June 23, 2021

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: GC 123 OF 2021

IN THE MATTER OF SECTION 38 OFTHE 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

NOTICE OF ORIGINATING MOTION

TAKE NOTICE that the Court at the Law Courts, George Town, Grand Cayman will be moved on at or as soon thereafter as counsel can be heard on behalf of Juan Carlos Gonzales Infante to grant the following relief:

1. The date of hearing this appeal shall be listed as soon as the case may be accommodated, sooner than 21 days after service if possible, according with the availability of the parties.

2. The Legal Aid certificate LACR0112/2020 is extended to provide for the instruction of Queen's Counsel to conduct the Extradition proceedings in matter no 2455/2019.

3. The Legal Aid Department may pay the costs of and incidental to these proceedings;

AND FURTHER TAKE NOTICE that the grounds upon which relief is sought are set out below.

1. The Appellant arrived in the jurisdiction on 28 May 2019 as the pilot of a Venezuela 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 Appellant and the other occupants of the plane were subject thereafter to proceedings in the Grand Court under indictment 81, 82, 83, 84 and 92 of 2019 relating to offences contrary to the

Proceed of Crime Act. The trial commenced in November 2019 and concluded on 20 March 2020. All defendants were acquitted. The Appellant was represented by different attorneys for this Grand Court Trial.

2. On or around 14th November 2019, whilst remanded in custody awaiting trial, the Appellant was served with papers relating to a request for his extradition to the USA by members of the RCIPS, following the issue of a provision arrest warrant issued by the Summary court pursuant to the Extradition Act 2003 Overseas Territories Order 2016. The required documents were supposed to have been sent and received in the jurisdiction within 60 days from the date of the provisional warrant. They were not, however.

3. After the conclusion of the Grand Court Trial, the Appellant and co-pilot were prosecuted in relation to smuggling charges in the Summary Court. The Appellant instructed his current attorneys – McGrath Tonner in relation to these proceedings, and the existing legal aid certificates were transferred in June 2020 for the criminal smuggling charge and the extradition. A certificate was granted for this, with permission for leading counsel to represent the appellant at trial. The Appellant was represented by Charles Miskin QC of 23 Essex Street Chambers, London. The hearings were conducted remotely with leading counsel for the Crown and the Appellant appearing via video link due to the ongoing restrictions on movement imposed by the UK government relating to COVID-19. Both defendants were acquitted in around September 2020.

4. The US authorities seek the Appellant's extradition to stand trial following a Grand Jury indictment sealed on 11th February 2011. The indictment alleges the Appellant, together with others, between March 2006 and March 2007, was involved with others in the importation of 100kg of cocaine to Florida, and further laundered $250,000.00 being the proceeds thereof.

5. The Appellant denies any involvement in the facts alleged, or at all, and opposes his extradition to the USA. The Grounds for opposition are:

a. Unreasonable delay since the alleged incidents, which is not the fault of the Appellant, such that it will be impossible for his to stand a fair trial, and therefore his extradition is unjust;
b. The extradition may risk his personal safety being extradited from a country with zero community transmission of COVID-19 to a jurisdiction with very serious problems and widespread infections, such as to threaten his life and safety;
c. If convicted, the Appellant may face life imprisonment without parole, which would be unduly harsh, disproportionate, arbitrary, and contrary to his human rights guaranteed by the Cayman Islands Constitution Order 2009;
d. The prison conditions to which he may be transported may be unsuitable and below the standard accepted in the UK and Cayman Islands, particularly in light of the risk of COVID-19 transmission.

6. There is no precedent for the threat of COVID-19 as it affects the rights of a person being extradited – this will be a novel point for any extradition, and the first in this jurisdiction on the point. Furthermore, the Cayman Islands is almost unique in its position as having zero community transmission of the virus since May 2020, and therefore the issues affecting the Appellant are novel and particular to this jurisdiction.

7. The extradition matter is a "complex" case as described by s.24 Legal Aid Act 2015 for the following reasons:
    a. The extradition proceedings, as well as the criminal matters with which the Appellant was charged, tried, and acquitted have already given rise to publicity in national newspapers in the jurisdiction;
    b. Successfully defending the extradition proceedings requires specialist knowledge and expertise in extradition to the USA, particularly the jurisdiction of Florida. This is particularly important in relation to the effects of COVID-19 and whether this will affect the constitutional rights of the appellant.
    c. The law relating to the extradition is not straightforward, and will require comparison of UK and European case authority as well as case authorities in this jurisdiction, and expert evidence on the law and procedure in the USA, particularly Florida;

d. The extradition involves an international dimension by its very nature, but in the present case there is an added element of the unique nature of at least one of the grounds to this jurisdiction, without precedent therefore;

e. The offence alleged in the USA has a minimum sentence of 10 years, and likely to be substantially more, possibly life without parole. A whole-life sentence without the possibility of parole could constitute inhuman or degrading treatment, amounting to torture in breach of the Appellant's rights under the Cayman Islands Constitution Order 2009.

8. The case is, therefore, complex for the purposes of s.24 Legal Aid Act 2015, and senior leading counsel with the requisite specialist knowledge ought to be funded for purposes of the proceedings. The Appellant seeks to instruct Clair Dobbin QC of 3 Raymond Buildings Chambers in London, who has agreed to represent the Appellant in the case, subject to funding, work permit approval and other administrative requirements permitting foreign counsel to act in the jurisdiction.

9. The initial application for a QC was made by way of letter from the Appellant's attorneys dated 19th January 2021 (attached as **TAB B**), which also sought an increase in the cap of the certificate. The cap increase was granted, but the application for leading counsel was refused by way of certificate dated 27th January 2021 (**TAB C**). The Appellant's attorneys requested a Reconsideration of the decision not to fund a QC by the Respondent within 7 days of this decision. However, owing to an apparent problem with the Appellant's attorneys' email server, this was not delivered to the Respondent or the legal aid department, a fact which only became apparent upon chasing for a response in February 2021.

10. The grounds for Reconsideration by the Director were repeated and the request renewed by email dated 3rd May 2021. The Respondent refused the request for reconsideration, and notification of this was given by email dated 4 June 2021 (**TAB D**).

11. The Appellant now seeks to appeal the refusal by the Respondent to grant a certificate for leading counsel in the Extradition case on the grounds above.

12. The Plaintiff seeks its costs of and incidental to these proceedings, at the usual Legal Aid rate, to be taxed if not agreed.

Dated the 11th day of June 2021

Filed the 11th day of June 2021

McGrath Tonner
Attorneys for the Plaintiff

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AND TO: The Director of Legal Aid
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