



IN THE GRAND COURT OF THE CAYMAN ISLANDS

G 123 of 2021

IN THE MATTER OF SECTION 38 OF THE LEGAL AID ACT 2015;
AND IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE DIRECTOR OF LEGAL AID
RELATING TO CERTIFICATE LACR0112/2020

BETWEEN

JUAN CARLOS GONZALES INFANTE

Plaintiff

-and-

THE DIRECTOR OF LEGAL AID

Defendant

IN CHAMBERS

Appearances: Mr. Juan Carlos Gonzales Infante, *in person*
Ms. Darlene Oko, Legal Counsel for the Defendant

Before: Hon. Mme Justice Margaret Ramsay-Hale

Heard: 2 August 2021

Draft Judgment handed down: 3 September 2021

Judgment Delivered: 3 September 2021

HEADNOTE

*Legal Aid - Legal Aid Act (2015 Revision) - Sections 4 and 24- Legal Aid
21 Regulations (2016) - Appeal of refusal to extend legal aid for Queen's Counsel*

JUDGMENT

Introduction

1. By Notice of Originating Motion dated 11 June 2021, the Plaintiff, Mr. Juan Carlos Gonzales Infante ("Mr. Gonzales") seeks the following relief:

"The Legal Aid certificate LACR0112/2020 is extended to provide the instruction of Queens Counsel to conduct the Extradition proceedings in matter no. 2455/2019."

Background

2. The background to this application is that Mr. Gonzales arrived in the jurisdiction on 28 May 2019 as the pilot of a Venezuelan registered private jet. There were 3 more people on board, the co-pilot and two passengers. The passengers had with them a large quantity of gold. The Plaintiff



and the other occupants of the plane were subject to proceedings in the Grand Court for offences under the **Proceeds of Crime Act** (“POCA”). The trial commenced in November 2019 and concluded 20 March 2020. The Plaintiff was granted legal aid in those proceedings. He and his co-defendants were all acquitted.

3. On or around 14 November 2019 whilst on remand in custody awaiting trial, Mr. Gonzales was served with papers relating to a request for his extradition to the USA, following the issue of a provisional arrest warrant pursuant to the **Extradition Act 2003 (Overseas Territories) Order 2016**.
4. Following their acquittal in the Grand Court, Mr. Gonzales and his co-pilot were prosecuted in the Summary Court for related smuggling charges. Mr. Gonzales’ application for Legal Aid in respect of the summary criminal proceedings and the extradition proceedings was granted to Mr. Alex Davies of McGrath Tonner.
5. The Director of Legal Aid (the “Director”) extended the Legal Aid certificate to allow Mr. Gonzales to instruct leading counsel to represent him on the smuggling charges on the grounds *inter alia* of complexity and equality of arms, pursuant to which Mr. Charles Miskin QC of 23 Essex Street Chambers, London was appointed. The trial was conducted remotely with leading counsel for the Crown and Defendants both appearing via video-link due to ongoing Covid-19 restrictions. Both Defendants were subsequently acquitted in or around September 2020.
6. Mr. Gonzales subsequently sought an extension of his Legal Aid Certificate to fight the attempt of the US authorities to extradite him to face trial for the offences of conspiring with others to import cocaine into Florida, possessing and distributing cocaine and conspiring with others to launder the criminal proceeds thereof. The offences are alleged to have taken place between 2006 and 2007. The indictment was returned by the Grand Jury in 2011 and sealed. It remained sealed until mid-December 2020.
7. On 19 January 2021, Mr. Davies made the application on his behalf, seeking both an extension of the legal aid cap to allow for the additional preparation needed to contest the Extradition proceedings and to extend the Legal Aid certificate to allow Queen’s Counsel to be instructed. By the time the application was made, Directions had been given for a two day hearing of the Extradition application on the 7 and 8 April 2021.
8. The Director in her decision of 27 January 2021, approved an extension of the legal aid cap but refused the application to extend it further to appoint Queen’s Counsel stating as follows:



“For the avoidance of any doubt an extension is not provided for Lead Counsel in this matter. Having reviewed the matter, the court file and notes, it would seem that this matter is well within the capabilities of Mr. Davies and there is no need for a Lead Counsel for this issue. Mr Davies should be in a position to deal with the matter and/or have the ability to prepare for the same.”

9. Mr. Davies sought a reconsideration of the Director’s decision by email on 3 May 2021. The Director’s response which was recorded and notified to Mr. Davis on 4 June 2021 stated as follows:

*“Legal Aid reconsideration Refused.
Section 37(3) of the Legal Aid Law referred.
The time of seeking reconsideration of the Director’s 27 January 2021 decision (which was sent to the parties the same day) has elapsed.
The decision remains as noted. No reconsideration of the decision to refuse Lead Counsel can be made at this time.”*

10. The Plaintiff filed his appeal against the Director’s decision on 23 June 2021. On 8 July 2021, Mr. Davies sought and was granted leave to withdraw as the attorney for Mr. Gonzales who confirmed he was content to proceed with the appeal without the assistance of Counsel. He sought and was granted leave to file further submissions and the appeal finally came on for hearing on 2 August 2021.

Legal Aid Act

11. The **Legal Aid Act (2015 Revision)** (the “Law”) provides at section 24 that,

(1) The Director may procure, by contract, legal aid services on behalf of the assisted persons in certain criminal cases which he determines, in accordance with subsection (2), to be complex legal aid cases.

(2) In determining whether a matter is a complex legal aid case the Director shall take into account whether the case satisfies at least three of the following criteria:

- (a) the commission of the offence to which the case relates is likely to give rise to national publicity and widespread public concern.*
- (b) A successful defence to the charges requires highly specialist knowledge;*
- (c) the elements of the offence are of a technical nature and a successful defence requires an attorney-at-law with the relevant technical legal knowledge;*



- (d) *the elements of the offence involve an international dimension;*
- (e) *a successful defence against the charges requires a combination of legal, accountant, investigative and other expert skills;*
- (f) *the charges are based on allegations of terrorism;*
- (g) *the offence attracts a sentence exceeding 10 years;*
- (h) *The offence is of a violent or sexual nature involving multiple victims;*
- (i) *the offence involves complex financial or legal transactions or records.*

The Issue

12. The issue for resolution is whether the Director has properly taken into account the nature of the extradition proceedings and the surrounding circumstances in applying the criteria set out in section 24.

The Plaintiff's submissions

13. Mr. Gonzales's primary submission is that the Director erred in deciding that the extradition proceedings were not complex and that he did not require specialist legal advice.
14. He contends that that extradition is in fact a complex and specialized area of law that requires in-depth knowledge of both the Extradition Treaty and the Extradition Act as well as the case law relevant to the grounds on which he intends to rely on as barring his extradition including delay and the likelihood that he would receive a sentence which would be unduly harsh, disproportionate, arbitrary and contrary to his human rights.
15. Mr. Gonzales submits that the case he would wish to argue requires experienced counsel to obtain and lead expert evidence on US domestic law and procedure relating *inter alia* to the legal effect of the delay in unsealing the indictment. He would also wish to present evidence that jury trials have been suspended in the federal district court where it is proposed to try him because of the Coronavirus, which may result in him being held in custody without trial for several months compounding the delay which he contends should be a bar to his extradition, and further that there is a high incidence of the Coronavirus in the facilities where he might be detained and that his extradition to Florida would not be compatible with his human rights as he would be exposed to the risk of serious illness or death, this incremental risk to his health from the disease has been created by the State seeking his extradition.
16. Mr. Gonzales asserted for the first time at the hearing that he has experienced significant mental decline while on remand, raising for the Court's consideration the complexity of extradition law and practice with regard to requested persons presenting with mental health disorders.



17. By way of general comment, Mr. Gonzales notes that all the reports of decided cases he has read demonstrate that it is usual for defendants to be represented by leading counsel in extradition matters.
18. Mr. Gonzales concludes his submissions by asserting that his case meets the test for a complex legal aid case set out in section 24 of the Law in that more than three criteria have been met: the news that the US was seeking his extradition attracted considerable national and international media attention, a successful defence to a request for extradition requires highly specialist knowledge, extradition is a highly technical field which, by its very nature, has an international dimension and, finally, the offences for which his extradition is sought carry a sentence of 10 years or more.

Submissions on behalf of the Director

19. Ms. Oko submits in support of the Director's refusal to extend the grant of legal aid that, when applying the criteria in section 24, the Court should bear in mind that the hearing of the extradition application is before a Magistrate. While not a routine matter, Counsel states that it is not an unusual occurrence and that the Summary Court is experienced and familiar with these types of cases that the law to be applied is not complicated and there is recent appellate authority to guide the court considering the request.
20. Ms Oko contends that Mr. Gonzales has overstated the complexity of the issues and refutes the suggestion that Mr. Gonzales requires an attorney with highly specialist or technical knowledge to advance the bars to his extradition and the human rights issues which he has identified and notes that he has already obtained the evidence of a US expert.
21. With respect to the section 24 factors, Ms. Oko submits that the only factor present is that the offences for which Mr. Gonzales's extradition is sought carry sentences of 10 years or more.
22. Counsel submits further that no consideration as to parity of arms arises given that the Crown has not appointed a Queen's Counsel to present the application.
23. Absent sufficient qualifying criteria, Ms. Oko submits that the Director was constrained by section 24 to refuse the application and that her decision should be upheld.

Discussion and Conclusion

24. Having considered the submissions, I respectfully disagree with the Director's conclusion that this matter did not fall to be considered a complex legal aid case. In my view, extradition law is a highly specialized and technical field and that successfully defending an application for the extradition request requires highly specialist knowledge. This, taken together with the self-evident international dimension of an extradition request and the fact that the offences for which



the US proposes to try Mr. Gonzales attract a sentence of 10 years or more, meets the criteria set out in section 24 for determining whether a matter is a complex legal aid case.

25. In lieu of an affidavit, Mr. Gonzales gave evidence on oath with respect to his attempts to secure representation. He stated that he had approached certain attorneys on Island who he believed had the requisite experience and skill to represent him, but they had all indicated they were unwilling to accept a brief at the legal aid rates. It appeared to the Court, after some discussion, that Mr. Gonzales was not wedded to the view that only Queen's Counsel could adequately represent him but that he simply wished to be assured that the lawyer who was engaged to represent him would have the requisite experience and skill. At the handing down of the judgment, however, Mr. Gonzales affirmed the position taken in the appeal, that the complexity of defending an extradition request required that Queen's Counsel with the requisite skill and experience in extradition matters be engaged to represent him.
26. The appeal from the decision of the Director is allowed and the matter is remitted to the Director for reconsideration.

DATED THE 3RD SEPTEMBER 2021



Hon Mme Justice Ramsay-Hale
Judge of the Grand Court