Mark Taylor v Office of the Public Prosecutor of West Flanders District of Veurne, Belgium

CO/5068/2017

4 September 2018

[2018] EWHC 2453 (Admin)

Before: Sir Ross Cranston (Sitting as a Judge of the High Court)

Tuesday, 4 September 2018

Representation

Mr J Atlee (instructed by Atlee Green & Associates) appeared on behalf of the Appellant.

Ms K Howarth (instructed by The Crown Prosecution Service Extradition Unit) appeared on behalf of the Respondent.

Judgment

Sir Ross Cranston:

1 This is an appeal with the permission of Ouseley J against the decision of District Judge Zani made on 30 October 2017 to order the appellant's extradition under the Extradition Act 2003 ("the 2003 Act") pursuant to a conviction European Arrest Warrant. That EAW was issued by the Belgian Judicial Authority on 31 March 2017 and certified by the National Crime Agency on 28 August 2017. Permission was granted by Ouseley J because the appellant was tried in his absence and there was, to put it in general terms, an arguable lack of clarity regarding his appeal rights if he were to be extradited.

2 The warrant at box C sets out the sentence, namely one of 30 months, all of which remains to be served. At box E there is a description of the offending. Essentially it concerned the importation into Belgium of controlled drugs in the form of 12 kilograms of amphetamine. Belgian customs officers had found those drugs concealed in a van registered in the appellant's name. The driver of the vehicle stated that the appellant had provided him with the keys to the van, together with a mobile telephone purchased by the appellant. Crucially for our purposes, box D of the warrant reads as follows:

> "Indicate if the person appeared in person at the trial resulting in the decision: The person was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in a judgment in

> absenti (sic). Legal guarantees: The requested person can lodge a statement of opposition to the judgment see enclosed information on the rights of the individual sentenced in absentia in Belgium."

3 There was a two-page statement annexed to the warrant headed "Information about the rights of an individual sentenced in absentia in Belgium". It stated that:

> "Objection is a legal remedy by which a person against whom a judgment has been rendered in absentia has the possibility to bring the case before the court again in order to have the decision withdrawn and to have the case adjudged again after an adversarial debate".

4 Representing the appellant before the district judge, Mr Atlee raised a number of challenges, one of which concerned the position under section 20 of the 2003 Act and whether the appellant had a right of retrial. Mr Atlee contended firstly, that the warrant contained a gap and that the two-page supplementary document was ambiguous. Mr Atlee also contended that the legal aid position in Belgium was clear should the appellant be extradited and apply for a retrial.

5 The district judge stated at paragraph 17 that it was not suggested that the appellant was a fugitive from justice, in that the Belgian authorities acknowledged that he was not made aware of the court proceedings. He then stated at paragraph 39 that, in his view, the documentation, in particular the two-page document appended to the warrant, satisfied him that the appellant would be able to apply for a retrial on return to Belgium. As to the legal aid position in Belgium, he said at paragraph 41:

> "These concerns fall well short of persuading this court that Belgium would fail to comply with its Convention obligations in respect of ensuring that the appellant was adequately legally represented at any retrial."

Consequently, the district judge dismissed the section 20 challenge.

6 Following the hearing and the publication of the district judge's rejection of the section 20 challenge, Ouseley J, as I have said, granted permission on the basis of the arguable ambiguity, as he saw it, in the warrant. There was also the position of the two-page-appendix to it which, as he said in granting permission, "Is a form of summary/commentary: it is not a statement from the prosecutor."

7 In an undated enquiry, but after permission was granted, the CPS asked the Belgian authorities whether the appellant would be provided with a lawyer to represent him if he did not have sufficient means to pay for legal assistance and

the interests of justice so required, whether he would have the right to examine witnesses, and in particular could the Belgian authorities confirm that he "will be able to lodge a statement of opposition to the judgment following his extradition from the United Kingdom to Belgium". There were also supplementary questions about when that statement of opposition had to be lodged.

8 In reply, on 11 June 2018 the Belgian authorities stated that the appellant can "apply for a *pro deo* lawyer". They also stated that the appellant would be able to call and examine witnesses, and thirdly that he could submit a statement of opposition to the judgment within 15 days after the date on which he would be extradited or released abroad. The 11 June statement then went on to provide further details of the lodging of the statement of objection.

9 This morning Mr Attlee quite properly conceded that in the light of the statement by the Belgian authorities he was no longer able to pursue the arguable ambiguity in the warrant which Ouseley J had identified in granting permission. The statement of 11 June makes clear that within the terms of section 20(5) the appellant does have a right of retrial and that the conclusion of the district judge on that point, if not the reasoning, was correct.

10 However, Mr Atlee pursues the second argument that he advanced before the district judge, namely, the adequacy of the legal aid position in Belgium. He had not renewed his application for permission to appeal on behalf of the appellant on that matter because he had not at that time seen the 11 June statement from the Belgian authorities. In his submission, that statement does not satisfy the requirements of section 20(8)(a) , namely that the district judge had to decide whether an appellant on return will have:

> "(a) the right to defend himself in person or through legal assistance of his own choosing or, if he had not sufficient means to pay for legal assistance, to be given it free when the interests of justice so required."

11 In my view, this argument faces two difficulties. Firstly, it is raised too late. If it had been raised shortly after the 11 June statement was available, then the CPS no doubt could have made further enquiries of the Belgian authorities as to what they meant when they stated that the appellant can apply for a *pro deo* lawyer. I suggest no criticism of Mr Atlee, but the point is raised at the eleventh hour.

12 More fundamentally, however, I agree with the analysis offered by the district judge on this point. Given the mutual respect which operates in relation to the EAW system under the Council Framework Decision, we respect the right of the Belgian authorities to comply with their obligations in ensuring that the appellant will be legally represented at any retrial that he pursues as a result of his issuing a notice of objection.

13 On that basis, I dismiss the appeal.

Anything more, Mr Atlee?

MR ATLEE: No, my Lord.

SIR ROSS CRANSTON: No, well thank you very much. Thank you both.