

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CLAIM NO.: 429 OF 2006

BETWEEN:

EDGERTON PHILLIP MEDFORD

Applicant

AND

**THE SUPERINTENDENT OF PRISON
THE ATTORNEY-GENERAL**

Respondents

IN THE MATTER OF EDGERTON PHILLIP MEDFORD

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS

Appearances:

Mr. Duane Daniel for the Applicant

Mr. Camillo Gonsalves for the Respondents

2007: January 29

February 7

JUDGMENT

- [1] **THOM, J:** This is an application for Habeas Corpus by Edgerton Phillip Medford pursuant to the Fugitive Offenders Act Chapter 126 of the Laws of Saint Vincent and the Grenadines. The Applicant had been committed to custody pursuant to an order made by the learned Chief Magistrate (Ag.) on September 28, 2006 to await his return to the United States of America pursuant to a request from the Government of the United States of America made to the Government of Saint Vincent and the Grenadines in respect of certain alleged sexual offences.

SUBMISSIONS:

[2] Learned Counsel for the Applicant submitted that there was procedural irregularity in the committal proceedings in that no authority to proceed was tendered at the committal proceedings. This procedural irregularity resulted in the proceedings being null and void or ultra vires. Secondly, no evidence was tendered before the learned Chief Magistrate (Ag.) in relation to the jurisdiction of the United States of America, jurisdiction being an element of the offences with which the Applicant was charged in the United States of America.

AUTHORITY TO PROCEED

[3] Learned Counsel for the Applicant submitted no “authority to proceed” was tendered at the hearing before the learned trial Magistrate. That was contrary to the provisions of Section 10 of the Fugitive Offenders Act. Learned Counsel referred the Court to paragraph 4 of the Learned Chief Magistrate (Ag.) reasons for committal where she stated:

“Formal evidence of the existence of the Treaty, the issuance of an “authority to proceed” by the Governor-General and the issuance of the Warrant of Arrest of the Accused was given by Colin Williams, Director of Public Prosecutions of Saint Vincent and the Grenadines, though these documents were not physically tendered into evidence.”

[4] Learned Counsel stated that it is not disputed that an “authority to proceed” was issued by the Governor-General. His contention is the fact that it was not tendered in evidence at the committal proceedings made the proceedings null and void.

[5] Learned Counsel for the Respondents submitted that based on the evidence of the Learned Director of Public Prosecutions there can be no doubt that the Governor-General issued an authority to proceed and that such authority to proceed was accepted by the Chief Magistrate. The subsequent warrant of arrest sprang from that authority. It was further submitted that an authority to proceed was not a

prerequisite to the hearing of committal proceedings and the issue of an order of committal. Learned Counsel referred the Court to Section 11(4) of the Fugitive Offenders Act.

[6] In order to fully understand the submission of Learned Counsel for the Applicant, it is necessary to outline the background to the committal proceedings. The learned Chief Magistrate (Ag.) who presided over the committal proceedings was not the Magistrate who issued the warrant of arrest. I wish to emphasize that the applicant was not arrested on a provisional warrant. It is not disputed that at the committal proceedings the authority to proceed was not tendered. Evidence in relation to the authority to proceed was given by the Learned Director of Public Prosecutions.

[7] The issue to be determined is whether the provisions of the Fugitive Offenders Act require that the authority to proceed be tendered in evidence at the committal proceedings.

[8] The relevant sections are sections 10(1), 11(1)(4) and (5), and 12(3) and (4).

[9] Section 10 (1) reads:

“Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Act except in pursuance of an order of the Governor-General (hereinafter referred to as an “authority to proceed”) issued in pursuance of a request made to him by or on behalf of the appropriate authority in the requesting country in which the person to be returned is accused or was convicted.”

Section 11(1) (4) and (5) reads:

- “(1) A warrant for the arrest of a person accused of a relevant offence or alleged to be at large after conviction of such an offence may be issued –
- (a) on the receipt of an authority to proceed by a magistrate in any part of Saint Vincent and the Grenadines;
 - (b) without an authority to proceed by a magistrate in any part of Saint Vincent and the Grenadines upon information that

the person is believed to be in or on his way to Saint Vincent and the Grenadines, and any warrant issued by virtue of paragraph (b) is in this Act referred to as a provisional warrant.

- (4) Where a provisional warrant is issued under this section the magistrate by whom it is issued shall forthwith give notice to the Governor-General and transmit to him the information and evidence upon which it was issued.
- (5) Where the Governor-General has received notice from a magistrate under subsection (4) he may issue an authority to proceed; if the Governor-General decides not to issue an authority to proceed in respect of the person to whom the warrant relates he shall inform the magistrate who shall thereupon cancel the warrant and if the person has been arrested thereupon discharge him from custody.”

Section 12(3) and (4) reads:

- “(3) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a reasonable period (of which the court shall give notice to the Governor-General) after which he will be discharged from custody unless such an authority has been received.”
- (4) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied after hearing any evidence tendered in support of the request for the return of that person, that the offence to which the authority relates is a relevant offence and is further satisfied ---“

[10] Section 10(1) provides in effect that except for the issue of a provisional warrant by the Magistrate under Section 11(1)(b) and the arrest of a person pursuant to the provisional warrant no action can be taken against a person pursuant to the Act unless an authority is issued by the Governor-General.

[11] Under Section 11 the warrant of arrest is issued after the Magistrate receives the authority to proceed. Where a provisional warrant is issued the authority to proceed must be submitted to the Magistrate within a reasonable time if not the Magistrate is required to discharge the person arrested. The authority to proceed

must therefore be submitted to the Court before the committal proceedings can commence.

[12] Under Section 12(4) one of the requirements of which the Magistrate has to be satisfied before he or she makes a committal order is that the offence to which the authority to proceed relates is a relevant offence. The magistrate would only be able to be so satisfied if the magistrate is able to examine the authority to proceed or evidence in relation to the authority to proceed is presented to the Magistrate. In this case the learned Chief Magistrate (Ag.) at paragraph 3 of her reasons for committal stated that while the authority to proceed was not tendered in evidence at the committal proceedings she accepted the evidence of the learned Director of Public Prosecutions in relation to the authority to proceed.

[13] In view of the above I find that the fact that the Learned Chief Magistrate (Ag.) did not have the physical document the authority to proceed that did not make the proceedings null and void.

JURISDICTION

14] Learned Counsel for the Applicant submitted that one of the elements of the offences in respect of which the committal order was made is that the sexual act must have been committed in the special maritime and territorial jurisdiction of the United States of America as defined in Title 18 section 7 and there was no evidence before the Learned Chief Magistrate (Ag.) to establish the special maritime and territorial jurisdiction of the United States of America. Learned Counsel also submitted that while the request of the Government of the United States of America's jurisdiction is based on section 7 (1) and 7(8), the Learned Chief Magistrate (Ag.) found jurisdiction on section 7 (1). The only evidence in relation to 7(1) before the Learned Chief Magistrate (Ag.) was the affidavit evidence of Ollison and Stone where they stated that the ship was on the high seas, the location of the ship was not given. In any event evidence of the ship

being on the high seas was not sufficient evidence of ownership of the ship was also required and none was given.

[15] Learned Counsel for the Respondents submitted that the Learned Chief Magistrate (Ag.) had before her sufficient evidence on the issue of jurisdiction to make the committal order. Learned Counsel referred the court to the affidavit evidence of Quincy Ollison and Benjamin Stone. Learned Counsel also referred the court to several cases including the cases of **R v Governor of Brixton Prison ex parte Minervini** [1959] Q.B. 155; **Re: Al Fawwaz** [2001] UKHL 69; **United States v Roberts** 1F Supp 2d 601 CDLA 1998; **United States v Neil** 312 F3d 419 (9th Cir. 2002).

[16] The offences in respect of which the committal order was made are Aggravated sexual abuse contrary to Section 2241 (a) (1) and Sexual abuse contrary to Section 2242 (2) of Title 18 of the United States Code.

[17] Section 2241 (a) (1) reads:

“Aggravated Sexual Abuse:

- (a) By Force or Threat – Whoever in the special maritime and territorial jurisdiction of the United States or in a Federal prison knowingly causes another person to engage in a sexual act -
- (1) by using force against another person; or
- or attempts to do so shall be imprisoned for a term of years or life, fined \$250,000 or both. Supervised release of five (5) years.”

While section 2242 (2) reads:

“Sexual Abuse.

Whoever in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly –

- (2) engages in a sexual act with another person if that other person is -
- (A) incapable of appraising the nature of the conduct; or
- (B) physically incapable of declining participation in or communicating unwillingness to engage in that sexual act;
- or attempts to do so shall be imprisoned for not more that 20 years, fined \$250,000 or both. Supervised release of three (3) years.

While Section 7(1) and (8) reads:

“Special maritime and territorial jurisdiction of the United States defined.

The term special maritime and territorial jurisdiction of the United States as used in this title includes:

- (1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States or of any State, Territory, District or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state.
- (8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offence committed by or against a national of the United States.”

[18] The issue of whether there is sufficient evidence of the United States special maritime jurisdiction.

[19] I think it is appropriate to state at this juncture the role of the Magistrate in committal proceedings in relation to extradition. The role of the magistrate in such proceedings was outlined by Saunders JA as he then was in **Noel Heath v Government of United States of America** Civil Appeal No. 18 of 2003 (St. Christopher and Nevis) as follows:

“As was pointed out by a majority of the Canadian Supreme Court in **Canada v Schmidt** an extradition hearing is not a trial. It is simply a hearing to determine whether there is sufficient evidence of an alleged extradition crime to warrant the Government under its treaty obligation to surrender a fugitive to a foreign country for trial by the authority there for an offence committed within its jurisdiction. An extradition hearing does not determine the guilt or innocence of the fugitive, the magistrate is not required to weigh the evidence or to assess the credibility of witnesses.”

A similar approach was taken by the House of Lords in **Re: Al-Fawwaz**. Lord Rodger of Earlsferry stated at paragraph 131:

“... I am satisfied that Parliament did not envisage that the magistrate would need to hear evidence in regard to his jurisdiction. A dispute as to whether the crime specified in the order to proceed is an

extradition crime will generally be legal rather than factual. The nature of the jurisdiction upon which the requesting state founds will appear, if not from the arrest warrant issued by the authorities in the requesting State, at least from the supporting affidavits and other documents. On neither issue is the magistrate likely to need to look beyond these documents.”

[20] It is not disputed that the United States founded jurisdiction on section 7 (1) and 7 (8). The Learned Chief Magistrate (Ag.) in her reasons for committal at paragraph 6 stated that:

“There was sufficient evidence that the sexual offences for which the accused was charged in the United States of America were committed within the jurisdiction of the United States of America. The facts underlying the charges against the accused were revealed from the affidavit of Ollison and its supporting exhibits including the affidavit of the victim K.L. (Please see written ruling on no case submission given in this case on the issues of jurisdiction and...”

[21] The evidence before the Learned Chief Magistrate (Ag.) on the issue of jurisdiction as stated in the affidavits of Quincy Ollison and Benjamin Stone and Kelly Ladwig is that the ship left Galveston, Texas in the United States of America on the 13th day of July 2003. The incident occurred on the 17th day of July 2003 on board the ship. The ship was on the high seas when the incident occurred. The victim Kelly Ladwig is a citizen of the United States of America. The ship returned to Galveston, Texas, United States of America on July 20, 2003. In the cases of **United States v Roberts** and **United States v Neil** similar evidence was found to be sufficient to establish the United States special maritime and territorial jurisdiction as defined in Section 7(8).

[22] It is settled law that the role of the court on an application for Habeas Corpus is not to rehear the case or hear an appeal from the order of the Learned Magistrate. The court is only required to consider whether the learned Magistrate had sufficient evidence before him/her to commit.

[23] In view of the above and having regard to the role of the magistrate in committal proceedings for extradition, I find that the Learned Chief Magistrate (Ag.) had

before her sufficient evidence to make the committal order in relation to the Applicant. I find the committal order to be valid. The Application for habeas corpus is hereby dismissed.

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Gertel Thom
HIGH COURT JUDGE