

Junious C. Morgan

*Appellant*

v.

The Attorney General

*Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE  
18TH JUNE 1990  
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*Present at the hearing:-*

LORD TEMPLEMAN  
LORD GOFF OF CHIEVELEY  
LORD LOWRY  
SIR ROGER ORMROD  
SIR ROBIN COOKE

*[Delivered by Lord Templeman]*

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The appellant, Mr. Morgan, was accused before the United States District Court for the Southern District of Mississippi of the offence of possessing with intent to distribute 453 pounds of marijuana. He fled to Jamaica and in 1986 was convicted in his absence but sentence was postponed. On 4th June 1987 the Resident Magistrate for the Parish of Kingston, Jamaica, at the request of the Government of the United States of America made an extradition order under the Extradition Act 1870. Section 10 of the Act, as applied to Jamaica, provides that:-

"In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of Jamaica, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in Jamaica, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.

In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of Jamaica, prove that the prisoner was convicted of such

crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged."

Section 26 of the Act of 1870 as applied to Jamaica defines a "fugitive criminal" as:-

"Any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Jamaica."

The Magistrate was satisfied that the provisions of section 10 had been complied with.

The appellant appealed to the Full Court by way of an application for a writ of habeas corpus; he argued that, upon the true construction of section 10 and section 26 of the Act of 1870 he was not an "accused person" because he had been found guilty and he was not a "convicted person" because he had not been sentenced. The Full Court rejected this argument and declined to grant the writ of habeas corpus. The appellant then sought unsuccessfully to raise the same argument before the Constitutional Court and now appeals to Her Majesty in Council.

In some contexts a conviction is not completed until sentence has been passed: see *Reg. v. Cole* [1965] 2 Q.B. 388. But in the context of the Act of 1870 a "convicted person" is a person who has been found guilty. The object of extradition is to enable a country where a criminal offence has been committed to try the accused and punish the guilty. The appellant has been tried and found guilty and must be extradited in order to be punished. Notwithstanding a valiant attempt by Mr. Serota on behalf of the appellant the point taken by the appellant is unarguable. In these circumstances no constitutional question need be considered. Their Lordships will humbly advise Her Majesty that this appeal ought to be dismissed. The appellant must pay the costs of the respondent.