IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(Civil Division)

Claim No. DOMHCV2025/0195

BETWEEN:

MICHAEL ALEXIS MAGLOIRE also known as
ALEXIS SHERWIN ROBERTS

Applicant

and

[1] THE SUPERINTENDENT OF PRISONS
[2] THE ATTORNEY GENERAL

Respondent

Before Her Ladyship, Honourable Madame Justice Zainab Jawara-Alami

Appearances:

Ms. Dawn Yearwood-Stewart for the Applicant
Ms. Nadira Lando for the Respondents

2026: April 15 (*Oral Submissions*)
June 3 (*Decision*)

JUDGMENT

Extradition, Writ of habeas corpus, whether detention unlawful
Whether proper authentication of documents fatal to the application

[1] **JAWARA-ALAMI, J.**: The Applicant herein applies for a writ of habeas corpus pursuant to Part 57 of the Eastern Caribbean Civil Procedure Rules (Revised Edition 2023). The Application was filed on 25th September 2025 and contains a Notice of Application along with the Affidavit in support.

[2] The Applicant seeks reliefs as follows;

(1) A Declaration that the committal order to extradite the Applicant to St. Maarten made on the 11th September 2025 is void and of no effect.

(2) A Declaration that the Applicant is being held unlawfully as a Prisoner at the Dominica State Prison in Stockfarm, in the parish of Saint George.

(3) A Declaration that in all the circumstances surrendering the Applicant to St. Maarten to serve a sentence of 18 years imposed *in absentia* is oppressive and in violation of the fundamental rights of the Applicant as guaranteed by the Constitution of Dominica.

(4) An order directing that the committal order made against the Applicant on the 11th September 2025 be discharged and the Applicant released from custody.

(5) A Declaration that the documents submitted to the committing Magistrate were not properly authenticated and therefore should not have been received and admitted into evidence by the Magistrate.

(6) A Declaration that, having been sentenced *in absentia*, the Applicant ought to have been treated as an accused person under section 17(b) and not section 17(a) pursuant to Article VIII of the Treaty of the Netherlands and the United Kingdom in 1898.

(7) A declaration that the Applicant should have been committed under section 17(b) of the Extradition Act when he was sentenced in his absence.

(8) An order that the Applicant was in lawful custody and therefore not unlawfully at large as is required under section 17(a) of the Extradition Act before a committal order can be made under section 19 of the said Act.

(9) A Declaration that the detention of the Applicant constitutes false imprisonment

(10) Such further or other relief as may the Court considers just; and

(11) Costs

The Facts

[3] The Applicant claims that he was born in, and is a citizen of French St. Maarten. He is also a Dominican citizen by descent, through his father, who is a Dominican citizen by birth.

[4] He claims that in 2014, he arrived in Dominica, having fled from St. Maarten to escape a "psychopath" called Reo Raymond who had threatened to kill him. At the time there was no warrant for his arrest nor was he charged with any offence, or taken into custody in St. Maarten.

[5] The Applicant states that while in Dominica, he lived at his father's house in Castle Comfort, and in the Kalinago Territory and collected rent payments from his father's tenants and paid the bills.

[6] He asserts that in 2016, he was arrested and charged with robbery and remained at the Dominica State Prison until 2025 when the Director of Public Prosecutions entered a *nolle prosequi* to discontinue the robbery matter and he was released.

[7] The Applicant also asserts that he was immediately rearrested by police officers outside the courtroom on a provisional warrant signed by a local Magistrate, and was informed that he was wanted for Extradition to St. Maarten. He was then placed in the cells at the Roseau police station.

[8] The following day, he was taken before learned Magistrate Rupasinghe and was remanded into custody at the Dominica State Prison in Stock Farm.

[9] It is the Respondents facts that on October 1, 2024, the Second Respondent being the Central Authority received an international request for extradition from the Attorney General in Sint Maarten respect of the Applicant for the offences of manslaughter and attempted manslaughter[1]. Extradition proceedings were commenced against the Applicant in the matter DOMMCR2025/0092 The Chief of Police / The State v Michael Alexis Magloire also known as Alexis Sherwin Roberts.

[10] The Applicant was arrested on a form of warrant of apprehension under the Extradition Act on the 13th February 2025 and brought before the Magistrates' Court for determination as to whether the Applicant should be committed for surrender or discharged. Several hearings were conducted. The Chief of Police swore to an affidavit in support of the extradition proceedings on the 18th of July 2025 and exhibited the documents to which the State relied on in the extradition proceedings[2].

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1 paragraph 4 of the Affidavit of Lincoln Corbette

2 paragraphs 4 and 5 of the Affdavit of Lincoln Corbette filed on October 8, 2025

[11] On 11 September 2025, the learned Magistrate committed the Applicant to prison to await surrender to Sint Maarten under section 17 of the Extradition Act, where the Applicant is allegedly currently lawfully detained.

Applicant's Submissions

[12] The Applicant submits that the present application for a writ of habeas corpus and declaratory relief sought, challenges the lawfulness of the committal order issued on 11th September 2025 and the legality of his detention.

[13] He submits that there were procedural irregularities during the extradition hearing, which were raised but not addressed by the learned Magistrate, which are; that his attorney-at-law opposed the tendering of documents by way of paper committal for non-authentication as required by the Extradition Act; that he was not unlawfully at large; that he had been sentenced *in absentia* while in custody in Dominica; and that a request for additional documents which formed part of the Extradition request to the Attorney General of Dominica and the Prosecutor, Senior Counsel Keith Scotland, refused to disclose those documents claiming that they do not intend to rely on them.

[14] Relying on **section 15 of the Extradition Act**[3], the Applicant submits that the authentication of the documents presented to the learned Magistrate by the Requesting State tendered were not duly authenticated. In particular, the Applicant contends that there was an Apostille attached to the verdict in the bundle of documents, however, upon scrutiny, it appeared that there was no nexus between the Apostille document and the Judge who adjudicated the matter. Additionally, the Applicant emphasizes that there is no material connection between the Apostille and the documents attached, given that there is not a date or corresponding number to link the documents. The Applicant submits that this irregularity poses a threat to the verification of the authenticity and validity of the document.

[3] Chapter 12.04, Revised Laws of the Commonwealth of Dominica 2017

[15] The Applicant concludes his submissions by submitting that the Court ought to look at the sufficiency of the evidence and that the sufficiency of evidence had not been relied upon before the committal order as per the legislative guidelines. He argues that based on these grounds, the committal ought to be deemed unlawful.

Respondent's Submissions

[16] The Respondents submit that the Applicant was arrested pursuant to a warrant of apprehension under the Extradition Act on 13th February 2025 and brought before the Magistrates' Court to determine whether he should be committed for surrender or discharged. They state that the Chief of Police swore to an affidavit in support of the extradition proceedings on 18th July 2025, which was relied on by the State. The Applicant was thereafter committed to prison to await surrender to St. Maarten under section 17 of the Extradition Act.

[17] The Respondents conclude by upholding the position that the Applicant's grounds are essentially an argument of the committal's merits and that the Magistrate has already decided on the aforementioned grounds and declarations sought. Consequently, the Respondents submit that the Applicant ought to file a statutory appeal in the absence of any post-committal change or supervening illegality. Moreover, the Respondents submit that the application for a writ of habeas corpus should be dismissed and the declaration sought ought to be refused by the Court with costs to the Respondents.

Applicant's Submissions In Reply

[18] In reply to the Respondents' submissions, the Applicant contends that a habeas corpus application in extradition proceedings seek to challenge the legality of the imprisonment of the requested individual and the validity of the extradition request as per relevant treaties and law. Therefore, the court can assess the grounds on which the extradition is sought and protect individuals' rights to liberty.

[19] Furthermore, the Applicant contends that while habeas corpus is a fundamental legal principle in international and national law, it operates on different spectrums. In international law, it serves on a broader spectrum as a mechanism primarily dealing with human rights violations across borders, whereas, national law typically provides a mechanism to protect against unlawful detention and challenges to unlawful imprisonment.

[20] The Applicant relies on **Boatswain v Superintendent of Prisons et al**[4] and contends that, in habeas corpus proceedings, the court must determine whether the Magistrate had before him legally admissible and sufficient evidence to justify the committal, and whether a reasonable magistrate would have arrived at the same conclusion. The Applicant further submits that the present application raises issues concerning the admissibility of documentary evidence, particularly the certification and authentication of documents that were placed before the Magistrate.

[21] The Applicant also relies on the case of **Fuller v Attorney General of Belize**[5] in support of the proposition that habeas corpus is a fundamental safeguard of personal liberty in extradition proceedings and the Court has a jurisdiction to scrutinize the legality of a committal. The Applicant submits that the decision affirms the Court's power, in habeas corpus proceedings, to examine the lawfulness of detention and to guard against abuse of process. The decision also highlights the inherent difficulty in clearly delineating the proper scope of judicial review in extradition matters.

[22] In this context, the Applicant submits that even courts at the highest level have recognized the difficulty in defining the precise scope the matters falling for consideration in habeas corpus proceedings. The resultant effect is that it undermines the restrictive approach advanced by the Respondents

[23] Accordingly, the Applicant maintains that the committal order and the resulting continued detention are unlawful and ought to be set aside.

[4] ECSC HC Civil Claim No. 130 of 2006 (unreported)
[5] [2011] UKPC 23

The Issues

[24] The Issues arising for determination is simply; Whether the Applicant is being detained unlawfully;

The Law and Discussions

[25] The relevant law herein is the Extradition Act.

[26] According to **Halsbury's Laws of England**[6] The writ of habeas corpus for release is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention whether in prison or in private custody.

Whether the Applicant is being detained unlawfully

[27] The Applicant challenges the lawfulness of the committal order dated 11th September 2025 and on the grounds that; (i) the documents relied upon for the committal of the Applicant were properly authenticated in accordance with the Extradition Act; (ii) the Applicant ought to have been treated as unlawfully at large at the time of his conviction; and (iii) the Applicant's conviction *in absentia* rendered the committal unlawful.

documents for the committal of the Applicant, whether authenticated in accordance with the Extradition Act

[28] The Applicant submits that the documents tendered by the Requesting State before the learned Magistrate were not duly authenticated. In particular, the Applicant contends that although an Apostille was attached to the verdict contained in the bundle of documents, upon scrutiny there appeared to be no nexus between the Apostille and the Judge who adjudicated the matter. The Applicant further argues that there is no material connection between the Apostille and the attached documents, as neither a date nor a corresponding reference number appears on the Apostille linking it to the documents in question. It is submitted that this irregularity casts doubt on the authenticity and validity of the documents relied upon by the Requesting State.

[6] Halsbury's Laws of England, Rights and Freedoms, Volume 88 (2025)

[29] More specifically, the Applicant contends that the judicial officer identified in the Apostille is not the same judicial officer whose name appears on the judgment. The Applicant points to page 27 of the bundle, which records that the sentence was imposed by Judge G.P. Verbeek, assisted by D. den Haan, Court Clerk, and pronounced in open court in Sint Maarten on 18 March 2021. The Applicant contrasts this with the Apostille appearing at page 28 of the bundle and submits that the certification contained therein does not sufficiently establish that it relates to the judgment in question. According to the Applicant, the absence of a clear identifying link between the Apostille and the judgment undermines the reliability of the authentication process

[30] The Respondents submit that the statutory requirements for evidence of the extradition crime were met under section 15 of the Extradition Act and the Magistrate so found. Arguing that Section 15 requires that to show the truth of a charge of an extradition crime or the fact of a conviction for an extraditable crime, the evidence is admissible if the documents are duly authenticated, which means that they are certified by an appropriate judicial officer in the prescribed manner. In the case at bar, the documents relied on were certified by Apostille and Seal of the Minister of General Affairs, which is in keeping with the Act[7]. Therefore, it is submitted that the declaration sought at relief (v) should be refused.

[31] Having set out the arguments above, which are largely premised on the authenticity of the documents relied upon, I now turn to the relevant provision of the Extradition Act namely section 15 of the Act which provides as follows;

> **"(1) In order to show the truth of a charge of an extradition crime or the fact of a conviction for an extradition crime, any or all of the following are admissible in evidence, if duly authenticated, namely:**
>
> > **(a)evidence on oath or affirmation; and**
> > **b)warrants, depositions taken outside Dominica, certificates of conviction or judicial documents stating the fact of conviction in a Commonwealth country or foreign state, or copies thereof.**
>
> **(2)A document or paper is duly authenticated for the purposes of subsection (1) if it is authenticated in the manner provided for the time being by the law of Dominica.**
>
> **(3)Other documents or papers not within the purview of subsection (2) are duly authenticated for the purposes of subsection (1) if—**

[7] paragraph 4 of the Affidavit of Lincoln Corbette Exhibit L.C.1

(a) <u>in the case of a warrant or a copy thereof, it purports to be the original warrant signed, or a true copy thereof certified by an appropriate judicial officer in the prescribed manner;</u>
(b) in the case of a deposition or copy thereof, it purports to be the original deposition signed, or a true copy thereof certified, by an appropriate judicial officer in the prescribed manner; or
(c<u>) in the case of a certificate of conviction or a judicial document stating the fact of conviction or a copy thereof, it purports to be the original certificate of judicial document signed, or a true copy thereof certified, by an appropriate judicial officer in the prescribed manner.(my emphasis)</u>

(4)For the purposes of subsection (3)—
(a) "an appropriate judicial officer" means a Judge, Magistrate or officer of the Commonwealth country or the foreign state, as the case may be, that is seeking the surrender of the fugitive concerned; and
(b) "in the prescribed manner" means that the document or paper is authenticated by the oath or affirmation of some witness or by being sealed with the official seal of the Attorney General, Minister of Justice or some other Minister of Government of the Commonwealth country or foreign state, as the case may be, that is seeking the surrender of the fugitive concerned.

(5) For the purposes of this Act, judicial notice shall be taken of the official seal described in subsection (4)(a) and (b)."

[32] Section 15 sets out the evidential requirements to be satisfied in support of a request for extradition, including the requirement that judicial documents relied upon must be duly authenticated and must tend to establish the fact of the offence or conviction alleged.

[33] **Section 3(2)** provides that **"**The Act is remedial in nature**. it shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its purposes**"

[34] This reflects the well-established principle that extradition legislation is not to be construed in an unduly restrictive or technical manner. In the case of **In Re Ismail**[8], it was observed that extradition treaties and the statutory framework implementing them should be accorded a broad and generous construction, so far as the language permits, in order to give effect to their purpose.

[35] The proper approach on review is therefore whether, on the material before the Magistrate, a reasonable Magistrate would have been entitled to order committal, bearing in mind that

[8] [1999] 1 A.C. 320

extradition proceedings are not a criminal trial but a statutory process concerned with sufficiency of evidence rather than proof beyond reasonable doubt

[36] That said, the issue is not whether the documents are free from irregularity, but whether they have been sufficiently authenticated so as to satisfy the requirements of Section 15 of the Act. Minor or technical defects that do not detract from the character, authenticity, or reliability of the documents will not be fatal to the requesting state.

[37] In the present case, the documents before the Magistrate were judicial in character, emanating from the requesting judicial authority, and were accompanied by an Apostille certifying their official origin for use in international proceedings.

[38] Having said the above, I turn to the applicable legal principles which are clear. In **Knowles v Superintendent of Her Majesty's Fox Hill Prisoner and others**[9]**,** the Privy Council confirmed that while extradition documents must be duly authenticated, minor or technical defects will not invalidate committal; only substantive defects which undermine the reliability or official character of the documents will justify discharge. Similarly, in **Re Hilali**[10]**,** the House of Lords emphasised that habeas corpus is not to be used to challenge the evidential sufficiency in extradition proceedings. The court's role is limited to ensuring compliance with the statutory extradition framework and verifying that the alleged conduct falls within the statutory definition of an extradition offence.

[39] Further guidance is found in **Regina (Al Fawwaz) v Governor of Brixton Prison and another; Regina (Abdel Bary) v Governor of Brixton Prison and another; Regina (Eidarous) v Governor of Brixton Prison and another**[11], where the Supreme Court reaffirmed that the extradition court must adhere strictly to the statutory scheme and principles of international comity. The merits or sufficiency of the requesting state's evidence are not matters for re-examination, and attempts to revisit findings properly made by the Magistrate amount to an impermissible appeal on the merits.

[9] [2021] UKPC 19
[10] [2008] UKHL 3
[11] [2002] 1 AC 556

[40] The Applicant's challenge is directed primarily at the Apostille and the alleged discrepancy between the judicial officer named in the judgment and the reference contained in the Apostille. However, even accepting the existence of such a discrepancy, the issue for determination is whether it goes to the authenticity of the documents in a material sense so as to render them incapable of satisfying section 15.

[41] In applying the principles cited above, I am satisfied that the discrepancy in the Judge's initials does not, without more, affect the authenticity or admissibility of the documents. There is no evidence before this Court to suggest that the judgment and Apostille relate to different judicial officers, that the Apostille was improperly issued, or that the documents are otherwise unreliable. In the absence of such evidence, the discrepancy is properly characterised as a minor irregularity which does not vitiate the proceedings.

[42] In my judgment, it does not. The documents before the Magistrate were judicial in character, bore the formal indicia of a conviction, and were accompanied by an Apostille certifying their official origin for the purposes of international use. The absence of a direct cross-reference number or minor inconsistency in nomenclature does not, without more, negate the official character of the documents or their admissibility under section 15.

[43] The purpose of this requirement under the Hague Convention is not to impose an unduly technical evidential threshold, but to ensure that the documents relied upon are genuinely issued by the requesting judicial authority and are reliable on their face. Accordingly, the focus of the Court is on the authenticity and official character of the documents as a whole, rather than on minor irregularities which do not undermine their reliability

[44] In reviewing the decision of the learned magistrate, the relevant question is whether, on the material before him, a reasonable Magistrate would have been entitled to order committal. Having considered the learned Magistrate's decision, I am satisfied that the Magistrate made findings of fact on the evidence and concluded that there was sufficient admissible and cogent material to justify the applicant's committal to await extradition to Sint Maarten. It is to be borne in mind that the proceedings before the Magistrate were extradition proceedings and not a criminal trial.

[45] Accordingly, I find that the learned Magistrate was entitled to conclude that the documents were duly authenticated in accordance with the statutory requirements and that the evidential threshold for establishing the conviction for an extradition crime had been satisfied.

Unlawfully at large

[46] The Applicant submits **that section 17 (a) of the Extradition Act** stipulates that;

> **"a Magistrate may commit a fugitive where the fugitive is alleged to have been convicted of an extradition crime and to have been unlawfully at large"**

[47] Thus, the Applicant contends that while it can be satisfied that the Applicant was convicted for an extradition crime, he cannot be deemed as a fugitive who was unlawfully at large given that he had been in custody at the Dominica State Prison on remand at the time of his conviction in St. Maarten (and several years prior). Further, that this was a fact that the requesting state was privy to.

[48] The Respondents submit that the Applicant was properly treated as a convicted person for the purposes of the committal proceedings. They argued that the extradition request and accompanying duly authenticated judgment established that the Applicant had been convicted *in absentia* and sentenced to 18 years' imprisonment. Further, pursuant to section 48 of the Extradition Act and the applicable Extradition Treaty, only a non-final conviction is treated as an accusation for the purposes of extradition proceedings. As the evidence demonstrated that the conviction was final, the Magistrate was entitled to proceed under the provisions applicable to convicted fugitives.

[49] The governing provision is **section 17 of the Extradition Act**, which sets out the requirement applicable where a fugitive is alleged to have been convicted by the requesting state, and provides as follows:

> **"(1) Where a fugitive is brought before a Magistrate pursuant to section 13, the Magistrate shall, notwithstanding that section 7 appears to apply to the fugitive issue his warrant for the committal of the fugitive to prison if—**
>
> > **(a)<u>when the fugitive is alleged to have been convicted of an extradition crime and to have been unlawfully at large</u>, such evidence is produced before the Magistrate as would, in accordance with the law of Dominica as**

modified by this Act, satisfy him that the fugitive has been so convicted and was unlawfully at large; or

(b) when the fugitive is accused of an extradition crime, such evidence is produced before the Magistrate as would, in accordance with the law of Dominica as modified by this Act, justify the committal of the fugitive for trial had the extradition crime occurred in Dominica.

(2) Upon committal of a fugitive to prison pursuant to subsection (1), he shall remain there until he is surrendered to the Commonwealth country or foreign state seeking his surrender or until he is discharged according to law."

[50] The provision therefore clarifies when a person is to be treated as unlawfully at large and a person is alleged to be unlawfully at large after conviction of an offence. In particular, a person is so regarded where (a) he is alleged to have been convicted of an extradition offence , and (b) his extradition is sought for the purpose of his being sentenced for the offence or of his serving a sentence of imprisonment or other form of detention imposed in respect of the offence.

[51] The authorities considered in **Wisniewski et al v Regional Court of Wroclaw**, **Poland**[12] reflect a consistent line of principles in relation to persons alleged to be "unlawfully at large" in extradition proceedings..

[52] As to the concept of being "unlawfully at large", the authorities including **Pinto v Judicial Authority of Poland,**[13] **Herman v Polish Judicial Authority**[14], and **Salbut v Circuit Court Gliwice**[15] illustrate that the question turns on whether there has been a breach of the terms under which the person is required to remain subject to supervision or custody. In particular, breach of the conditions of a suspended sentence or failure to comply with requirements to maintain contact with the authorities may render a person unlawfully at large.

[53] While some cases emphasise knowledge of the activation of a sentence, the weight of authority supports an objective assessment focused on whether the person is in fact at large in breach of a lawful sentence, rather than subjective awareness.

[12] [2016] EWHC 386 (Admin)
[13] [2014] EWHC 1243 (Admin)
[14] [2015] EWHC 2812 (Admin)
[15] [2014] EWHC 4275 (Admin)

[54] The Court in **Wisniewski** endorsed this approach and accepted that the relevant enquiry is whether, by reason of breach of sentence conditions, the appellants were properly to be regarded as unlawfully at large.

[55] Finally, the judgment reaffirms the strong public interest in extradition proceedings as articulated by Baroness Hale in **HH v Deputy Prosecutor of the Italian Republic, Genoa**[16] drawing on **Norris v Government of the United States of America (No 2)**[17], namely that extradition serves to ensure that fugitives face justice, that treaty obligations are honoured, and that the United Kingdom does not become a safe haven for those seeking to avoid prosecution or sentence.

[56] The authorities considered above establish that the concept of being "unlawfully at large" is to be assessed objectively and once the Magistrate was satisfied that there was a conviction for an extradition crime and that the Applicant was unlawfully at large, Section 17(1)(a) impose a mandatory duty to commit him to prison.

[57] It is necessary at this stage to state the role of the Court in habeas corpus applications. In **Boatswain v Superintendent of Prisons et al**[18], the court emphasized that;

> " "It is established law that in Habeas Corpus proceedings the Court does not re-hear the case that was before the Magistrate or hear an appeal from his order, but only has to ensure that the Magistrate had sufficient evidence before him." The Court must consider whether on the material before the Magistrate a reasonable Magistrate would have been entitled to commit the prisoner."

[58] The Court is not required to conduct a retrial of the conviction or to investigate the merits of the foreign proceedings. Its function is limited to determining whether the statutory evidential threshold has been met. The Court is not engaged in a rehearing of the foreign proceedings and does not sit as an appellate tribunal over the conviction itself.

[59] In these circumstances therefore, I am satisfied that there was sufficient evidence upon which the Magistrate could properly conclude that the Applicant had been convicted of an extradition crime within the meaning of sections 42 and 47 of the Act and was unlawfully at large for the purposes of section 17(1)(a). The fact that the Applicant was convicted *in absentia* does not alter

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16 [2014] EWHC 4275 (Admin)
17 [2010] 2 AC 487
18 ECSC HC CIVIL No. 130 of 2006 (unreported)

that conclusion. The evidence demonstrates that the sentence remains operative and that the Applicant has not commenced serving it. On an objective assessment, he therefore falls within the category of a convicted fugitive who is unlawfully at large.

[60] Accordingly, the statutory requirements for committal were satisfied, and the Magistrate was entitled under section 17(1)(a) of the Act, to order the Applicant's committal on the basis that the applicant was convicted and was unlawfully at large.

In absentia conviction

[61] In relation to the conviction *in absentia*, the Applicant relies on correspondence between the requesting state and the Attorney General of Dominica which outlines the grounds of the *in absentia* sentence by stating that summons was presented to the Applicant who refused to cooperate which consequently led to the court's conclusion that the Applicant "voluntarily waived his right to be tried in his presence". Further, the Applicant contends that he ought to have been treated as an accused person rather than as a convicted person.

[62] The Respondents address the *in absentia* conviction by submitting that the question of whether the fugitive was "convicted" or "accused" was a statutory construction record-of-case issue for the Magistrate's Court or appeal. Moreover, the Respondents submit that the *in absentia* conviction and sentence of the Applicant were confirmed and as such subject to **section 48 of the Extradition Act and the Extradition Treaty,** the Magistrate had the power to conduct the committal proceedings based on the Applicant's final verdict.

[63] In **Bertino v. Public Prosecutor's Office**[19] the Supreme Court held that extradition following a conviction *in absentia* is permissible under section 20(3) of the Extradition Act[20] only where the requested person has unequivocally, knowingly waived the right to be present at trial as per Article 6 of the European Convention on Human Rights (ECHR). Furthermore, it sets out that waiver may be express or inferred, but cannot be inferred merely from absence, fugitive status, or lack of diligence, nor from vague or informal awareness of proceedings. The test is whether a person could have reasonably foreseen that their conduct would result in the trial proceeding in

[19] [2024] UKSC 9
[20] The Extradition Act, 2003 (UK)

their absence. Applying these principles, the Court held that the appellant was not deliberately absent, the lower courts had erred, and that extradition of the Appellant was incompatible with Article 6 of the ECHR.

[64] The principles in **Bertino** are of importance in so far as they emphasise that, in cases of conviction *in absentia*, the court must be satisfied that any waiver of the right to be present at trial is clear, unequivocal, and informed, and not merely inferred from absence or non-participation in proceedings.

[65] In the present case, the Magistrate was entitled to proceed on the basis of the formal record provided by the Requesting State, which indicated that the Applicant had been tried, convicted, and sentenced *in absentia*, and that the conviction was final and operative within that jurisdiction. There was nothing before the Magistrate to displace that status for the purposes of the Act.

[66] Indeed, the evidence before the Magistrate included interview notes recording an interview between the Applicant and a police officer, conducted in the presence of the Applicant's counsel on 19 February 2025, during which the Applicant was informed of the international arrest warrant and the legal proceedings instituted against him. The Applicant further acknowledged that he had been aware of the warrant since 2017. The evidence also disclosed that summonses were served upon the Applicant by the Sint Maarten authorities in 2020 and 2021 and that he was informed of his right to appeal. The Applicant refused to accept the relevant documents. It was on this basis that the courts of the Requesting State proceeded in his absence and ultimately entered the conviction *in absentia*.

[67] In those circumstances, the Magistrate was entitled to conclude that the Applicant had notice of the proceedings and that the conviction remained final and effective for the purposes of the extradition request.

[68] Once the statutory threshold is met, section 17 imposes a mandatory obligation on the Magistrate to order committal. The court reiterates that in such [proceedings, it is enjoined not to exercise a discretionary appellate function over the foreign conviction but to apply a statutory test based on the sufficiency of evidence.

[69] Having said the foregoing, I am satisfied that the learned Magistrate's committal was based on sufficient evidence, having regard to all submissions by counsel for both parties, the law involved in the charges laid against this Applicant, the law relating to admissibility of evidence as well as the authorities cited. I hold that the committal is valid and ought to stand. In that regard the application for habeas corpus is hereby denied.

DISPOSITION

[70] Accordingly, it is hereby ordered and declared that;

1. The Committal of the Applicant is affirmed as valid, and reliefs 1 to 10 sought in the application accordingly fail;
2. The application for habeas corpus is dismissed
3. There shall be no order as to cost.

Zainab Jawara-Alami
High Court Judge

BY THE COURT

REGISTRAR