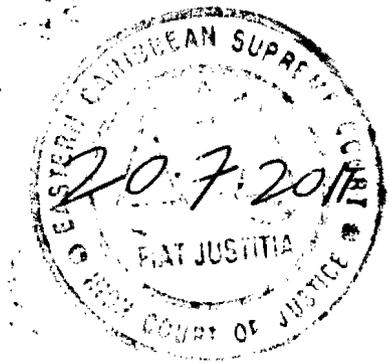


THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
HIGH COURT CIVIL CLAIM NO. 125 OF 2011
IN THE MATTER OF FLETCHER GOODLUCK



AND

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

BETWEEN:

FLETCHER GOODLUCK

Applicant

AND

THE SUPERINTENDENT OF PRISONS

Respondents

AND

THE ATTORNEY GENERAL

Appearances: Mr. Richard Williams and Mr. Sten Sargeant for the Applicant
Mr. Colin Williams for the Respondents

2011: June 25th, 28th
July 20th

JUDGMENT

- [1] **THOM, J:** On March 16, 2011 the Chief Magistrate committed the Applicant to custody to await extradition to the Republic of France.

- [2] The Applicant not being satisfied with his committal for extradition made an application to the High Court for Habeas Corpus. The grounds on which he relied at the hearing of the application are:
- (a) He was an accused person within the meaning of Sections 5 and 12(4) of the Fugitive Offenders Act 1989 and he should have been treated as an accused person and not as a convicted person at the committal hearing.
 - (b) Alternatively the provisions of Section 7(3) of the Fugitive Offenders Act 1989 have not been complied with.

BACKGROUND

- [3] On January 20, 2011 the Government of the Republic of France (France) made a request for the extradition of the Applicant on the basis that on the 3rd day of July 2009 the Applicant was convicted in his absence of:
- "Exportation, acquisition, transportation, possession, and sale or delivery of narcotic drugs."
- [4] The Applicant was sentenced to 10 years imprisonment. He was also fined jointly with others Euro 2,119,000 for breach of the Public Health Code and Euro 587,000 for breach of the Customs Code.
- [5] Pursuant to a request by the Chief Magistrate an affidavit on foreign law was provided by French Prosecutor Mr. C. Bellenger. In his affidavit Mr. Bellenger deposed that the Applicant having been convicted in his absence could oppose his conviction and that will nullify his conviction and he would be given a new trial.

SUBMISSIONS

Ground One

- [6] Learned Counsel for the Applicant Mr. Richard Williams submitted that the Applicant having been convicted in his absence he was an accused person within the meaning of Sections 5 and 12(4). His committal therefore should have been in accordance with the procedure for committal of an accused person and not as a convicted person.

- [7] Mr. Richard Williams based his submissions on the following:
- (a) The provisions of Article VII(C) of 1876 Treaty between the United Kingdom and France which was extended to Saint Vincent and the Grenadines (the 1876 Treaty).
 - (b) Alternatively the principle in Re Coppin.
- [8] Learned Counsel Mr. Richard Williams submitted that the 1876 Treaty is still in force in Saint Vincent and the Grenadines. He referred to Sections 4, 31 and Schedule 2 of the Fugitive Offenders Act and submitted that only the Parliament of Saint Vincent and the Grenadines could repeal laws applicable to Saint Vincent and the Grenadines. The 1876 Treaty continued in force after the independence of Saint Vincent and the Grenadines and also after the enactment of the Fugitive Offender Act 1989 having been saved by Section 31 of the said Act. None of the circumstances referred to in Sections 4 and 31 have occurred in relation to the 1876 Treaty.
- [9] Mr. Richard Williams submitted that the principle in Re Coppin forms part of the common law of Saint Vincent and the Grenadines. It was part of the common law at the date of independence and it was not abrogated or superseded when the Fugitive Offenders Act 1989 was enacted by Parliament. Learned Counsel referred the Court to several cases including Luke Atkinson v Supreme Court of Cyprus [2009] EWHC 1579, Re Guisto [2003] UKHL 19 and Calderili v Court of Naples [2008] UKHL 51.
- [10] The Learned Director of Public Prosecutions in response submitted that the 1876 Treaty was terminated both by the United Kingdom and France who are now parties to the European Convention on Extradition. The European Convention on Extradition is a treaty within the meaning of Section 31 of the Fugitive Offenders Act. Further the UK European Convention Extradition Order 1990 which gave effect to the European Convention on Extradition revoked the Orders-in-Council in relation to France that are contained in the Second Schedule. Also the UK European Convention Extradition Order 1990 is a manner

of termination of the Orders-in-Council within the meaning of “otherwise” in Section 31. He also submitted that Section 4(4) provided for the Act to apply to the 1876 Treaty as modified by a later treaty. The European Convention on Extradition is such a treaty that not only modified the 1876 Treaty but terminated it. The 1876 Treaty is therefore no longer in force.

- [11] The Learned Director of Public Prosecutions also drew an analogy between Section 31 of the Fugitive Offenders Act and Section 3 of the Evidence Act which provides for the laws and practice of the United Kingdom to apply to Saint Vincent and the Grenadines in certain circumstances, and submitted that the Sections 4(4) and 31 provide for termination of the 1876 Treaty by a later treaty of which Saint Vincent and the Grenadines was not a party and also by laws passed by the United Kingdom.
- [12] In response to the submission relating to Re Coppin, the Learned DPP submitted that while Re Coppin was part of the common law when Saint Vincent and the Grenadines became independent, in 1989 when the Parliament of Saint Vincent and the Grenadines enacted the Fugitive Offenders Act, the principle in Re Coppin was not incorporated into the Act, it was therefore repealed by the Fugitive Offenders Act. There is no qualification in the Act to the term “unlawfully at large after conviction”. No provision is made that the conviction must be final. The words of the Act should therefore be given their natural meaning.

FINDINGS

- [13] The issue the Court has to determine is whether an Applicant who was convicted in his absence in France is a person “unlawfully at large after conviction”, within the meaning of Sections 5 and 12(4) of the Fugitive Offenders Act or is an “accused” person.
- [14] The procedure governing the extradition of persons from Saint Vincent and the Grenadines is to be found in the Fugitive Offenders Act 1989. The relevant provisions are Sections 4, 5, 12 and 31.

- [15] Under Section 4(1) of the Act a person may be extradited to:
- (a) any foreign country named in the Second Schedule;
 - (b) any foreign country with which Saint Vincent and the Grenadines has an extradition treaty;
 - (c) any foreign country which is a party to a multinational international convention to which Saint Vincent and the Grenadines is also a party.
- [16] Section 5 of the Act provides in effect that a person accused of a relevant offence or a person alleged to be unlawfully at large after conviction of such an offence may be extradited to a foreign country, a Commonwealth country or the Republic of Ireland.
- [17] Section 12 sets out two separate procedures for committal for extradition. First where the person is accused of committing a relevant offence and secondly where it is alleged that he is unlawfully at large after conviction of a relevant offence.
- [18] Section 31 of the Act saved the Orders-in-Council made pursuant to the Extradition Acts of 1870 to 1935 until the Governor-General makes other provision by an Order under Section 4(5) stating that the Act shall not apply to a foreign country in the Second Schedule or it shall apply subject to such conditions, limitations, exceptions, and modifications, or until provision is otherwise made by treaty, or otherwise.
- [19] Five Orders-in-Council in the Second Schedule apply to France being Order-in-Council dated May 16, 1878; S.I. No. 54 of 1896; S.I. No. 1458 of 1909; S.I. No. 575 of 1928 and S.I. No. 455 of 1978. The Order-in-Council dated May 16, 1878 made provision for the application of the UK 1870 Extradition Act as amended by the UK 1873 Extradition Act to apply to the 1876 Treaty. The later Orders-in-Council deal with amendments to the 1876 Treaty. None of the amendments affect the issues in this case.
- [20] France requested the return of the Applicant pursuant to the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the 1988 UN Convention). It is not disputed that the 1988 UN Convention is a multinational Convention to which both France and Saint Vincent and the Grenadines are party.

[21] The 1988 UN Convention recognises that extradition is subject to the laws of the requested party and applicable treaties. Article 6 paragraph 5 states:

“Extradition shall be subject to the conditions provided for by the law of the requested party or by applicable extradition treaties including the grounds upon which the requested party may refuse extradition.”

[22] Article VII(C) of the 1876 Treaty reads:

“Persons convicted by judgment in default or arret de contumace shall be in the matter of extradition considered as persons accused, and as such, be surrendered.”

While Article XVII of the 1876 Treaty provides:

“... Either party may at any time terminate the Treaty on giving to the other six months notice of its intention.”

[23] The question is whether the 1876 Treaty is still in force or it has been terminated. If the 1876 Treaty is in force then the Fugitive Offenders Act will apply subject to the limitations, exceptions and modifications in the 1876 Treaty and a person who was convicted in his absence would not be regarded as a person unlawfully at large after conviction but as an accused person. The procedure to be followed for the committal of a person accused is the procedure set out in Section 12(4)(a). The Applicant was treated as a person unlawfully at large after conviction and was committed pursuant to procedure set out in Section 12(4)(b).

[24] It is agreed by both parties that when Saint Vincent and the Grenadines became independent on 27th October 1979 the UK Extradition Acts 1870-1935, the 1878 Order-in-Council and the Fugitive Offenders Act 1970 were all part of the laws existing in Saint Vincent and the Grenadines and they were preserved and continued by Section 2 of Schedule 1 of the Saint Vincent and the Grenadines Constitution subject to such modifications and adaptations necessary to bring them into conformity with the Constitution. It is also agreed that 1876 Treaty which was entered in between Great Britain and France applied to extradition between France and Saint Vincent and the Grenadines, Saint Vincent and the Grenadines being a Colony of Great Britain at the date of entry into force of the Treaty.

[25] It is a settled principle of International Law that in the absence of any contrary intention, any territorial clause to the contrary, a treaty is presumed to apply to all territories for which the Contracting States have international responsibility. It is also a settled principle of International Law that a treaty remains in effect until it is terminated. When a country becomes independent the treaties which were extended to it prior to independence do not immediately cease to have effect. The New State may wish to honour those treaties or terminate them or enter into new arrangements. The practice that has developed is for the New State to indicate usually by letter that it will honour the existing treaties. However the failure to do so is not an indication that the treaty is terminated.

[26] At the time of the enactment of the Fugitive Offenders Act 1989, there were two sets of legislation relating to extradition in Saint Vincent and the Grenadines. The Fugitive Offenders Act 1970 governed extradition to Commonwealth Countries and the Republic of Ireland and the UK Extradition Acts 1870 - 1935 governed extradition to foreign countries (non-Commonwealth Countries and Ireland). The Fugitive Offenders Act 1989 now governs all extradition matters. Section 31 of the Fugitive Offenders Act 1989 specifically saved inter alia the Orders-in-Council referred to earlier. Sections 4 and 31(1) of the Fugitive Offenders Act 1989, specifically provide for the Act to apply subject to the Orders-in-Council which made the UK Extradition Acts 1870 - 1935 applicable to the foreign countries listed in the Second Schedule. Section 4 also provides for the Act to apply subject to limitations and exceptions contained in treaties existing prior to the commencement of the Act and treaties entered into after the commencement of the Act. The sections read as follows:

“4. (1) Subject to the provision of subsection (2) to (5), this Act applies to -
(a) every foreign country specified in the Second Schedule;

(b) every foreign country with whom Saint Vincent and the Grenadines has concluded an extradition treaty after the 27th October, 1979;

(c) every foreign country who is a party to a multinational international convention to which Saint Vincent and the Grenadines is a party;

Provided that this Act only applies to a country to which subparagraph (c) relates in respect of offences to which such convention relates, unless the provisions of subparagraphs (a) or (b) apply to such country.

(2) This Act shall apply in relation to the foreign countries specified in the Second Schedule subject to such conditions, exceptions, limitations and modifications, if any, contained in the Orders-in-Council specified in the second column of the said Schedule in relation to such countries (being Orders-in-Council which extended to Saint Vincent and the Grenadines at the date of commencement of this Act) made pursuant to the United Kingdom Acts known as the Extradition Acts 1870 - 1935 and applying such Acts to such countries.

(3) Where an extradition treaty concluded between Saint Vincent and the Grenadines and a foreign country comes into effect after the commencement of this Act, the provisions of this Act shall apply to that foreign country subject to such conditions, exceptions, limitations and modifications, if any, as are necessary to give effect to that treaty or to the provisions thereof relating to fugitive offenders.

(4) If this Act applies to a foreign country specified in the Second Schedule before the concluding of an extradition treaty between Saint Vincent and the Grenadines and that country and the treaty affects or amends an earlier extradition treaty with that country which extended to Saint Vincent and the Grenadines at the commencement of this Act, then this Act shall apply thereafter in relation to such foreign country subject to that earlier extradition treaty as modified by the later treaty.

(5) The Governor-General may, by order, provide that this Act shall not apply to any foreign country specified in the Second Schedule named in the order, or shall have effect in relation to the return of fugitive offenders to that country subject to such conditions, exceptions, limitations and modifications as are specified in the order.

31. (1) Notwithstanding the cesser of applications of the United Kingdom Acts known as the Extradition Acts 1870 to 1935, the Orders-in-Council made under the said Acts and specified in the second column of the Second Schedule made under the said Acts and applying the said Acts to the foreign countries specified in the first column of the schedule (which Orders have been applied to Saint Vincent and the Grenadines and are so applied at the commencement of this Act) shall continue to apply unless and until provision is otherwise made by order of the Governor-General under Section 4(5) or by treaty or otherwise."

[27] The Orders-in-Council listed in the Second Schedule will cease to be in force if one of the events listed in Section 31 of the Act occurred being:

- (a) An Order has been made by the Governor-General under Section 4(5) of the Act.

- (b) by treaty; or
- (c) otherwise.

- [28] It is not disputed that no Order has been made by the Governor-General pursuant to Section 4(5) in relation to France. Also it is not disputed that no treaty has been concluded between France and Saint Vincent and the Grenadines since the enactment of the Fugitive Offenders Act 1989.
- [29] I respectfully disagree with the submission of the Learned DPP that the European Convention on Extradition is a treaty within the meaning of Sections 4(4) and 31 of the Fugitive Offenders Act 1989. The term "treaty" in Sections 4 and 31 of the Act refers to a treaty made between Saint Vincent and the Grenadines and another country or a multinational treaty of which Saint Vincent and the Grenadines is a party. In Section 3 of the Evidence Act express provision is made for the law and practice in England to apply in circumstances that were not addressed in the Evidence Act. Similarly specific provisions are made in the Application of English Law Act Cap. 8 for specified laws of the United Kingdom to apply to Saint Vincent and the Grenadines. There is no such express provision in the Fugitive Offenders Act 1989. The Court cannot imply that the Parliament of Saint Vincent and the Grenadines, a Sovereign State intended that a foreign state should exercise the power and authority to terminate or enter into treaty arrangement binding the sovereign state of Saint Vincent and the Grenadines. More so without its consent. Likewise "otherwise" in Section 31 must be interpreted to mean other act of Saint Vincent and the Grenadines such as giving notice in accordance with Article XVII of the 1876 Treaty.
- [30] The United Kingdom and France have by mutual consent terminated the treaty when they became a Party to the European Convention on Extradition. The United Kingdom gave effect to the Convention by the European Convention on Extradition Order 1990 which came into effect on May 14, 1991.

- [31] Article 28.1 of the Convention reads:
- "This Convention shall in respect of those countries to which it applies supersede the provisions of any bilateral treaties, conventions or agreement governing extradition between any two contradicting Parties."
- [32] While the European Convention on Extradition supersedes the provisions of the 1876 Treaty in relation to the United Kingdom and France, the United Kingdom entered a reservation under Article 28 to make it clear that the Convention does not supersede the bilateral arrangement in relation to its Dependent Territories to which the Convention does not apply. The reservation reads as follows:
- "The Convention supersedes the provisions of bilateral treaties between the United Kingdom and other Contracting Parties only to the extent that the Convention applies by or under Article 27, to the United Kingdom, the Contracting Parties, and any territories for whose international relations the UK or the Contracting Parties are responsible."
- [33] The United Kingdom by Section 5(1) of the European Convention on Extradition Order 1990 repealed all of the Orders-in-Council in relation to France that are listed in the Second Schedule of the Fugitive Offenders Act 1989. However provision is made in Section 5(2)(b) for the Orders-in-Council to apply to those Territories for whose international relations the United Kingdom is responsible.
- [34] The European Convention on Extradition only supersedes the bilateral extradition of arrangements of States that are party to the Convention. Saint Vincent and the Grenadines is not a party to the Convention. So the Convention does not supersede the extradition arrangement between Saint Vincent and the Grenadines and France under the 1876 Treaty. There is no evidence that Saint Vincent and the Grenadines or France has taken any step to terminate or modify the extradition arrangement in the 1876 Treaty. In view of the above I find that the 1876 Treaty is still applicable in relation to extradition to France.
- [35] I am also of the view that Section 4(4) does not assist the Respondents. Section 4(4) deals with the situation where after the enactment of the 1989 Act Saint Vincent and the Grenadines concludes a treaty with a foreign state listed in the Second Schedule where an earlier treaty was extended to Saint Vincent and the Grenadines and the treaty concluded

by Saint Vincent and the Grenadines and the foreign state modifies the earlier treaty. The Act would then apply in relation to the foreign state subject to the earlier treaty as modified by the latter treaty made between Saint Vincent and the Grenadines and the foreign state. As stated earlier this subsection does not include a treaty made by the United Kingdom and a foreign state after the commencement of the Act. Also Saint Vincent and France have not entered into any extradition treaty after the commencement of the Fugitive Offenders Act 1989.

[36] The Fugitive Offenders Act 1989 applies to extradition in relation to France subject to the limitations and exceptions contained in the Orders-in-Council. Section 4(2) makes this very clear. Under Article VII(C) of the 1876 Treaty a person convicted by judgment in default or *arret de contumace* must be treated as an accused person.

[37] Mr. Claude Bellenger a Public Prosecutor in his affidavit on the law of France stated *inter alia*:

“Para (4). Fletcher Goodluck having no known residence of the French judicial authorities, they could not be personally notified of the prosecution exercised against them, and therefore the date of trial. Under these conditions, the sentences against them were, according to French law passed in *absentia*.

Para (10). And provided under French law, a ruling by defect (*sic*) cannot be considered a final conviction. Being indeed a conviction against a defendant who was unaware of the hearing date fixed for judgment, it follows from the application of Article 412 and following of the French Criminal Code procedure that Fletcher Goodluck has, in this condition, ways to oppose his (*sic*) execution and obtain a new trial.

Para (11). In the first place and soon after he will manifest the intention, Fletcher Goodluck may freely form opposition to the sentence imposed against him 3rd July 2009 by the Criminal Court of Fort de France. This opposition will effectively set at nought the initial decision rendered in *absentia* against him and a new hearing date will be fixed. At that time, the Criminal Court will, this time in his presence, re-examine the original charges against Fletcher Goodluck. During this hearing, Fletcher Goodluck will be assisted by counsel of his choice, and if necessary, a court-appointed lawyer.”

[38] The affidavit makes it very clear that the conviction of the Applicant in his absence is a judgment in default within the meaning of Article VII(C) of the 1876 Treaty. Consequently

the Applicant should have been treated as an accused person and the procedure outlined in Section 12(4)(a) of the Fugitive Offenders Act should have been followed in committing him to await extradition. The Applicant was treated as a person unlawfully at large after conviction and the procedure adopted was the procedure set out in Section 12(4)(b). I therefore find that the Applicant was not lawfully committed into custody to await extradition to France.

Re Coppin

[39] When **Re Coppin** was decided, the 1843 Extradition Act was in force in the United Kingdom. That Act only provided for the extradition of accused persons. A person convicted could not be extradited. The Court in **Re Coppin** decided that a person convicted "par contumace" was to be regarded as an accused person, and that a court should look at the true nature of the foreign proceedings and receive expert evidence in relation to it in determining whether a person is a convicted person or an accused person. The Extradition Act 1870(UK) included the principle in **Re Coppin** in Section 26 the definition section. The Saint Vincent and the Grenadines Fugitive Offenders Act 1970 also included the principle in **Re Coppin** in the interpretation section of the Act, Section 2. It reads as follows:

"2.(3) For the purposes of this Act a person convicted of an offence in his absence shall be treated as a person accused of that offence."

When the Parliament of Saint Vincent and the Grenadines enacted the Fugitive Offenders Act 1989 it did not include the distinction between a person convicted and a person convicted for contumace which was included in the UK Extradition Acts and the Saint Vincent and the Grenadines Fugitive Offenders Act 1970. As stated earlier the Fugitive Offenders Act applies to both extradition to commonwealth and non-commonwealth countries. In commonwealth countries and indeed some non-commonwealth countries the issue of conviction for contumace does not arise. Sections 4 and 31 maintained the Orders-in-Council which applied the UK Extradition Acts 1870 - 1935 to France and other Foreign countries. The Fugitive Offenders Act 1989 applies subject to the conditions, exceptions, limitations and modifications contained in the Orders-in-Council. The principle in **Re Coppin** is embedded in the UK Extradition Acts 1870 - 1935.

GROUND TWO

- [40] Learned Counsel for the Applicant submitted that the provisions of Section 7(3) of the Fugitive Offenders Act have not been satisfied and therefore the Applicant cannot be committed to await extradition. Learned Counsel referred the Court to the documents in support of the formal request for extradition, and submitted that the request only relates to offences committed in 2008 while the warrant of arrest also refers to offences committed in 2006 and 2007. The Applicant was sentenced for 10 years for offences committed from 2006 - 2008, and he was also ordered to pay fines. The extradition request does not refer to the fines or the sentences for the offences between 2006 - 2007. Further the Governor-General's certificate is not in conformity with the provisions of Section 7(4) of the Fugitive Offenders Act 1989, which requires the Governor-General's certificate to confirm the existence of an arrangement with France and state the terms of the arrangement.
- [41] Learned DPP in response submitted that while the wording in the Governor-General's certificate is not the same as in the Act, the contents of the certificate shows that the Governor-General addressed his mind to the issue and he specifically dealt with the issue by stating categorically that the Applicant would not be dealt with for any other offence in France other than for the offence for which he is returned to France. He also submitted that Section 7(3) must be read in light of the provisions of Section 4(5) which empowers the Governor-General to determine that the Act shall apply subject to such conditions, exceptions, limitations and modifications as specified by the Governor-General.
- [42] Learned DPP also submitted that France is a democratic country and the Court must assume that France will act in good faith in accordance with the Governor-General's certificate if the Applicant is surrendered.

FINDINGS

- [43] Section 7 of the Fugitive Offenders Act provides grounds which preclude a person from being extradited from Saint Vincent and the Grenadines. The provisions relevant to this case are to be found in subsections (3) and (4). They read as follows:

“(3). A person shall not be returned under this Act to any country, or be committed to or kept in custody for the purposes of such return, unless provision is made by the law of that country, or by arrangement with that country, for securing that he will not, unless he has first been restored to, or had the opportunity of returning to Saint Vincent and the Grenadines, be dealt with in that country for or in respect of any offence committed before his return under this Act other than:

(a) the offence in respect of which his return under this Act is requested.

(b) any lesser offence proved by the facts proved before the court of committal; or

(c) any other offence, being a relevant offence, in respect of which the Governor-General may consent to his being dealt with.

(4). Any such arrangement as is mentioned in subsection (3) may be an arrangement made for a particular case or an arrangement of a more general nature; and for the purposes of that subsection a certificate of the Governor-General confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in the certificate.”

[44] The provisions in Section 7(3) is often referred to as the rule of speciality. Such provisions are included in extradition legislation and treaties as a safeguard so that persons who are surrendered would not be subjected by the requesting state to indiscriminate prosecutions which were not made known to the requested state before the surrender of the person or offences for which the requested state would not have surrendered the person.

[45] The Formal request for extradition dated January 12, 2011 states that judgment in default was issued against the Applicant on July 3, 2009 by the Criminal Court of Fort De France on counts of:

“Exportation, acquisition, transportation, possession, and sale or delivery of narcotic drugs, act committed in the international waters during 2008 and until October 3rd, 2008 contrary to the Penal Code and the Public Health Code; Exportation with no prior clearance of prohibited goods, acts committed in the international waters during 2008 and until October 3, 2008 contrary to the Customs Code.”

[46] The Formal request further states that the Applicant was sentenced to a 10 year jail term.

[47] The Warrant of Arrest dated 29th April 2009 states that the Applicant was charged with:

“- Exporting narcotic drugs in organised gang (cocaine and heroin)

- Acquisition, possession, transport, offer and sale of narcotic drugs in organised gang (cocaine and heroin)
 - Smuggling prohibited goods (cocaine and heroin)
- ... Committed during the years 2006, 2007 and until 2008 until 3rd October 2008 and punishable under the Penal Code, Public Health Code; and the Code of Customs Code.”

[48] The Formal request does not make any mention of the fines which were imposed jointly on the Applicant and others. The supporting documents submitted with the formal request in particular the record of the Court show that the Applicant was charged, convicted and sentenced for acts during 2006, 2007, 2008 and until October 3, 2008.

[49] The proceedings in this case were not conducted on the basis that there was such a law in force in France as is referred to in Section 7(3). Rather the issue is whether the certificate of the Governor-General satisfied the requirements of Section 7(4).

[50] The certificate of the Governor-General reads as follows:

“Issued pursuant to the Fugitive Offenders Act, Chapter 126 of the Laws of Saint Vincent and the Grenadines, Revised Edition 1990.

WHEREAS a request was made to the Government of Saint Vincent and the Grenadines for the return of Fletcher Goodluck to the Republic of France, accused of being at large following conviction by the Tribunal de Grande Instance de Fort de France, Republic of France and sentenced to ten(10) years imprisonment for illegal drug trafficking.

AND WHEREAS on the 30th day of December 2010, I Frederick Nathaniel Ballantyne, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor-General of the State of Saint Vincent and the Grenadines, issued an Order to proceed to the Chief Magistrate to issue a Warrant for the apprehension of the said Fletcher Goodluck and to ensure that the provisions of the Fugitive Offenders Act Chapter 126 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990 are complied with.

I stipulate that the said Fletcher Goodluck, if the other conditions of the law are satisfied, may be returned to the Republic of France on condition that:

- He shall be restored to Saint Vincent and the Grenadines after being dealt with in the Republic of France. He shall not be returned to any third country.

- He shall only be dealt with in respect of the offences specified in the Warrant of Arrest dated the 29th day of April 2009, and for which judgment in default was entered on the 3rd day of July 2009 and a sentence of ten(10) years imposed.

Given under my hand and seal this 22nd day of February 2011.
 FREDERICK NATHANIEL BALLANTYNE (SIR)
 GOVERNOR GENERAL."

[51] While the Governor-General's certificate does state that the Applicant may be returned to France on the two conditions spelt out in the certificate, the certificate does not include the specific provisions that are stipulated in Section 7(4) being confirmation of the existence of an arrangement with France and stating the terms of the arrangement. These matters are not addressed in the Governor-General's certificate. I therefore find the certificate of the Governor-General is not in conformity with the provisions of Section 7(4) of the Fugitive Offenders Act 1989.

[52] A useful guide of a certificate is to be found in the case of **R v Governor of Pentoville Exp. Narang**, 1978 A.C. 247. The Secretary of State certificate was issued pursuant to Section 4(4) of the UK Fugitive Offenders Act 1967 which is in the same terms as Section 7(4) of the Fugitive Offenders Act 1989. It reads as follows:

"In pursuance of the powers conferred by Section 4(4) of the Fugitive Offenders Act 1967, I hereby certify under the authority of the Secretary of State that an arrangement has been made with the Government of India in the case of Manu Narang in the following terms: the Government of India undertakes that if Manohar Lal Narang, is returned to India in pursuance of the Fugitive Offenders Act 1967, he will not unless he has first been restored or had an opportunity of returning to the United Kingdom, be dealt with in India for or in respect of any offence committed before his return under the Fugitive Offenders Act 1967 other than (a) the offence in respect of which his return under that Act is requested; (b) any lesser offence proved by the facts proved before the Court of committal or (c) any other offence in respect of which the Secretary of State consent to his being so dealt with."

A similar guide can be found in the case of **R v Governor of Brixton Prison, ex parte Osman** (No. 3) [1992] 1AER p.122.

[53] The Court of Appeal considered the application of Section 7(3) in the case of **Dexter Chance and Others v the Superintendent of Prison and the Attorney-General of Saint**

Vincent and the Grenadines HCVAP No. 18 of 2009. The Court of Appeal held that Section 7(3) of the Act clearly speaks to a situation in which the person sought to be extradited has committed an offence in the requesting state before his return under the Act other than the offences referred to in paragraphs (a) (b) or (c). If the person sought to be extradited has not committed any such offence, Section 7(3) is not engaged. There is no evidence nor is it contended by either party that the Appellants committed an offence in the BVI to bring them within the contemplation of Section 7(3). In the circumstances there is no basis for the Appellants to complain that there is no provision made by the law of the BVI or any arrangement with that territory within the contemplation of Section 7(3) of the Act.

[54] Based on the decision of the Court of Appeal in the **Dexter Chance case**, the offences referred to by Learned Counsel for the Applicant fall within paragraphs (a) (b) and (c), there is no evidence that brings the Applicant within the contemplation of Section 7(3). The Applicant therefore cannot complain that there is no evidence of an arrangement with France within the meaning of Section 7(3), that the Governor-General's certificate was not in conformity with the provisions of Section 7(4).

[55] In conclusion I find that the 1876 Treaty is applicable to extradition in relation to France. The Applicant having been convicted by judgment in default in France he must be regarded as an accused person within the meaning of Sections 5 and 12(4) of the Fugitive Offenders Act 1989. The Applicant having been committed pursuant to Section 12(4)(b) he was not lawfully committed into custody to await extradition.

[56] It is ordered that:

- (a) The application for habeas corpus is granted.
- (b) The Applicant shall be released from custody forthwith.

- (c) The Second Respondent shall pay the Applicant costs to be assessed by the Court if not agreed.



.....
Gertel Thom
HIGH COURT JUDGE