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IN THE HIGH COURT OF JUSTICE

CO/1531/2018

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2018] EWHC 2888 (Admin)

Royal Courts of Justice

Wednesday, 10 October 2018

Before:

MR JUSTICE HOLMAN

B E T W E E N :

GEORGI LAZAROV

Appellant

- and -

PROSECUTOR'S OFFICE VARNA, BULGARIA

Respondent

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MR D WILLIAMS (instructed by Lawrence & Co) appeared on behalf of the Appellant.

MR J SWAIN (instructed by the Crown Prosecution Service) appeared on behalf of the Respondent.

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**J U D G M E N T**

MR JUSTICE HOLMAN:

- 1 The situation with which I am faced today is very unusual, if not unique. There is listed for hearing today a statutory appeal, pursuant to sections 26 and 27 of the Extradition Act 2003, from a decision and order of the Westminster Magistrates' Court in extradition proceedings.
- 2 On 11 April 2018 a district judge of that court made an extradition order for reasons which he gave in a written judgment handed down that day. The essence of the appeal in its now wisely slimmed down form is simply that the district judge made so many errors of fact in his handed down, written judgment that he cannot objectively be said to have been dealing with the true facts of this case at all. Both counsel before me speculate that he may (as is very common in this type of case) have been incorporating various paragraphs and propositions of law into this written judgment on a "scissors and paste" basis. It may be that in the process he mistakenly incorporated a number of paragraphs from some other judgment or judgments in entirely different cases and that that explains the many factual references which simply have nothing to do with this case at all or are markedly incorrect. It may, alternatively, be that an extremely hard pressed district judge, who has to deal with many extradition cases of this kind and only had an opportunity to prepare a written judgment some days or more later, simply became confused as to the true facts of this particular case when he was preparing the judgment. Either way, the essential submission is that on a fair, overall reading of this judgment it simply cannot be regarded as a judgment which is dealing with the facts and circumstances of this case at all. That is the broad submission of Mr David Williams on behalf of the appellant, and it is not one with which Mr Jonathan Swain on behalf of the respondent judicial authority has felt able to argue against, but Mr Swain does say that even on an appraisal of the true and correct facts of this case the court ought to have ordered extradition.
- 3 Meantime, however, from the perspective of this appellant he faces extradition, which is obviously grave for him, on the basis of a judgment that arguably does not really engage or deal with his case at all. If that submission of Mr Williams is right, it leads on to a difficult, and in my experience unique, procedural question as to how the injustice (for injustice it necessarily is) should be untangled and addressed. At the moment this court is seized only of the statutory appeal under sections 26 and 27 of the Extradition Act 2003. By sections 27 of that Act the powers of this court on appeal are closely circumscribed. The effect of sections 27(3)(b) and 27(4)(c) is that an appeal against an extradition order can only be allowed if the appropriate judge (ie the court below) "would have been required to order the person's discharge". In other words, an appeal can only be allowed if, on a correct appraisal of the facts and circumstances of the case, there is only one possible answer, namely that the requested person must be discharged. That, in turn, has the effect (very familiar in appellate situations) that the appeal court cannot interfere with the actual extradition order in circumstances (which may well be the circumstances of this case) in which, on a proper review of the facts an original court might without error have decided the discretionary decision either way.
- 4 If it be right that the written decision in this case contains so many errors of fact that, in effect, it is not a decision on the true facts of this case at all then it, frankly, may amount to a nullity. If it can be viewed as a nullity, or so procedurally irregular that it simply cannot be allowed to stand, then it is capable of being quashed by the Administrative Court within proceedings for judicial review. If it is so quashed, then the Administrative Court can of course remit the underlying issue, namely whether or not this requested person should be extradited, to the Westminster Magistrates' Court to reconsider it afresh.

- 5 If, indeed, the existing decision cannot stand, then it seems to me infinitely preferable and more consistent with justice that this matter be reconsidered afresh from scratch by, obviously, a different district judge of that court. In those circumstances the district judge considering it afresh would not even read the decision and reasons of the earlier judge. He or she would exercise the discretion from scratch and would not be circumscribed by the provisions of sections 27(3)(b) and 27(4)(c) that I have mentioned. There is the additional advantage that this case would be considered afresh by a district judge who is dealing very regularly, if not on a daily basis, with extradition, rather than by a judge such as myself who deals with extradition only occasionally and on an appellate basis.
- 6 It is not appropriate that I finally rule on the status of that judgment of 11 April 2018, because the appellant and his counsel, Mr David Williams, have indeed decided today to issue forthwith a claim in judicial review. That claim must of course be served upon the Westminster Magistrates' Court which will be the defendant to it, and that court must have some opportunity to file an Acknowledgement of Service, and indeed, if it so wishes, Summary Grounds of Defence, although it is my personal experience that lower courts never seek actively to defend situations like this but leave the decision entirely to the High Court. I must, nevertheless, be respectful of the position of the Westminster Magistrates' Court and it must be afforded that opportunity.
- 7 For those reasons, the outcome today, to be expressed in an order which has already been drafted and agreed by both counsel, is to the effect that the claim in judicial review will be issued forthwith; the time for the magistrates' court to file and serve the Acknowledgement of Service and any Summary Grounds of Defence will be abridged; but nevertheless, leave to that court about 10 days in which to do so. Subject to any positive case which may be pleaded by the Westminster Magistrates' Court, the claim in judicial review will be listed before myself for final "rolled-up hearing" on Wednesday, 24 October, concurrently with the adjourned hearing of the present statutory appeal. Subject to anything which the Westminster Magistrates' Court may say, and subject to any further submissions by either of the parties before me, I anticipate that on that date I will grant permission to issue the claimed judicial review out of time (which it is), the delay being explained in the peculiar circumstances of this case; I will grant permission to apply for judicial review; I will then hear the judicial review on a rolled-up basis, and it is currently anticipated that the claim will be allowed, the decision quashed and the whole case remitted to the Magistrates' Court for fresh determination from scratch. But I do not today rule upon any of those matters.

Have you in fact managed to issue?

MR SWAIN: Yes.

MR JUSTICE HOLMAN: You have.

MR SWAIN: Yes.

MR JUSTICE HOLMAN: Despite not having a cheque book

MR SWAIN: Yes, it was accepted by undertaking?

MR JUSTICE HOLMAN: An undertaking?

MR SWAIN: Yes.

MR JUSTICE HOLMAN: So I can say, "Upon the appellant having issued today...?"

Do you think you will be able to cope with that, Mr Williams?

MR WILLIAMS: Yes, my Lord.

MR JUSTICE HOLMAN: Well, you have not seen it yet.

MR WILLIAMS: I am sure I will be able to get so close that any minor amendments that need to be dealt with can be dealt with.

MR JUSTICE HOLMAN: All right.

So you have a case number on judicial review now, have you not?

MR WILLIAMS: My Lord, yes.

MR JUSTICE HOLMAN: You can put that number on the top of the order as well.

MR WILLIAMS: Yes, I will.

MR JUSTICE HOLMAN: So the associate will have the number of the judicial review and this statutory appeal and both cases will be listed concurrently on Wednesday, 24th at, I hope, 10.30 a.m. with a half a day allowed, although I do not, frankly, anticipate so long will be needed.

Anything else today on this case, Mr Williams?

MR WILLIAMS: No, thank you very much.

MR JUSTICE HOLMAN: Anything else Mr Swain?

MR SWAIN: No, thank you, my Lord.

MR JUSTICE HOLMAN: As ever, Mr Swain, you have been enormously helpful and I am very, very grateful to you.

MR SWAIN: Thank you, my Lord.

MR JUSTICE HOLMAN: So that is the end of this case. That is farewell to you today. Thank you so much for coming.

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This transcript has been approved by the Judge.