of the Extradition Act 2003 by the United States of America. The first, dated 2 February 2022 (E52/21), requests the appellant's extradition for trial in the State of Utah in respect of a

charge of rape alleged to have been committed in September 2008. The second request, dated 28 October 2022 (E61/22), relates to two charges, namely the rape and sexual battery of two separate complainers in November and December 2008 respectively.

[2] The appellant initially opposed his extradition on both requests on the basis that he was not Nicholas Rossi, the person whose extradition was requested. On 11 November 2022, Sheriff McFadyen found, on the balance of probabilities, that the appellant was indeed Nicholas Rossi. On 16 February 2023, Sheriff Dickson, in relation to the second request, held that the principle of *res judicata* applied and followed Sheriff McFadyen's decision. A hearing on substantive matters followed. The appellant relied upon three grounds: that his extradition was barred by passage of time; that it would be incompatible with his rights under the European Convention on Human Rights; and that his physical or mental condition made it unjust or oppressive to extradite him. On 2 August 2023, Sheriff McFadyen rejected these grounds of challenge and concluded that there was no barrier to his extradition. He sent the appellant's case to the Scottish Ministers to decide whether the appellant should be extradited. It is against these decisions that the appellant appeals.

Statutory framework

[3] The United States is a category 2 territory. Part 2 of the Extradition Act 2003 prescribes the framework for the process of decision making in relation to an extradition request from a category 2 territory. It is not necessary to set out the entire process, save for those parts that are of particular relevance to the present proceedings.

[4] Once the Scottish Ministers have certified a request as valid and sent the request and certificate to the sheriff (section 70), the sheriff may issue either a warrant for the arrest of the requested person if satisfied of the matters set out in section 71(2) or, where an

extradition request has not yet been received, a provisional warrant (section 73). A provisional warrant will be issued where the sheriff is satisfied that the requested person is, or is believed to be in, or on their way to, the UK, and where that person is accused, in a category 2 territory, of the commission of an offence (sections 73(1) and (2)). Once issued, the same rules apply as in the case of an arrest warrant under section 72. A copy of the warrant must be given to the requested person as soon as practicable after arrest and be brought before the sheriff as soon as practicable (section 74(2) and (3)). Once brought before the sheriff, the sheriff must *inter alia* remand the requested person to custody or admit him to bail (section 74(7)(c)).

[5] When the requested person ultimately appears before the sheriff for the extradition hearing, the sheriff must make decisions on a number of preliminary matters. In terms of section 78(4) this includes that “the person appearing or brought before him is the person whose extradition is requested”. That question is to be determined on the balance of probabilities (section 78(5)).

[6] Provided the sheriff answers each of the questions in section 78 in the affirmative, he must proceed to section 79 and consider whether the requested person’s extradition is barred by one or other of the considerations listed in section 79(1). The only consideration of relevance to the present case is the “passage of time” (section 79(1)(c)). This bar to extradition is explained in section 82. Extradition will be barred “if (and only if) it appears that it would be unjust or oppressive to extradite him”. In the case of a person whose extradition is requested to stand trial for an offence of which he is accused, the passage of time runs from the date that the requested person is alleged to have committed the offence (section 82(a)). If the sheriff decides that any of the bars to extradition apply he must order

the requested person's discharge (section 79(3)). If not, he must proceed to determine the questions raised in the following sections.

[7] Because the United States is a designated territory, the sheriff need not determine under section 84 whether there is sufficient evidence against the requested person. Next is section 87, which is headed "Human rights". The sheriff must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998. If it would not, he must order the person's discharge. If extradition would be compatible, he must send the case to the Scottish Ministers for a decision whether the requested person is to be extradited (section 93).

[8] Before the sheriff does so, if at any time during the course of the extradition hearing it appears to the sheriff that the requested person's physical or mental condition is such that it would be unjust or oppressive to extradite him, the sheriff must take one of two options. He must either (a) order the person's discharge or (b) adjourn the extradition hearing until it appears that this is no longer the person's condition (section 91).

[9] If not prohibited from doing so by virtue of section 93(2), the Scottish Ministers must order that the requested person be extradited. Extradition may only be ordered where the category 2 territory has in place "speciality arrangements" (section 95). Essentially this means that the requested person will only be prosecuted for the offence in respect of which he has been extradited. That is unless another extradition offence is: disclosed by the same facts as that offence; consented to by the Scottish Ministers; or where the requested person has waived the speciality rule in respect of the offence (section 95(4)). The procedure for obtaining consent from the Scottish Ministers for an offence other than the offence for which the requested person has been extradited is set out in section 129. The requested (likely now extradited) person must be served notice of any request for consent, unless it would not be

practicable to do so (section 129(3)). If the Scottish Ministers are satisfied that the offence is an extradition offence, the Ministers must proceed through the sequential decision-making process, usually carried out by the sheriff, in terms of sections 79-91.

[10] The requested person may appeal, on a question of law or fact, against the sheriff's decision to send his case to the Scottish Ministers (section 103(4)). The court's powers on appeal are prescribed by section 104(1). It may (a) allow the appeal; (b) direct the sheriff to decide again a question (or questions) decided at the extradition hearing; or (c) or dismiss the appeal. The court may only allow the appeal where the conditions in sections 103(3) or (4) are satisfied. The conditions in section 104(3) are that (a) the sheriff ought to have decided a question before him differently; and (b) would have been required to order the person's discharge had he decided it as he ought to have done. Section 104(4) refers to issues or evidence raised not available at the extradition hearing which would have led the sheriff to decide a question differently and would have required that the person's discharge be ordered.

The alleged crimes

[11] Affidavits accompanying the extradition requests narrate the circumstances of the alleged offences. Sandi Johnson, Chief Deputy, Utah County Attorney deponed that the rape forming the basis of the first request is alleged to have been committed by the appellant in Utah on or around 13 September 2008 against his then partner, KP. On 14 September, KP reported to a local hospital that the appellant had sexually assaulted and raped her. The investigations that followed upon KP's report disclosed that the appellant was a convicted sex offender from Ohio, who had failed to register while in Utah or comply with offender notification requirements to which he was subject. The appellant was formally interviewed

on 15 September 2008. He confirmed his criminal history. A sexual assault kit was completed on KP. This was submitted to the crime lab on 22 September and a male DNA profile from the swabs was taken and entered into the Combined DNA Index System. On 17 May 2018, police were notified that the swabs matched an offender sample out of Ohio belonging to the appellant.

[12] The second request is accompanied by two affidavits. Clint T Heiner, Senior Deputy District Attorney at Salt Lake County District Attorney's Office details an allegation of rape made against the appellant by MS. The rape is alleged to have occurred during the course of MS's relationship with the appellant between November and December 2008, at MS's home in Salt Lake County, Utah. MS reported the matter to police in January 2022 having recognised the appellant from media reports relating to his extradition. Mr Heiner's affidavit also refers to disclosures of sexual battery against the appellant made by MC, who was identified in the course of the investigation into MS's allegations, said to have occurred sometime between September and December 2008 in Utah County. A second affidavit by Ms Johnson details this matter further. NC attended the appellant's apartment with her friend who was the girlfriend of the appellant's roommate. While in the hallway, the appellant pushed or pulled her into a nearby bedroom, closed the door, pushed her onto the bed, got on top of her, tried to kiss her on the mouth and stick his tongue in her mouth, and grabbed her breasts. She screamed for help. Another male in the apartment came into the room and pulled the appellant off her.

[13] The affidavits also refer to other criminal behaviour which it is suspected that the appellant has been involved in between 2007 and 2019. The allegations against the appellant include sexual assault, kidnapping, domestic assault and communication fraud. In

particular, there is an outstanding indictment and arrest warrant against the appellant for fraud stemming from a 2017 investigation by the Federal Bureau of Investigation Ohio.

Proceedings before the sheriff

Initial procedure

[14] The appellant fled the United States to Dublin, Ireland, in 2017. He thereafter lived under a series of aliases, most recently Arthur Knight Brown. The appellant was provisionally arrested at Queen Elizabeth University Hospital on 13 December 2021 pursuant to an Interpol Red Notice. He appeared before the sheriff, by video link, on 23 December 2021 and confirmed that he did not consent to extradition. The first extradition request was issued on 2 February 2022. (The appellant appeared before the sheriff relative to the second extradition request on 17 November 2022 and did not consent to extradition in terms of that request either). On 10 February the appellant sought discharge of the full extradition hearing on the basis that he had instructed new representation.

[15] The extradition hearing commenced on 7 November 2022. On that date, the appellant sought discharge on the basis that his extradition would be oppressive and an abuse of process. He relied on failures to follow the required procedure when first brought before the court on 23 December 2021, namely that: the procedure was minuted as if it were a full extradition request rather than a provisional arrest; the certificate produced by the Scottish Ministers failed to comply with the requirements of the 2003 Act; and extradition would give rise to a risk of further prosecution which did not form the basis of the requests. The sheriff held that any deficiency in procedure had been superseded by what had occurred on 10 February when the appellant successfully sought discharge of the full

extradition hearing. The case based on prosecution of other offences was speculative. The United States were understood to observe the rule on speciality.

[16] A further motion for discharge in terms of section 74D(10) based on alleged procedural failures followed, and was refused, on 27 June 2023. The sheriff considered that what the appellant was seeking was discharge from the provisional warrant procedure, which became spent as at the date that the extradition hearing commenced (7 November 2022). In any event, contrary to the appellant's assertions, the sheriff was satisfied that he was served with the Interpol Red Notice and National Crime Agency certificate; that these were given to the appellant as soon as practicable after arrest; and that the appellant was brought before him as soon as practicable after arrest.

The identity decisions: 11 November 2022 and 15 February 2023

[17] The first hearing to determine whether the appellant was Nicholas Rossi was held before Sheriff McFadyen. In finding that he was, the sheriff relied on fingerprint, photographic and tattoo evidence. The appellant's fingerprints matched those which the United States authorities held on file for Nicholas Rossi. The prints had been analysed by sufficiently experienced officials and bore the appellant's unique characteristics. NHS staff and police with whom the appellant had engaged identified him from photographs of Nicholas Rossi provided by the United States authorities in the extradition paperwork. The charge nurse and a police constable described seeing distinctive tattoos on the appellant which matched those depicted on Nicholas Rossi in photographs provided by the United States authorities. The frequent changes to his name suggested an attempt to evade identification. The sheriff rejected the appellant's various allegations of manipulation by the United States authorities and those involved in the appellant's healthcare in the UK as

scandalous, implausible and fanciful. (For example, the appellant submitted that, while hospitalised, an NHS worker had taken his fingerprints, sent these to United States prosecutors whereupon they were placed into the file held for Nicholas Rossi. He suggested that photographs of Nicholas Rossi were manipulated to depict him and that, while in a coma, he had been tattooed with the distinctive tattoos seen in photographs of Nicholas Rossi.)

[18] Sheriff Dickson considered the same matter in respect of the second extradition request, the appellant having continued to deny that he was Nicholas Rossi. The sheriff held that the principle of *res judicata* applied; the facts established by Sheriff McFadyen in the first request were conclusive of the question before him. In so doing he founded upon the decisions in *RG v Glasgow City Council* 2020 SC 1 (see para 27) and *Iliev v HM Advocate* 2021 SLT 960 (see paras 34-35). It followed that the appellant was Nicholas Rossi for the purposes of the second request.

The decision on substantive matters: 2 August 2023

[19] Having heard evidence from various medical professionals and American legal professionals, the appellant and his fellow inmate, William King, Sheriff McFadyen considered the three matters mentioned above. We address these matters in the order as they were by the sheriff, albeit not in the sequence in which they appear in the 2003 Act.

[20] The appellant sought discharge based on his mental health condition, or adjournment for further investigation. The sheriff noted that this submission was founded upon a *possible* diagnosis of personality disorder. While an adjournment would be competent, there was nothing to suggest that psychiatric or psychological intervention was unavailable in Utah. There had been no diagnosis of personality disorder; the medical

evidence was that his presentation was “suggestive” of such a disorder. All medical witnesses were consistent in stating that further detailed investigation would be required to establish a diagnosis. It had been suggested that the appellant would be inhibited in his ability to give instructions at trial, but he had been providing instructions throughout the extradition proceedings. Further, and importantly, Dr Choudhary, the defence expert who most recently examined the appellant, expressed the opinion that there was no present barrier to the appellant’s extradition and that a diagnosis of personality disorder would be unlikely to change this.

[21] The appellant was not a fugitive, at least in relation to the offence in respect of which his extradition was sought, such that he would be unable to rely on a passage of time argument (*Lagunionek v Lord Advocate* 2015 JC 300, para 16). He likely fled the United States in respect of fraud allegations from 2017 which did not form part of the extradition request. The appellant’s submission was directed only towards the first request, where the United States had taken no action since he was interviewed by police in 2008. However, there was no basis for concluding that the appellant would be at risk of prejudice at trial or that a fair trial was impossible (*Kakis v Cyprus* [1978] 1 WLR 779, Lord Diplock at 782G-783B; *Gomes v Government of the Republic of Trinidad and Tobago* [2009] 1 WLR 1038, paras 32 and 33). He relied on matters which were by no means exceptional, namely the time which had elapsed since the allegations were made and the effect that this might have on witnesses. Historical allegations were commonplace in the criminal courts of Scotland and juries were directed that delay did not necessarily detract from the credibility of complainers (Criminal Procedure (Scotland) Act 1995, section 288DA(2)).

[22] The hardship that the appellant would face if extradited was not so exceptional as to amount to oppression (*Kakis*). He had not produced evidence that he had family, friends or

dependants in the UK or Ireland, other than his wife. The deterioration of his health since 2021 did not render extradition oppressive. Previous medical assessments were based on the appellant's self-reporting. There was a strong public interest in serious crimes being tried and the personal or family hardship was no greater than what was inevitable and inherent in extradition.

[23] The Convention grounds argument was advanced under five headings: other prosecutions; health; prison conditions; arbitrary detention; and sentencing. The other prosecutions referred to extant allegations, including rape, dating back to 2007 and an outstanding indictment and arrest warrant in relation to fraud from 2017. The sheriff noted that the information provided was very vague. He would have expected these matters to form part of the extradition requests if the United States authorities intended to proceed with them. If they decided to proceed later, the rule of speciality meant that the Scottish Ministers' consent was required and the appellant would have the opportunity to participate in this process (2003 Act, section 129(3)). An article 6 ECHR challenge against the consent procedure generally was not open to the appellant (*Pomiechowski v District Court of Legnica, Poland* [2012] 1 WLR 1694, Lord Mance JSC at paras 31-35). In any event, the possibility of the consent procedure being invoked did not give rise to a risk of violation of the appellant's article 3, 5, 6 or 8 rights.

[24] The evidence relating to prison conditions, in particular the likelihood of solitary confinement, was somewhat speculative. Wheelchair users could be accommodated. The ill-treatment in a non-contracting State had to be at a high level before a violation of article 3 would be made out (*Amnott v United States* 2022 SLT 456, para 38). The appellant's submission that time spent on remand in the UK would not be taken into account in sentencing in the United States had no evidential basis. It was clear from the expert

evidence that the sentence imposed would be not less than five years and may be for life. The role of the Board of Pardons and Parole in determining when the offender will be eligible for release did not form part of the trial and the law in relation to this matter was neither uncertain nor unforeseeable. It did not follow from the fact that a lesser sentence might be imposed by the Scottish courts that the sentence which the United States would impose was flagrantly disproportionate and, in any event, such a comparative exercise was seldom appropriate (*Polish Judicial Authority v Celinski* [2016] 1 WLR 551, para 13(iii); *Amnott*, para 29).

Preliminary issues raised at the appeal hearing

[25] In a wide ranging submission the appellant presented a number of preliminary motions which the court dealt with as follows:

1. Motion for extension of time lodged 25/10/23, in support of which he sought to lead evidence from Mr Lance Bastian

[26] There is no provision for this court to hear evidence; moreover, having regard to the nature of the grounds contained within the note of appeal, there is no reason to think that an extension of time would be necessary for effective presentation of these. There is no explanation for the fact that the complaint regarding access to the prison library was not made until the day before the appeal hearing: had there really been a problem for the appellant, one might have expected him to raise the issue long before then. The court concluded that it was not in the interests of justice to grant this motion. (It should be noted that Mr Bastian gave evidence during the extradition hearing).

2. Motion for bail

[27] This was refused *in hoc statu*; given that the motion for extension had been refused

there was no purpose to such a motion at that stage of the proceedings. The court indicated that should the matter become a live or relevant one it would address it in due course.

[28] It was not clear that the petition seeking to remit the issue of bail to the sheriff had not been dealt with; but if it has not, in any event it will be refused for the reasons already given. It was suggested that a further petition to the sheriff court had not dealt with the matter as requested. We are unable to say whether this is so, but it is not a matter to address to this court.

3. Motion to amend

[29] Section 110 (4) provides that, except by leave of the High Court on cause shown, it shall not be competent for an appellant to found any aspect of his appeal on a grounds not contained in the note of appeal. No cause was shown and the motion was refused.

4. Motion to submit fresh evidence in relation to Mr David Levitt of Utah County designed to show obstruction on his part of the course of justice; also identity and defective representation

[30] Section 104(4) refers to issues or evidence raised, not available at the extradition hearing, which would have led the sheriff to decide a question differently and would have required that the person's discharge be ordered. There is no material before the court to indicate that there would be available evidence which was capable of meeting this test. The matter regarding the prosecutor in Utah was raised by the sheriff who rejected the appellant's various allegations of manipulation, by the United States authorities and those involved in the appellant's healthcare in the UK, as scandalous, implausible and fanciful. The test for submission of new evidence is essentially where the interests of justice lie and whether the evidence could have been reasonably obtained prior to the extradition hearing being one of the material considerations (*FK v Germany*, para 40). The issue of identification was determined at an earlier stage in these proceedings. Defective representation already

featured as part of the appeal. In any event, there was no basis, nor justification for allowing additional evidence to be presented on any of these matters at this late stage of proceedings.

[31] The role of the High Court on an extradition appeal is essentially one of review; and is narrower than those on a conventional criminal or civil appeal (see *Polish Judicial Authority v Celinski* [2015] EWHC 1274 (Admin); [2016] 1 WLR 551 ("Celinski") at [18] per Lord Thomas of Cwmgiedd LC).

5. Motion for reporting restrictions to be imposed

[32] The basis of this was that erroneous information was printed in the press in relation to this case; whether that is so we are unable to judge. However, even if it is so, given that this is a case which has throughout been determined, and will be determined, by professional judges there is no risk of prejudice arising therefrom. Otherwise the complaint made relates to alleged breach of privacy with which this court is not concerned. There was no basis for granting such a motion.

[33] For these reasons all the preliminary motions were refused. Mr Rossi was invited to address the issues raised only in the Note of Appeal, which the court had read and considered in detail, and without reference to extension, amendment, additional evidence or other extraneous matter.

The Note of Appeal and submissions for the appellant

[34] The appellant makes wide ranging and unsubstantiated allegations against various parties that have been involved in the proceedings relating to his extradition. He alleges that he was abused, bullied and harassed by his previous representatives; that the Crown are corrupt and colluded with his previous representatives and the United States authorities; and that he is the victim of a conspiracy at the hands of the Utah County Attorney, David

Leavitt. He has produced no evidence to support these claims, which can only be described as spurious and a continuation of the types of scandalous claims which he made throughout the extradition proceedings before the sheriff. His previous representatives, some of whom have made representations to the court, vehemently deny them.

[35] It was apparent from the outset that the appellant was approaching matters on the basis that this appeal was a rehearing of all issues, and an opportunity to lead evidence, or further evidence, rather than the limited kind of review permitted under statute. When the court asked him to advance submissions on the grounds of appeal, he repeatedly sought to lead evidence, and asked for adjournments to enable him to do so. The court made it clear that the effect of the decisions on the preliminary issues was that this would not be allowed.

[36] The appellant maintained, as he had submitted during the preliminary motions, that he had been refused access to the prison library and relevant material. Given however that the complaint about the former was not made until the day before the court hearing we could not accept that this had presented an insuperable obstacle to preparing submissions to make on the substantive appeal, particularly having regard to the limited nature of an appeal such as this and the nature of the issues raised in the Note of Appeal. In particular we did not accept that the appellant had been prevented from preparing submissions on any relevant substantive matters arising in the appeal. In the course of his submissions the appellant attempted repeatedly to revisit the court's determination on the preliminary motions, despite the court making it clear that its decision had been made and was final. He demanded to be told the authority under which the court had determined that new evidence would not be admitted. He only desisted from further pursuit of this line when the court indicated that it would have to consider whether further challenges of this kind, when the court had repeatedly indicated that the ruling on the issue could not be reopened, might

amount to contempt of court. In fact he repeatedly presented material to the court which was effectively hearsay evidence in contravention of the court's ruling, and was highly resistant to the court's attempt to persuade him to focus on relevant matters.

[37] The vast majority of the Note of Appeal refers to matters that are of absolutely no relevance to an appeal under section 103. Access to legal aid and *Wednesbury* unreasonableness, both of which are referred to on a number of occasions, have no bearing on the issue that this court is required to determine.

[38] The only vaguely recognisable ground of appeal in the Note of Appeal is that of defective representation. The appellant submits that his previous representatives ignored his instructions; failed in the preparation of his case; and instructed, what the appellant considers were, inappropriate experts. Particular reference is made to the case based upon personality disorder, which the appellant suggests was contrary to his instructions, without any basis in the evidence or expert opinion, and highly offensive. Patently, there was evidence before the sheriff to the effect that the appellant's presentation was suggestive of personality disorder. This was the import of Dr Choudhary's evidence, who had most recently assessed the appellant. Indeed, there appears to have been little disagreement amongst the three medical experts. The most significant point is this; no medical witness expressed the opinion that the appellant's mental or physical condition was such as to render his extradition unjust or oppressive. In presenting his submissions, the appellant essentially gave evidence himself, narrating, at great length, alleged fallings out between his counsel and solicitor, and other alleged deficiencies, without in any way attempting to tie these in to the decision in this case, or indicate in what way they impacted upon the sheriff's decision. Leaving aside that the Note of Appeal fails to engage with the applicable test for defective representation, it is abundantly clear that, had the appellant's possible personality

disorder not been put forward, the result would have been the same. He suffered no prejudice. Despite the appellant's criticisms of his lawyers, it is apparent that the sheriff was treated to submissions on subjects as diverse as the effect of the passage of time as a bar to extradition; conditions of physical and mental health being such as to render extradition oppressive; a panoply of considerations regarding the European Convention on Human Rights, in particular articles 3, 5, 6 and 8, as well as submissions relating to other prosecutions in the US; health as relevant to convention issues; prison conditions; arbitrary detention; the seeking of assurances; and sentencing, including the operation of the Board of Pardons. There is no basis upon which this court could find that the allegations of defective representation were made out.

[39] The appellant's counsel proceeded on the basis of the evidence that had been led. On behalf of the appellant, this included two psychiatrists, three US attorneys, and a prisoner in Saughton, as well as the appellant himself, whose evidence the sheriff described (and was entitled to describe) as unreliable, to the extent that the sheriff was unable to accept any statement of fact made by him unless it was independently supported. The sheriff also stated:

"I conclude that he is as dishonest and deceitful as he is evasive and manipulative. These unfortunate facets of his character have undoubtedly complicated and extended what is ultimately a straightforward case."

We have no reason to disagree with this assessment.

[40] The appellant continues to rely on apparent procedural failures which have already been the subject of determination. He advances no reasons why the previous decisions of the sheriff are erroneous. It is simply a disagreement with the sheriff's conclusion and provides no basis for the court to interfere with any of the decisions made throughout these extradition proceedings. In any event, if there were procedural failures, the appellant has

not demonstrated that he suffered any prejudice as a result. The court advised the appellant that if he had not made submissions on all matters by the end of the court day, it would not fix a continued hearing but would instead treat the contents of the Note of Appeal as written submissions on the matter. As matters turned out, the appellant took the whole day to make submissions, without addressing any matter of relevance or engaging with the statutory tests applicable to the appeal, despite repeated encouragement from the court to do so and to focus his submissions by reference to the grounds of appeal and the content of the sheriff's decision. For example, he did not address why, or how, issues of alleged defective representation (or any other ground of appeal) vitiated the sheriff's determination. Given that this should have been the entire focus of the appeal, and given the irrelevance of the majority of the specified grounds, the court did not consider it likely that more informative or relevant submissions might be made, had a continued hearing been fixed. The closest the appellant came to it was to submit that, had his solicitors and counsel acted with understanding of the need for top experts to assess the appellant, "whilst the Crown were coaching NHS Scotland personnel to lie about his health", there would have been a different result which would have made the sheriff make a different decision or a decision that he ought to have made differently. This manifestly fails to engage with the very detailed evidence which the sheriff heard about these matters, his assessment of that evidence, and the conclusions which he reached as a result of it.

[41] In the interests of the summary nature of extradition proceedings, the interests of justice generally, including the importance of dispatch in proceedings of this kind, the court considered that the most appropriate way to proceed was to take account of the detailed Note of Appeal (which extended to 11 pages) as the submissions in the case. At the same

time, the court proceeded to consider the written submissions for the Crown as the entire submissions for the Crown, without oral supplementation.

[42] We agree with the sheriff that the appellant's case is, at its core, a straightforward one. The evidence supporting that the appellant is Nicholas Rossi was overwhelming. He did not, nor does he now, produce anything which would suggest to the contrary. The conspiracy theories which he tendered in explanation were properly rejected. The sheriff carefully considered the submissions made on the appellant's behalf as to the potential barriers to his extradition. Having heard evidence from various medical witnesses, there was quite simply nothing to support that he was suffering from any mental health condition, far less one which would render it unjust or oppressive to extradite him. Moreover, there was little if any evidence to suggest that, on the hypothesis the appellant does indeed have such a condition, treatment would be unavailable in Utah. Trials based on historical sexual abuse allegations are prosecuted on a daily basis in the Scottish courts. The allegations which he will stand trial for if extradited are of an extremely serious nature. There is a strong public interest in such crimes being prosecuted and nothing placed before the court demonstrates that the appellant's trial would either be unfair or that any of his other Convention rights would be violated if extradited.

Disposal

[43] For these reasons the court concludes that there is no merit in any of the appellant's arguments. It follows that leave to appeal under section 103 of the 2003 Act must be refused.