

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 230 of 2024

**IN THE MATTER OF OSMAR CORREA
a person remanded at the Hattieville Prison**

AND

IN THE MATTER OF an Application for a Writ of Habeas Corpus ad Subjiciendum

AND

**IN THE MATTER OF SECTION 37 of the Senior Courts Act, Cap 91 of the Laws of
Belize**

BETWEEN:

OSMAR CORREA

AND

[1] ATTORNEY GENERAL 1st Respondent

[2] SUPERINTENDENT OF PRISONS 2nd Respondent

Appearances:

Mr. B. A Neal for the Applicant

Mrs. C. Vidal, DPP, for the Respondents

2024: October 18
 January 3

DECISION

Habeas Corpus – Extradition – Judicial function of the court – Whether court informed the applicant of his rights – Identification of applicant – Extradition Treaty with USA – Extradition Act (Cap 112)

- [1] **Mansoor J:** The application concerns a prisoner who is detained at the Hattieville prison following the conclusion of extradition proceedings issued by the United States of America USA). The applicant has been detained since 25 February 2024. The applicant was indicted in the USA on the counts of operating a motor vehicle in a public place while intoxicated and thereby causing the death of two persons and serious bodily injury to three others.
- [2] On 30 March 2000, the governments of the USA and Belize signed an extradition treaty, which is incorporated into the Extradition Act. The treaty and the Extradition Act 2000 (Cap 112) allow for extradition procedures to be executed between the USA and Belize upon meeting legal requirements.
- [3] Andrew Finkelman, associate director of the office of international affairs, criminal division of the department of justice of the USA gave a certification of the affidavit and accompanying documents in support of the request for the extradition of Osmar Eliasa Correa. The certification is dated 4 September 2018. The affidavit in support of the request was given by Martin Strahan, an assistant district attorney in Johnson County, Texas. The affidavit was sworn on 27 August 2018 before judge William C Bosworth of the 413th judicial district court. Attached to the Strahan affidavit were several documents and affidavits of witnesses who were aware of proceedings against the applicant in the USA.
- [4] The minister of foreign affairs and trade in Belize signified to the chief magistrate on 25 January 2022 that an extradition request has been made by the USA pursuant to the extradition treaty between Belize and the USA. The previous chief magistrate, Ms. Sharon Fraser, issued a warrant of apprehension on 1 February 2022. The applicant was arrested in Belmopan on 7 February 2022 and was arraigned.
- [5] The application states that the detention of the applicant is unlawful and in contravention of section 5(1)(i) of the Constitution of Belize and section 10 of the Extradition Act, 1870; that the order made by the chief magistrate be quashed; that the applicant be discharged from extradition proceedings and released from the Hattieville prison forthwith; that a writ of habeas corpus directed to the superintendent of the Hattieville prison be issued; that the applicant is entitled to compensation in accordance with section 5 of the Constitution and for costs.
- [6] The applicant was remanded pending the outcome of extradition proceedings which continued from 28 November 2023 to 25 Apr 2024. At the hearing of the extradition request before the chief magistrate evidence was given regarding the extradition request and the process followed. Idelso Iman Leslie testified that he received the

extradition documents from the embassy of Belize in Washington at his office in Belmopan on 14 January 2022. He produced the extradition bundle and was cross-examined. On conclusion of the proceedings, the present chief magistrate, Ms. Jayani Wegodapola, detained the applicant by order dated 25 February 2025.

- [7] The applicant takes exception to the chief magistrate's written ruling dated 25 April 2024. The applicant states that the written decision fails to set out the offences for which there were findings based on sufficient evidence to justify a committal under the laws of Belize. Therefore, it is submitted, the committal order is unlawful and insufficient to justify the extradition of the applicant. The applicant also states he was not supplied with a copy of the committal order and that he is at risk of being tried for any offence other than those named in the extradition bundle.
- [8] The applicant states that in terms of extradition treaty between Belize and the USA extradition shall "only be granted if the evidence is found sufficient according to the law of the requested state". Belize is the requested state. The USA is the requesting state. The applicant submits that the chief magistrate did not consider the laws of Belize related to manslaughter. The applicant states that the evidence in the extradition bundle is insufficient to justify extradition as the exhibits do not identify the applicant and that identification evidence was incorporated into the proceedings although such evidence was not properly admitted. Moreover, the applicant states, the court did not inform the applicant of his rights to seek further remedies as required by article 11 of the 1870 Extradition Act.
- [9] Jahina Dominguez, an officer of the attorney general's ministry gave an affidavit on behalf of the respondents. The affidavit states that on 23 March 1998, the applicant was driving a motor vehicle on the public road in Johnson, Texas, when he drifted into the lane of oncoming traffic and struck an ambulance head-on. As a result of the collision both the passenger in the applicant's vehicle and the patient being transported in the ambulance were killed. The ambulance driver and two ambulance attendants suffered injuries. The applicant was arrested after he showed signs of intoxication. On April 3, 1998, a grand jury sitting in Johnson County, Texas, returned a bill of indictment for two counts of "Intoxication Manslaughter" and three counts of "Intoxication Assault". On 7 April 1998, the applicant was released from custody subject to two bail bonds and on the condition that he makes a personal appearance to stand trial for the offences on August 10, 1998. On August 10, 1998, the applicant did not appear in the 18th judicial District Court of Johnson County in Texas to stand trial as required by his bail bonds. Consequently, his bond was forfeited, and a warrant was issued for his arrest. In 2016, information became available to the USA authorities that the applicant was living in Belize. In September 2018, the USA made a request to the government of Belize through diplomatic channels for the applicant to be extradited to stand trial for the offences of "Intoxication Manslaughter" and "Intoxication Assault" in accordance with Article 6 of the Treaty. On 25 January 2022, the minister of foreign affairs signed the order to proceed, granting the authority to the then chief magistrate to commence

extradition proceedings in Belize. Dominquez explained the process that was followed in proceedings before the chief magistrate.

[10] The applicant filed a fixed date claim form seeking a stay of extradition proceedings contending that the proceedings were a breach of his constitutional right to protection of law and amounted to an abuse of process. On 23 August 2023, Justice Farnese ruled in favour of the state and held that extradition proceedings did not violate the applicant's constitutional right to trial in a reasonable time, that the proceedings were not an abuse of process and remitted the case to the chief magistrate.

[11] This application was filed subsequently. The application was initially set before Goonetilleke J, who recused himself by order made on 9 July 2024 on an application by the applicant's counsel.

The function of the chief magistrate

[12] The Extradition Act empowers the chief magistrate to decide whether a fugitive should be committed for surrender or be discharged. The respondents submit that it is the magistrate's duty to see whether a *prima facie* case is made out against the fugitive. The matter for determination before the chief magistrate was whether the evidence was sufficient according to the laws of Belize to justify the applicant's committal to stand trial.

[13] Section 3 of the Belize Extradition Act vests the chief magistrate with the jurisdiction to hear extradition proceedings. The extradition of a fugitive offender is an executive act. However, extradition requires statutory authority. This is provided by the Belize Extradition Act of 2000 (Cap 112). Section 9 of the Act provides that the extradition of fugitives between Belize and the USA will be directed in accordance with the extradition treaty.

[14] The extradition agreement between Belize and the USA is set out in schedule 1 of the Act. Article 2 deals with extraditable offences. The offences relevant to the applicant's extradition are covered by article 2. Article 6 of the extradition treaty between Belize and the USA sets out the extradition procedures and the required documents. All requests for extradition are required to be submitted through the diplomatic channel.

[15] The role of the court in extradition matters is very limited. It is limited to determining whether on the evidence before the court, the person sought can be extradited¹. This position was recognised by the Belize Court of Appeal in ***Rhett Fuller v the Attorney General of Belize***² and by the Supreme Court in ***Mark Sewell v the***

¹ *Atkinson v United States of America* [1969] 3 W.L.R. 1074

² Civil Appeal No.11 of 2009

Attorney General³. The court must consider whether on the material a reasonable magistrate could have made an order of committal. The court cannot, however, retry the case to substitute its discretion for that of the magistrate.

- [16] In ***Cecil Boatswain v the Superintendent of Prisons***⁴, the Eastern Caribbean Supreme Court stated:

"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."

Identification

- [17] One of the objections raised by the applicant concerns his identification during extradition proceedings. The applicant states that the chief magistrate did not receive sufficient evidence to be satisfied that the applicant is the person wanted by the US authorities.

- [18] The Dominguez affidavit states that it is standard practice for evidence of identification to be produced in the form of photographs and statements identifying the person sought to be extradited. Ms. Vidal submitted that in extradition proceedings it is the chief magistrate's function to look at the requested person in court and compare him or her with a photograph to decide whether the person in court is the person represented in the photograph.

- [19] The respondents submit that the written decision refers to the identification evidence including statements by sergeant Mark Reinhardt identifying the applicant as the person who admitted to the offence and marshall William Hicks provided photograph evidence identifying the applicant. A copy of the bio page of the applicant's passport obtained from the immigration department was available at the extradition proceedings. The passport bio page was not disputed. The notes of proceedings show that the applicant was compared with the photos in the extradition bundle. The court observes that the applicant's identification was dealt with by the chief magistrate's decision. The written decision notes that the passport bio page was not disputed. The applicant's fingerprint evidence was also made available. The decision points out that the local authorities have not made use of fingerprint information.

Committal

- [20] Along with her written decision, the current chief magistrate issued a warrant of committal on 25 April 2024 following which he was committed to custody. The applicant submits the committal is defective as the written decision did not specify

³ Claim No.817 of 2009

⁴ Claim No.130 of 2006

the offences for which he could be committed in Belize based on the available evidence. The respondents submit that the extraditable offences must be listed in the warrant of committal and not in the written decision of the chief magistrate. They submit that extradition treaties and extradition statutes ought to be accorded broad and generous construction so far as the texts permit to facilitate extradition.

- [21] The written decision shows that the chief magistrate considered the applicant's alleged conduct would constitute the offences of manslaughter and assault under Belize's criminal laws. Both offences are punishable by imprisonment. Manslaughter and assault are offences listed in the schedule to the extradition treaty between the governments of Belize and the USA. The court is of the view that the applicant received sufficient notice of the corresponding Belize offences when these were set out in the warrant of committal.

Right to file habeas corpus

- [22] Counsel for the applicant submitted that the chief magistrate's written decision did not state that the applicant had a right to apply for a writ of *habeas corpus*. Section 11 of the Extradition Act requires the court to inform the requested person that he will not be surrendered until after the expiration of 15 days and that he has a right to apply for *habeas corpus* within that period.

- [23] The written decision does not explain the applicant's right to apply for the writ. The record of the proceedings before the chief magistrate on 25 April 2024, however, reveals that the applicant was informed that he will not be surrendered until after the expiration of fifteen days and that he has a right to apply for a writ of *habeas corpus*. While the decision does not expressly refer to the applicant's right to apply for a writ of habeas corpus, there is substantial compliance with the requirement to inform the applicant of his right to apply for the writ. No prejudice has been caused to the applicant. Importantly, the statutory requirement is to inform the requested person. It does not require written notification.

Delay in sending the warrant of committal

- [24] The applicant also states that the magistrate court delayed in sending the warrant of committal made by the chief magistrate on 25 April 2024 under which the applicant was ordered to be remanded pending extradition. By letter dated 7 June 2024, the applicant wrote that he needs the warrant by 19 June 2024 to file a habeas corpus application. The request was repeated by letter dated 18 June 2024. The clerk of the magistrate's court replied on the same day, apologised for the delay and undertook to forward all requested warrants by email the following day. While the personal liberty of a person is a matter of the utmost consideration, this administrative delay by itself will not make the extradition proceedings irregular to the extent of denying the extradition request.

Conclusion

- [25] The judicial function of the chief magistrate is to decide whether there is sufficient evidence to warrant extradition of the applicant. The decision whether to extradite the claimant is an executive act by the minister responsible⁵. He can make that decision only after the chief magistrate concludes the extradition proceedings⁶. The proceedings against the applicant have been concluded. In doing so, the chief magistrate has exercised her judicial function in accordance with the stipulated procedure and the treaty.
- [26] The court sees no reason to grant the remedies that the applicant seeks.

ORDER

- A. The application is declined.
- B. The applicant is to pay the respondents' costs as assessed or agreed.

M. Javed Mansoor

Judge

⁵ Vasiljkovic v Commonwealth [2006] HCA 40, 80 ALJR 1399

⁶ Argentina v Mellina [1987] 1 SCR 536