THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 130 OF 2006

BETWEEN:

CECIL BOATSWAIN

Claimant

v

THE SUPERINTENDENT OF PRISONS
THE ATTORNEY GENERAL

Respondents

IN THE MATTER OF CECIL BOATSWAIN
AND
IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

Appearances:

Mr. Arthur Williams and with him Mr. Richard Williams and Mr. Bertram Stapleton for the Claimant
Mr. Camillo Gonsalves Senior Crown Counsel for the Respondents
Mr. Colin Williams, Director of Public Prosecutions (Ag) holding a watching brief

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2006: May 11th
May 18th

JUDGMENT

[1] **BRUCE-LYLE, J**: This is an application for Habeas Corpus by Cecil Boatswain (the Applicant) pursuant to the Fugitive Offenders Act Chapter 126 of the Laws of Saint Vincent and the Grenadines (the Act). The Applicant had been committed to custody pursuant to an order made by the learned Chief Magistrate on 4th May 2006 to await his return to the United States of America in respect of alleged offences of Drug Trafficking, pursuant to a request received by the Government of Saint Vincent and the Grenadines from the Government of the United States of America for these certain alleged drug offences.

APPLICANT'S SUBMISSIONS:

[2] The applicant made several submissions in support of this application for Habeas Corpus. First was the submission that the Fugitive Offenders Act Cap. 126 is to be construed strictly and as such all of its provisions are mandatory and must be strictly complied with; secondly, that the ruling of the Learned Magistrate in the admissibility of the affidavits of Monica McCall, Ruth Anderson Failkow, Rose Cadle, Tina Marie Lapera, John Condon, and Maureen Craig, did not comply with the requirements for authentication as set out in Sections 26(1)(a) and 26(2)(a) ; thirdly, that the proper test for the Magistrate to apply is whether , if the evidence available stood alone at trial, a reasonable jury, properly directed, could accept it and find a verdict of guilty, and that in this instant matter there was no evidence on which the Magistrate could commit; and fourthly, the prosecution had failed to satisfy the Magistrate that the United States of America had provisions in their law that the Applicant would not be charged with any other offences other than those for which he has been extradited unless he has been first restored to St. Vincent and the Grenadines and lastly that the Prosecution had led no evidence that an order was granted by the Governor-General pursuant to Section 10 of the Fugitive Offenders Act and as such the application for the extradition against the Defendant must fail.

THE ROLE OF THE COURT:

[3] It is necessary at this stage to state the role of the Court in Habeas Corpus applications, before dealing with the submissions of the Applicant. The role of the Court in reviewing Habeas Corpus applications is essentially limited to determining whether the learned Magistrate abused her discretion in ordering the committal of the Applicant.

> "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, but the Court cannot retry the

case so as to substitute its discretion for that of the Magistrate. See Halsbury's Laws of England, Fourth Edition, Vol. 18, 234 – 35; and also Schtraks v Government of Israel (1962) 3 ALL E.R. 529 at 532 – 533.

[4] The Court hearing an application for a writ of Habeas Corpus is not a Court of Appeal from the Magistrate on questions of fact, but has only to ensure that he had sufficient evidence before him. The Court will not grant an application for a Writ of Habeas Corpus if there was evidence upon which the Magistrate could commit. The sufficiency of the evidence is a question for the Magistrate. The Court will interfere only if it is satisfied that there was no evidence upon which a Magistrate properly directing himself as to the law could have committed. The evidence must be admissible evidence.

DEFENDANTS' SUBMISSIONS:

[5] The Defendants assert through Learned Counsel Camillo Gonsalves that

(a) under the terms of the Fugitive Offenders Act, subject to the operative Extradition Treaty, the Claimant is applying the incorrect level of scrutiny to the evidentiary burden necessary to warrant committal;

(b) that even applying the evidentiary burden advanced by the Claimant, there was more than enough evidence to justify the committal order;

(c) that the affidavits complained of by the Claimant were duly authenticated under both the terms of the Treaty and the Fugitive Offender's Act, and were admissible in evidence before the learned Magistrate;

(d) that the Claimant's arguments regarding the chain of custody are premature and should be saved for his trial in the United States and further such arguments go to the weight, and not the sufficiency of the evidence, and are thus beyond the scope of this Court's review.

[6] I wish to deal with the last limb of the Defendant's submissions at this stage. I agree with Learned Counsel for the Defendants/Respondents when he says that the Claimant's arguments regarding the chain of custody of the drugs in issue are premature and should

be saved for his trial in the United States, if that becomes necessary. To my mind and in agreement with learned Counsel for the Respondents such arguments go to the weight and not the sufficiency of the evidence and are therefore beyond the scope of this Court's review. That ground of the application therefore fails.

[7] It is again necessary to examine the current realities of the Fugitive Offenders Act and the conditions and limitations imposed on it by the relevant Extradition Treaty. The Act by its very terms was not meant to be read in isolation. It explicitly subjects itself to the terms and conditions of the operative extradition treaties – see Section 4(3) and 4(4) of the said Act. A review of the Extradition Treaty between the Government of the United States of America and the Government of Saint Vincent and the Grenadines reveals pellucidly, that for matters of extradition between the said two governments, the evidentiary standard to be met is much lower than that of a "prima facie" case. The language of the Act therefore dictates deference to any limitations, modifications or conditions contained in the relevant Extradition Treaties. Therefore the Claimant's position that the evidence necessary to be adduced by the United States was one that would justify a prima facie case if the matter were to be heard in Saint Vincent and the Grenadines is wholly misconceived.

[8] A glance at Article 6 of the Extradition Treaty which governs the Extradition Procedures and Required documents states at subsection (c):

> "such information as would provide a reasonable basis to believe that the persons sought committed the offence for which extradition is requested"

The operative words in this subsection are "a reasonable basis". This clearly imposes a lower standard than that posited in the Fugitive Offenders Act. This Act, I must state, is subject to this lower evidentiary standard by way of the treaty governing Extraditions between the United States of America and Saint Vincent and the Grenadines. I therefore have to agree with Learned Counsel for the Respondents that in matters of Extradition between these two governments, the requesting state is under no obligation to submit evidence sufficient to establish a prima facie case.

[9] To go further, there is also no requirement for extradition acts and treaty's to be strictly construed. The current trend as posited by recent authorities by way of case law and legal texts presents the unanimous view that extradition acts and treaties must be positively construed so as to give favourable effect to their purpose – see the case of In Re Ismail [1999] 1 AC 320, 327 –

> "The Board considers that it is imperative of legal policy that extradition law must, wherever possible, be made to work effectively."

The position in recent times therefore is to do away with strict construction of extradition acts in favour of "purposive construction." Therefore the applicant's arguments in favour of a prima facie standard are invalid and dismissed outright.

AUTHENTICATION:

[10] Flowing from the position recently adopted by the English and Caribbean Courts and also elsewhere as regards a more liberal evidentiary standard for committals in relation to extradition treaties, by extension, so too does it reduce the procedural burdens for the acceptance of documentary evidence.

[11] It would therefore be necessary to look at the dictates of Saint Vincent's Extradition Treaty with the United States of America which is what is in issue. Article 7 of the said Extradition Treaty governs the admissibility of documents in extradition proceedings. It states –

> "The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if .....
>
> (c) they are certified or authenticated in any other manner accepted by the law of the requested State."

This, having considered its relation to the Fugitive Offenders Act Cap. 126 supercedes the dictates or provisions of the Act. The Act is to be read subject to the "conditions, exceptions, limitations and modifications" of the Extradition Treaty.

[12] Having already held that Extradition Statutes should not be given a narrow, technical or obstructionist reading, and having regard to the case of Re Ismail where it was stated that Extradition Treaties and Extradition Statutes ought therefore to be accorded a broad and generous construction so far as the text permits in order to facilitate extradition, this Court is also mindful, in the exercise of its role, of the fact that it has to consider whether on the material before the Magistrate, a reasonable Magistrate would have been entitled to commit the prisoner. Having analyzed the ruling or decision of the Magistrate, it is clear that she made certain findings on the evidence and held that there was sufficient and admissible and cogent evidence to justify the committal of the applicant to await his return to the United States of America. It also has to be remembered that the Magistrate was conducting an extradition hearing and not a trial. It is my view, and I so hold, that the Magistrate had sufficient admissible evidence before her to commit the applicant.

[13] The Applicant submits that the only evidence against him is the evidence of his co-conspirators in the alleged offence, and that such evidence would not be admissible against him in a Court in Saint Vincent and the Grenadines, and that the Magistrate should have dismissed the proceedings on this ground. It is my view, on a review of the authorities, that the Court is entitled to entertain the question of law whether the evidence was sufficient to give a reasonable Magistrate applying the right test jurisdiction to commit the Claimant. It is not for the Court to weigh the evidence; that is a matter for the Magistrate.

[14] In this instant case, the Claimant takes issue with the Learned Magistrate's decision that applied the case of Oskar v Government of Australia [1988] 1 ALL E.R. 183 to the facts of this case. To my mind, that case pellucidly posits that the Fugitive Offender's Act, Cap 126 of Saint Vincent and the Grenadines "does not require each statement to carry on its face a certificate from the Magistrate." In that case, as in this case, it is clear that the documents comprise a single bundle and in that situation there is need for only one certification from a Judge pursuant to Section 26 of the said Fugitive Offenders Act.

[15] This case is on all fours with the case of Cooper v The Attorney General NO AMU HCV 2002/0228, emanating from Antigua and Barbuda per Mitchell, J as he then was. He stated –

> "Their affidavits were put in evidence by the device of exhibiting them to a properly authenticated affidavit of one Lydia F. Padgett, a prosecutor in Florida (hereinafter "Ms Padgett"). Ms. Padgett for good measure had summarized in her own affidavit the substance of the affidavits of Mr. Sangaree and Mr. Gamble. Counsel for the Claimant had submitted to the Magistrate that all three of these affidavits were inadmissible on the grounds that (1) Ms. Padgett's evidence as to the facts particularly paragraphs 12 to 21, was entirely hearsay, and (2) the affidavits of Mr. Pledger, Mr. Sangaree and Mr. Gamble were inadmissible as evidence for the purpose of the proceedings as they offended the Section 28 provision of the Extradition Act in that they had no been properly authenticated. He had urged that they could not be sneaked in by exhibiting them to a properly authenticated affidavit. The Magistrate overruled Counsel's submissions and found that the evidence was admissible in that ; one, Ms. Padgett was entitled to give evidence of information and belief, and, two, her affidavit was properly authenticated, and that authentication covered the exhibits attached to it. Neither Counsel produced any authority in support of their submissions on this .. point, although counsel for the Defendants provided the court with an unidentified note concerning a 1986 UK decision in the Queen Bench Divisional Court in a case cited only as In Re Espinosa that supported his contention. In the absence of any authority to the contrary having been produced, I respectfully agree with the Magistrate on both points. To find otherwise would be to give an unnecessarily restrictive interpretation to the Act."

[16] This is the same conclusion arrived at by the Learned Magistrate in this instant case having considered the case of Oskar, and also an identical factual situation. It is clear that the Claimant/Applicants in this case would not have canvassed this argument were it not for their insistence on a strict and obstructionist construction of the Act despite the explicit mandate of the Privy Council to the contrary.

[17] Accordingly, it is my view that the notarized affidavits in the bundle, that are further attested to by the Sworn Burlingame Affidavit, which were put before the Learned Magistrate as evidence, are all properly certified or authenticated and were quite rightly received and admitted as evidence. To find otherwise would be to give an unnecessarily restrictive interpretation to the Act.

[18] There is one other issue I wish to deal with for completeness. It was canvassed by the Applicant that his committal is invalid because no authority to proceed was issued. The simple resolution to that misleading argument is that in exhibit before the Learned Magistrate and dated the 1st March 2006, is a signed authority to proceed issued under the hand of the Governor General His Excellency Sir Frederick Ballantyne. The Respondent's claim that the subsequent warrants and committal of the Claimant sprang from this authority. I agree and hold that the committal was valid by reason of this authority to proceed.

[19] All told, I am satisfied that the learned Magistrate's committal was based on the sufficient evidence before her, having regard to all arguments proffered 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 her committal is valid and ought to stand. In that regard the application for Habeas Corpus is hereby denied.

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Frederick V. Bruce-Lyle
HIGH COURT JUDGE