IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

CAUSE NO. G 246 OF 2023

BETWEEN	**JUAN CARLOS GONZALEZ INFANTE**	**APPLICANT**
AND	**THE DIRECTOR OF PRISONS**	**RESPONDENT 1**
	THE GOVERNOR OF THE CAYMAN ISLANDS	**RESPONDENT 2**
	THE ATTORNEY GENERAL	**RESPONDENT 3**
	THE GOVERNMENT OF THE UNITED STATES	**RESPONDENT 4**

IN OPEN COURT

Appearances: **Mr. Juan Carlos Gonzalez Infante, in person**
Ms Reshma Sharma, K.C. and Ms Heather Walker, of the Attorney General's Chambers, and Ms Toyin Salako, Mr. Alexander Barbour and Mr. Gabriel Milton-Job, of the Office of the Director of Public Prosecutions, for the Respondents

Before: **The Chief Justice, the Hon. Justice Ramsay-Hale**

Heard: **26 and 30 April 2024**

Draft Judgment delivered: **31 May 2024**

Judgment delivered: **3 June 2024**

Extradition - applicant challenging magistrate's decision to send case to the Governor - whether habeas corpus an available remedy where statutory right of appeal exists - Extradition Act 2003 section 116

JUDGMENT

Introduction

1. The Applicant, Mr. Juan Carlos Gonzalez Infante, applies to the Court for a Writ of Habeas Corpus on the ground that he has been unlawfully detained within the Cayman Islands since 4 June 2019.

Background

2. On 30 May 2019, the Applicant entered the Cayman Islands via private aircraft on which he was the pilot. On 4 June 2019 he was arrested on suspicion of smuggling and money laundering. He was remanded in custody pending trial.

3. On 18 November 2019, under cover of a Diplomatic Note from the British Embassy in Washington, the United States of America requested the provisional arrest of the Applicant for the purpose of his extradition to face trial in the Southern District Court in Florida. Pursuant to that request, on 21 November 2019 an application was made for a provisional warrant for the arrest of the Applicant. The application was granted and a warrant was issued by the Chief Magistrate (ret.), His Hon. Valdis Foldats.

4. On 20 March 2020, the Applicant was acquitted of money laundering charges arising from his 2019 arrest following a trial in the Grand Court. He remained in custody pending trial in the Summary Court with respect to other charges arising out of the same incident.

5. On 8 April 2020, His Hon. Mr. Foldats vacated the provisional arrest warrant on the grounds that the extradition request was not filed within the time limit set out in the **Extradition Act 2003**, as extended to the Cayman Islands by the **Extradition Act 2003 (Overseas Territories) Order 2016**, that is to say, within 65 days of the execution of the arrest warrant.

6. On 14 April 2020, Her Hon. Mrs. Gunn issued a second provisional arrest warrant for the Applicant which was served on the same day. The Applicant first appeared before the Summary Court with respect to this second provisional arrest warrant on 16 April 2020. He was remanded and the extradition proceedings were adjourned pending the outcome of the trial.

7. The United States of America transmitted its formal extradition request to the Cayman Islands on 16 April 2020. On 7 May 2020, Her Hon. Mrs. Gunn heard legal argument as to the validity of the renewed application for a provisional warrant. On 8 May 2020, she

handed down her decision dismissing the application to declare the second provisional arrest warrant an abuse of process of the Court.

8. On 8 September 2020, the Applicant was acquitted of the charges before the Summary Court. On 11 September 2020, the Applicant made an application for bail, which was refused. The extradition hearing was set for 19 October 2020.

9. That date was vacated as were several other dates for a variety of reasons which included:

(i) the Applicant's need for additional time and legal aid funding to secure expert witnesses from the United States;
(ii) time for further medical reports to be obtained;
(iii) delays in the approval of additional legal aid funding to retain King's Counsel for the Applicant;
(v) the Applicant's local Counsel applying to come off record as a result of a breakdown in the attorney-client relationship;
(vi) difficulties on the part of the Applicant in securing experts who were prepared to take instructions at Cayman Islands legal aid rates;
(vii) issues with expert availability;
(viii) the refusal of legal aid funding for an expert to give evidence on prison conditions in Florida, followed by an application for reconsideration of that decision; and
(ix) difficulties experienced by the Applicant in securing an expert to give evidence on the Applicant's neurological condition(s).

10. The extradition hearing eventually took place between 15 and 18 November 2022. Judgment was reserved and handed down on 25 January 2023. The learned Magistrate, being satisfied that the Applicant was a person sought by the United States of America and that there were no bars to extradition, ordered that the case be referred to His Excellency the Governor for consideration under the **Extradition Act 2003**. The Applicant was advised of his right to appeal to the Grand Court.

11. On 23 March 2023, the Governor made an order that the Applicant be extradited to the United States of America to stand trial for divers offences which he is alleged to have committed between March 2006 - 2007, namely:

(i) Conspiracy to import 5 kg or more of cocaine;
(ii) Conspiracy to possess with intent to distribute 5 kg or more of cocaine;
(iii) Importation of more than 5 kg of cocaine into the USA from a place outside thereof;
(iv) Possession with intent to distribute more than 5 kg of cocaine; and
(v) Conspiracy to commit money laundering.

12. The Applicant is currently detained pending his appeal to the Grand Court which is fixed for 18 June 2024.

The Application

13. I start by saying that the grounds of the Applicant's challenge to his detention are not readily understood as he is acting in person and he is a native Spanish speaker. It is perhaps for that reason that my view of the grounds on which he rests his application differ to some degree from the Respondents' summary of his grounds as set out in their written submissions.

14. I would summarize the Applicant's grounds for contending his detention is unlawful as follows:

I Procedural Irregularity[1]

15. The Applicant contends that the execution of the warrant was unlawful in the circumstances where the request was made pursuant to the 1972 **Extradition Treaty** between the UK and USA (the "1972 Treaty") which had been repealed and replaced by the UK **Extradition Act 2003** (the "2003 Act") which was extended to Cayman Islands by the **Extradition Act 2003 (Overseas Territories) Order 2016.** The submission is that as the request was made pursuant to the 1972 Treaty it was flawed, and the provisional arrest warrant issued on the basis of it was unlawful.

16. The Applicant also contends that the evidentiary requirements in the Treaty were not met in that there was insufficient evidence of identity before the Court that he was the person whose extradition was requested.

II Abuse of process

17. It is common ground that the original provisional warrant issued by the Chief Magistrate was 'withdrawn' as the time limit laid down in the statute for service of a certified request from the USA after service of the warrant was not met.

18. The Applicant contends that Her Hon. Mrs. Gunn ought not to have issued a second provisional arrest warrant in the absence of a renewed request for his extradition from the United States, with the consequence that his detention on that warrant was unlawful.

[1] The Applicant refers to this ground as *Breach of Primary Legislation*.

III Inordinate Delay

19. The Applicant's challenge to the Magistrate's decision under this ground raises issues of fact. With respect to section 79 of the Act, which provides that the Court must consider whether the passage of time is a bar to the extradition, the Applicant asserts that the Magistrate was wrong to find that it was not unjust or oppressive to extradite him by reason of the very long passage of time since the offences were alleged to have occurred.

20. The Applicant also contends that she was wrong to rely on the evidence of Andrea Goldbarg which was not duly authenticated and thus fell into error in finding that he was a fugitive as there was no admissible evidence to support such a conclusion.

IV Breach of Human Rights

21. The Applicant alleges that the learned Magistrate erred in not holding that his extradition would be incompatible with the fair trial rights enshrined in the **Human Rights Convention** (and equally in the **Cayman Islands Constitution Order**) in the circumstances where the offences were allegedly committed some 17 years ago, he is now suffering from early onset dementia and has been held in custody in these proceedings for 4 years.

Respondents' Position

22. The Respondents position is that the Court should not hear the application on its merits as *habeas corpus* is not available to the Applicant as there is a statutory right of appeal under section 116 of the Act.

Section 116 of the Extradition Act

23. Section 116 provides as follows;

> *"A decision under this Part of the judge or the Secretary of State may be questioned in legal proceedings only by means of an appeal under this Part."*

Submissions

24. The Applicant submits that the right to physical liberty is highly prized and protected by the common law. Even before the United Kingdom became party to the European Convention on Human Rights ("ECHR"), a person who was unlawfully imprisoned could, and can, secure his release through the writ of habeas corpus. He can also secure damages for the tort of false imprisonment.

25. He submits further that the most important thing to be said about habeas corpus, at least in the context of this case, is that entitlement to the issue of the writ comes as a matter of right: *"The writ of habeas corpus issues as of right"* per Lord Scarman in *R v Secretary of*

State for the Home Department, Ex p Khawaja [1984] AC 74 at 111. It is not a discretionary remedy. Thus, if detention cannot be legally justified, entitlement to release cannot be denied by public policy considerations, however important they may appear to be. If your detention cannot be shown to be lawful, you are entitled, without more, to have that unlawful detention brought to an end by obtaining a Writ of habeas corpus.

26. Under the heading, *"Exhausting of Administrative Remedies"* the Applicant also relies on the decision of *Kruger and Kruger v. Northward Prison (Director), Government Of Switzerland and Attorney General* 1996 CILR 157 in which then Chief Justice Harre stated at 164 that:

"No case has been cited to me where in extradition proceedings it has been doubted whether Habeas Corpus was on an appropriate procedure to be used in a challenge to the decision of a magistrate where that challenge is to the legality of his acts or it is argued that there was insufficient evidence to entitle him to commit."

27. Ms Sharma KC on behalf of the Respondents submits that the remedy of habeas corpus is precluded where there is a statutory right of appeal. She says that the application is essentially a challenge to the decision of the Magistrate under the various statutory grounds that she was required to consider at the extradition hearing before determining the matter should be transmitted to the Governor for a decision whether to extradite the Applicant. She says that the Applicant's avenue of redress lies not by way of habeus corpus but by way of an appeal by section 116 of the Act. That section provides as follows;

> *"A decision under this Part of the judge or the Secretary of State may be questioned in legal proceedings only by means of an appeal under this Part."*

28. The learned Solicitor General says further that the Respondents' position is not that section 116 removes a person's ability to apply for habeus corpus in the context of extradition but that it would be confined to circumstances for which no right of appeal is provided for in the statute. She relied on a number of cases to support that proposition which I consider in detail below.

The Authorities

29. *Nikonovs v Governor of Brixton Prison* [2006] 1 All ER 927 illustrates the distinction between decisions for which the appropriate avenue for challenge is the statutory appeal and decision for which the only remedy is habeas corpus. In that case, the defendant was arrested under Part 1 of the Act but not brought before the district judge until some 74 hours after his arrest. The applicant argued there was a breach of the section 4(3) requirement to bring him before a Judge as soon as practicable and that it was mandatory

to order his discharge under section 4(5). His application to be discharged was refused and he applied for habeas corpus.

30. Rejecting the Government's submission that the application was precluded by section 34 (the equivalent Part 1 provision of section 116 in Part 2), the court held that habeas corpus was available against a decision under section 4(5) for which no appeal was provided as it was not made at an extradition hearing. Scott-Baker LJ stated at para 18:

> *"Absent a right of appeal, did Parliament really intend habeas corpus should not be available? Did Parliament really intend that a person who ought to have been discharged because he should have been brought before the appropriate judge sooner, but nevertheless remains in custody, should have no remedy? In my view, the passages from Hansard that I have cited make the answer clear beyond a peradventure. It would in my judgment require the strongest words in a provision such as section 34 to remove the ancient remedy of habeas corpus".*
> [emphasis mine]

31. *Nikonov*s was applied in the case of *R (Hilali) v Governor of Whitemoor Prison and Anor* [2008] 1 AC 805. In that case (also under Part 1 of the Act), the district judge ordered the applicant's extradition to Spain. The applicant's subsequent appeal under section 26 of the Act was dismissed.

32. Following the dismissal of his appeal, a central figure (Y) in the terrorist conspiracy to which the applicant was allegedly a party, was later acquitted in Spain for conspiracy to commit terrorist killing (relating to the murders of persons killed on September 11, 2001). His convictions were quashed on grounds including the inadmissibility of certain telephone intercept evidence which had been obtained unlawfully.

33. The applicant then sought a writ of habeas corpus on the basis that the change in circumstances resulting in the quashing of Y's convictions (following the Supreme Court of Spain's ruling on the inadmissibility of the evidence) meant that the entire foundation for his extradition order has been undermined because the evidence against the applicant was to all intents and purposes the same as that available to the prosecuting authority in relation to Y. As such, his continued detention was no longer justified.

34. The Divisional Court, rejecting the submission that habeas corpus was not available once the appeal provisions were available, granted the application.

35. An appeal to the House of Lords against that decision was allowed. In his Opinion, Lord Hope at para 21 D-F said this:

> *"One of the features of the provisions about appeals in Part 1 is that not every decision that the judge is required to take can be appealed against under the statute: see, for example, section 4(5) which requires the judge to order the discharge of a person arrested under a Part 1 warrant who is not brought before him as soon as practicable.*
>
> *…..*
>
> *Section 34 must receive effect where the decision was one against which there was a right of appeal under the statute. In the case of those decisions, the remedy of habeas corpus must be taken to have been excluded by the clear and unequivocal wording of section 34."*
>
> [emphasis mine]

36. Lord Hope declined at para 23 to *"identify circumstances in which, notwithstanding section 34 of the 2003 Act, the remedy of habeas corpus may be available*", but concluded that an application for habeas corpus based on no case to answer in the requested state *"must always be rejected as having been excluded by the provisions of the statute"*. This was because such a question was not within the jurisdiction of the judge at the extradition hearing and was contrary to the principle of mutual recognition which underpinned the Part 1 extradition scheme.

37. *Hilali* was relied on by the applicants in *Ignaoua and ors v Judicial Authority of the Courts of Milan and Others* [2008] EWHC 2619. They sought writs of habeas corpus on the ground that fresh evidence demonstrated that, contrary to the findings of the District Judge, there were substantial grounds to believe that the requesting state, Italy, would deport the applicants to Tunisia where there would be a real risk of a breach of their ECHR Article 3 rights.

38. The Divisional Court was critical of that court's earlier findings in *Hilali*. Affirming Lord Hope's statement of principles, the Court referred to the "*fallacy in the reasoning"* in the earlier decision:

> "*19. That court drew a distinction between questioning the judge's decision, banned by s 34 save via a statutory appeal, and it being "undermined" by a change of factual circumstances. The problem with that distinction lies in the nature of the habeas corpus remedy…It lies to challenge the legal validity of a person's detention. But in the present case the order of District Judge Evans provides the authority for the detention of the Applicants. …*
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> *20. What this demonstrates is that the Applicants are indeed seeking to challenge the order of the judge and to do so by way of collateral challenge".* [emphasis mine]

Summary and Conclusion

39. The foregoing canvas of the statutory provisions and the authorities may be summarised as follows: The 2003 Act stipulates that a magistrate's decision may be *"questioned in legal proceedings"* only by means of the statutory appeal right. The cases of *In Re Hilali and Ignaoua* both establish that where a statutory right of appeal exists, the remedy of habeus corpus is excluded. Habeas corpus is the correct means of redress only against decisions which fall outside the scope of the statutory right of appeal, as decided in the *Nikonovs* case.

40. The decision in this case was made at an extradition hearing and is expressly subject to the right of appeal contained in section 116. It follows then that the application must be dismissed as the remedy the Applicant seeks is not available to him.

41. The authority of *Kruger* on which the Applicant relies does not assist, as the statute which applied in that case was the 1989 **Extradition Act.** As stated in the headnote :

> ***"****The issue of a writ of habeas corpus was the long-established and proper remedy in extradition cases when the applicant challenged the magistrate's finding of a prima facie case against him, as was recognized by para. 8(1) of Schedule 1 to the Extradition Act 1989.* [2]

42. The statutory appeal to the Grand Court lies on all questions of law and fact which the Applicant sought to argue in the application before me, there is really no substantive benefit of the remedy of habeas corpus over the statutory appeal, as the Applicant appears to believe.

43. The application was wholly misguided and is hereby dismissed. I make no order for costs.

DATED 3 JUNE 2024

Hon. Justice Margaret Ramsay-Hale
CHIEF JUSTICE

[2] Para 8(1) provides "If the metropolitan magistrate commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus."