SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

SLUHCV 2012/0123

BETWEEN

RON WILLIAMS

AND

THE DIRECTOR OF BORDELAIS PRISON
The ATTORNEY GENERAL OF SAINT LUCIA

……..
2013: October 15th
November 5th
……

JUDGMENT

Appearances:

Alberton Richelieu for the Claimant
Ralston Glasgow Solicitor General for the Respondent, with Mrs. Brenda Portland-Reynolds and Ms. Karen Bernard

[1] This is an application for a Writ of Habeas Corpus Ad Subjiciendum. In his application filed on the 15th February 2012, the Applicant set out a number of grounds in aid of the application. On the date of hearing the Applicant through his attorney indicated to the Court that he wished to narrow the grounds of the complaint, would not be pursuing all the grounds set out in the application and instead would rely only on what are essentially grounds one, two, three and ten of the application.

## The background to the application

[2] On 4th February 2010, the Government of Canada made a request of the Government of St Lucia for the surrender to Canada of the Applicant, a St. Lucian national. The request alleged that the Applicant was part of a criminal enterprise in Canada that had resulted in the death of a Canadian national, Jonathan Rodrigues. The request further alleged that the Applicant fled Canada shortly after the incident and returned to St. Lucia. The request sought the return of the Applicant to Canada to face a trial for the murder of Jonathan Rodrigues.

[3] Acting on the Request, the second named Respondent commenced surrender proceedings against the Applicant, first seeking the endorsement of a warrant of arrest issued by the Canadian Government for the arrest of the Applicant. On the 29th March 2011 the second named Respondent withdrew those proceedings. It is not in dispute that the main reason for the withdrawal of the proceedings was the fact that the warrant of arrest and documents accompanying the Request were not authenticated in accordance with Section 149 of the Evidence Act, No. 9 of 2004.

[4] On 31st March 2011, a fresh application having been made by the second named Respondent for the endorsement of the warrant of arrest, the then Senior Magistrate, after hearing the application, endorsed the warrant of arrest pursuant to the Backing of Warrants Act, Cap 3:15 of the Revised Laws of St. Lucia. The Applicant was arrested and remanded into custody pending the determination of these fresh surrender proceedings. On 30th January 2012, the Senior Magistrate, after hearing the application and representations by Counsel for the Applicant, ordered that the Applicant be surrendered to Canada to stand trial for the offence of murder.

## The Applicant's Case

[5] On this application for a writ of Habeas Corpus, the Applicant challenged the decision of the Senior Magistrate on two main grounds. The Applicant complains that he was served with documents in the surrender proceedings that had not been properly authenticated in accordance with the provisions of the Evidence Act. Counsel for the

Applicant argued that the nature of the proceedings demanded that there be strict adherence to the provisions of the statute so that if the Applicant had not been served with properly authenticated documents he had been greatly disadvantaged at the hearing of 30th January 2012.

[6] Counsel submitted that the Senior Magistrate, upon being informed by Counsel for the Applicant of this irregularity, did not make inquiries to satisfy herself as to the authentication of the documents nor did she satisfy herself that as some of these documents had been used in previous proceedings that had been withdrawn, whether those same said documents could now be properly and legally used in the proceedings before her.

[7] Further the Applicant contends that in the circumstances where the Senior Magistrate had been so alerted and had made a decision to order the surrender of the Applicant despite these complaints, the Senior Magistrate should have given reasons for her decision. The nature of the proceedings involving the liberty of the subject required critical scrutiny from the Senior Magistrate. She has not demonstrated that she employed that further critical scrutiny. The Magistrate ought to have carried out an inquiry to assess the Applicant's credibility and belief that he had been served with unauthenticated documents.

[8] The applicant agreed that there was no statutory duty that required the Senior Magistrate to give reasons, however, the counsel for the Applicant advanced the view that the duty as recognized by the common law does fill that lacuna and required reasons to be given. Counsel referred to the case of ***Commissioner of Prisons*** v ***Farouk Warris,*** Civil Appeal No. 119 of 2004 (T&T Court of Appeal) in aid of his arguments.

The Respondent's Case

[9] The Solicitor General appeared on behalf of the Respondents. The Solicitor General argued that the Applicant's complaint was based on a mistaken belief of what was required under the Evidence Act to ensure that the documents used in the surrender

proceedings were properly authenticated, a misinterpretation of the authentication process.

[10] The Solicitor General agreed that the withdrawal of the proceedings on 29th March 2011 was due to the warrant of arrest and documents accompanying the Request not being authenticated in accordance with Section 149 of the Evidence Act, No. 9 of 2004. However, he argued, these documents had subsequently been authenticated pursuant to the provisions of Section 149 as evidenced by the Certificate of the Consular representative to St Lucia, Mr. Stephen Julien. After such Certification the documents were submitted as evidence in the proceedings filed on 30th March 2011. There was no bar under the Evidence Act to the use of the same documents, now certified, in subsequent surrender proceedings. There was no need for fresh documents.

[11] The Solicitor General argued that the Senior Magistrate had to determine whether the evidence presented in the surrender proceedings had been properly authenticated as this authentication determined the admissibility of the documents in those proceedings. He argued that the evidence presented to the Senior Magistrate was sufficient in this regard for her to satisfy herself as to its admissibility and as to the sufficiency of evidence for a prima facie case against the Applicant so as to order his surrender to the Canadian Government. .

[12] The Solicitor General on behalf of the Respondents argued that the Senior Magistrate did all that she was required to do under the provisions of Section 8 and 10 of the Backing of Warrants Act. Further she was not required by Section 10(4) to give reasons for her decision but in any event, in the instant case, she did give oral reasons for her decision although she was under no duty to do so and that these reasons were given in the presence of the Applicant and his Counsel. The Solicitor General referred to the affidavit of the Senior Magistrate filed on 30th April 2012 in this regard.

The Law

[13] Sections 6, 8 and 10 of the Backing of Warrants Act set out the procedure upon a person being arrested under a provisional arrest warrant.

[14] Section 10 (4) of the Act sets out the procedure once a Magistrate determines that the person should be surrendered. The subsection provides that:

> *"(4) Where the Magistrate determines that the person should be surrendered, the Magistrate shall –*
>
> *(a) order that the person be committed to a correctional facility by warrant issued in the manner prescribed at Form D of the Schedule until the person is surrendered to the requesting country;*
>
> *(b) inform the person that he or she may, within 15 days of the day on which the order is made, seek a review of order under section 11;*
>
> *(c) record in writing his or her decision and the offence for which the person is to be surrendered; and*
>
> *(d) give a copy of the record referred to in paragraph (c) to the person and to the Attorney General."*

[15] There is no requirement under these provisions for a Magistrate to give reasons for her decision. As counsel for the Applicant has advanced to the Court throughout his submissions, the nature of extradition proceedings demand strict adherence to the provisions of the enabling legislation. In this regard if the legislation is silent on the obligation of the Magistrate to give reasons for her decision the Court should approach this issue in the same vein.

[16] Section 10(4)(c) expressly states that the Magistrate must record in writing his or her decision but is silent on the matter of reasons. Conversely, Section 10(6)(b) states expressly that, where the Magistrate determines that the person should not be surrendered, that the Magistrate shall *"advise the Attorney General in writing of the order and of his or her reasons for determining that the person should not be surrendered."*

[17] Clearly the obligation to give reasons was within the contemplation of the framers of the legislation and was consciously not included in Section 10(4). The Court having considered the authorities submitted by Counsel for the Applicant but also being cognizant of the precise and strict nature of proceedings of this nature is not in agreement with Counsel's arguments that it ought to be implied that the Senior Magistrate was legally bound to give reasons in this case.

[18]] The Senior Magistrate states in her Affidavit filed on the 30th April 2012 at paragraph 11 that:

> *"... there is no requirement in the Act for written reasons to be provided in the recorded decision. However, the Applicant, who was represented by Counsel who was also present when the decision was given, was told orally of the reasons for the Order for his surrender. Furthermore, as in the normal course of all decisions, written reasons are available upon the usual request."*

[19] The Senior Magistrate's assertion that she gave oral reasons, despite being under no statutory obligation to do so, was not challenged by the Applicant. This Court finds no merit in Counsel for the Applicant's submission that the reasons should have been reproduced in her affidavit filed in answer to this application.

[20] Section 149 of the Evidence Act provides the requirements to be met for the authentication of evidence tendered for admission where the evidence is obtained from a foreign country.

[21] Section 149 states:

> *"Proof of foreign documents Despite anything in this Act to the contrary, all deeds, wills, declarations and affidavits and other writings purporting to be executed, acknowledged, proved, declared or deposed to in a country or State outside of Saint Lucia and verified on oath before-*
>
> *(i) ...*
>
> *(ii) ...*

> *(iii) a notary public certified as such by a diplomatic or consular representative for Saint Lucia, shall be deemed to have been sufficiently executed, acknowledged, proved declared or deposed to and shall be received as evidence in any court…"*

[22] On this issue the evidence of the Senior Magistrate in her affidavit filed herein on 30th April 2012, at Paragraph 10 (b) is that:

> *"It was clear to me after searching the Court's records that a previous application had been presented to the former Senior Magistrate in earlier proceedings which included copies of warrants and other documents but this application was withdrawn. I was satisfied that the warrant endorsed in the proceedings before me was the one dated May 7, 2008 and stamped in the manner aforesaid. I was also satisfied that the warrant and all the documents before the Court were properly authenticated for their admission to evidence in accordance with section 149 of the Evidence Act, Cap. 4:15 of the revised laws of St. Lucia. The documents were stamped with the seal of the Saint Lucia Consulate and the affidavits of Stephen Julien, Consul General dated March 30, 2010 and October 27 2011 authenticated the identity of the persons before whom they were sworn."*

[23] The Senior Magistrate was cognizant of the need to be sure that the documents tendered in the surrender proceedings before her were properly authenticated and had not just been resubmitted without proper authentication.

[24] Having regard to the submissions made by the Applicant, the Applicant sought this Court's further scrutiny to ensure that documents which had been served on him in the first surrender proceedings were not being tendered in the second surrender proceedings without more. Although the documents themselves remained the same the Court is satisfied that the documents were properly authenticated in accordance with the provisions of the Evidence Act, upon being presented in the surrender proceedings before the Senior Magistrate and further that the Senior Magistrate was vigilant in ensuring their compliance with the statute. She satisfied herself as to the authenticity of the documents in accordance with the Evidence Act.

[25] The Court having determined these matters as above and also having considered the evidence of the Senior Magistrate on this application set out in Paragraphs 8 and 9 of

her affidavit filed on the 30th April 2012, is satisfied that the Applicant's detention is lawful and justified. The application for a Writ of Habeas Corpus is dismissed.

Marlene I. Carter
High Court Judge (Ag.)