Neutral Citation Number: [2024] EWHC 1460 (Admin)

Case No: AC-2023-LON-003734

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Thursday, 13th June 2024

Before:
FORDHAM J

- -

Between:

MATTHEW GRIMM	**Appellant**
- and -	
GOVERNMENT OF USA	**Respondent**

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- -

Rebecca Hill (instructed by BSB solicitors) for the **Appellant**
Nicholas Hearn (instructed by CPS) for the **Respondent**

- -

Hearing date: 13.6.24

Judgment as delivered in open court at the hearing

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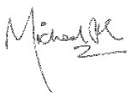
Approved Judgment



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FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

Introduction

1. The Appellant is aged 49 and is wanted for extradition to the United States. That is in conjunction with an accusation Extradition Request dated 12 December 2022 on which he was provisionally arrested on 8 November 2022. The index offences are of (i) conspiracy to import, and (ii) the importation, of "controlled substances" (novel psychoactive substances) from the Netherlands to the United States via a website, and an associated charge of (iii) money laundering. A Grand Jury in the United States returned the indictment in October 2022. District Judge Tempia ("the Judge") sent the case to the Home Secretary, for reasons set out in a judgment dated 20 October 2023 after an oral hearing two months earlier. The Home Secretary ordered extradition on 4 December 2023. Of four original grounds of appeal, two have been renewed following the refusal on the papers of permission to appeal by McGowan J.

Dual Criminality (Mens Rea)

2. The first ground is that arguably there is a missing ingredient, namely the knowledge required by domestic law (see eg. R v Taaffe [1984] AC 539; R v Panayi [1989] 1 WLR 187), which cannot be inferred, still less inevitably inferred, from the 'conduct' alleged. This is an aspect of dual criminality under section 137(4)(b) of the Extradition Act 2003. The point is that the domestically-required knowledge – knowledge that imported substances were prohibited, rather than simply knowledge that substances were being illicit imported – is or may be absent from the US offences, and the Court could not be satisfied that this intent is within the 'conduct' being alleged. The same is said of mens rea and conspiracy (R v Saik [2007] 1 AC 18 at §8); and money laundering.

3. The answer to all of that there is the clear 'correspondence' in the crimes, so it is not a question of focusing on the 'conduct'. The Extradition Request identifies as express and necessary elements for all counts a requirement of proof as to the importing of "controlled substances" done "knowingly". The conspiracy requires knowledge of the plan's unlawful purpose (where it is a "common and unlawful plan to import controlled substances"). The importation of controlled substances also requires "prohibited substances" having been imported "knowingly". The money laundering requires knowledge of the plan's unlawful purpose and the unlawfulness is the importation of "prohibited substances". As the Judge put it, all the offences require "proof" that the requested person "knowingly imported controlled substances". There is nothing, even arguably, in this first ground of appeal.

Forum

4. The second ground is that the Judge arguably went wrong in applying the forum criteria in section 83A of the 2003 Act. Reliance is placed on the Judge's description first of finding "most" of the harm resulting from the extradition offences to have occurred in the US, but later factoring in that it was "all" of the harm. Reliance is placed on the Judge introducing considerations of delay into the distinct question of whether evidence could be made available in the UK. Reliance is placed on the Judge as having placed weight on there being a co-defendant, notwithstanding a lack of information about where the co-defendant is and whether the co-defendants would be

tried together. These are said to be multiple defects which, cumulatively, undermine the forum conclusion, when put alongside the other features of the case including the connections to the United Kingdom that the Judge accepted.

5. I am unable to accept, even arguably, that there is an error of approach or an error as to outcome on the forum issue. The Judge set out the law clearly and correctly. The specified matter as to the location of the loss or harm involves addressing where "most" of the harm occurred (or was intended to occur). The Judge answered that question, correctly, and so that aspect favoured the United States as the forum. The fact that she subsequently described all the harm as occurring in the US does not undermine that fact. The Judge had to consider whether evidence could be made available in the UK and, in doing so, she was entitled to look at the practicalities of that course. She recognised that delay featured within a freestanding statutory "specified matter". Her evaluative paragraph was careful to refer to the delay once, and not twice. So far as the named co-defendant is concerned, the Judge was careful to recognise the absence of evidence to show the stage of the prosecution against the co-defendant or where the co-defendant had been located. The Judge was entitled to consider the existence on the indictment of a co-defendant as an important consideration relating to prosecutions regarding to the extradition offences taking place in one jurisdiction. This case is really all about importation into the US. The outcome as to forum came down decisively in favour of the United States and I do not see the points advanced as having a traction – even collectively – capable of producing as a realistic prospect that the forum outcome was wrong.

6. In those circumstances I will refuse permission to appeal.