



20 June 2012

PRESS SUMMARY

BH (AP) (Appellant) and another v The Lord Advocate and another (Respondents) (Scotland)
KAS or H (AP) (Appellant) v The Lord Advocate and another (Respondents) (Scotland)
[2012] UKSC 24

Appeal from the High Court of Justiciary [2011 HC]AC 77]

JUSTICES: Lord Hope (Deputy President), Lady Hale, Lord Brown, Lord Mance, Lord Judge, Lord Kerr, Lord Wilson

BACKGROUND TO THE APPEALS

The Appellants (Mr and Mrs H) are both British citizens. The United States has requested their extradition under the Extradition Act 2003 to face trial in Arizona on charges of conspiracy and unlawful importation into the United States of chemicals used to manufacture methamphetamine, knowing or having reasonable cause to believe that they would be used for that purpose. The Appellants argue that it would be incompatible with their right to respect for their private and family life under Article 8 of the European Convention on Human Rights for them to be extradited. Mrs H is the mother of six children, of whom the eldest is aged 14 years and the youngest is one year old. Mr H is the father of the four younger children. The Appellants submit that the public interest in giving effect to the extradition request is outweighed by the consequences that this would have for the best interests of their children.

Mr H is also the father of two other children, of different mothers. Allegations of sexual abuse of the elder daughter by Mr H when they were living in Arkansas led to her being taken into care for a period of time. Mr H moved to Oklahoma where he could not be prosecuted for offences said to have occurred in Arkansas. In 2004, after Mr H had moved to England and formed a relationship with Mrs H (then 'Miss S'), the High Court in Middlesbrough found that Mr H had indeed sexually abused his eldest daughter on a number of occasions in Arkansas and Texas in 1993 and 1994. It made an order against Mr H that he was to have no contact whatsoever with Miss S's three elder children. This order was ignored entirely by both Mr H and Miss S.

The extradition proceedings first came before the sheriff on 31 January 2007 and the Appellants were remanded in custody. They were both released on bail after seven months in custody on 31 August 2007. Mr H was returned to custody on 26 April 2011 after failing to attend a court hearing. Mrs H was again remanded in custody on 29 July 2011 when the Appellants' appeals were refused. She was released on bail on 12 August 2011, but Mr H remains in custody. While the Appellants were in custody, the children were looked after by Mrs H's mother, as well as by other friends and family. Initially following her release, Mrs H visited Mr H in prison with all six children. The number of visits then diminished and only the four younger children now regularly go to the prison with her. The two elder children are reluctant to visit. Within a few weeks of her release from custody, Mr and Mrs H's relationship broke down. The children were placed on the child protection register in July 2009 as a result of allegations of sexual abuse against Mr H by the nine year old daughter of a neighbour. They were removed from the register in December 2011. But this was on the basis that they would be restored to it if Mr H were to be released from custody and to resume contact with the family.

On 29 May 2008 the Scottish Ministers ordered the Appellants to be extradited to the United States. The Appellants appealed to the High Court of Justiciary. The hearing of the appeals was delayed on a number of occasions as a result of changes of legal representation by both Appellants. Mrs H's appeal was also further delayed by pregnancy complications and the birth of her two youngest children, and by the need for investigations into her mental health. Mr H's appeal was further delayed by an apparent suicide attempt. The Appellants' appeals were dismissed on 29 July 2011.

JUDGMENT

The Supreme Court of the United Kingdom

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The Supreme Court unanimously dismisses the appeal. The leading judgment is given by Lord Hope. Lord Brown, Lord Mance, Lord Judge and Lord Wilson give short concurring judgments.

REASONS FOR THE JUDGMENT

There is no appeal to this court against the determination of the High Court of Justiciary under the 2003 Act. But the Appellants are entitled to exercise their right of appeal under Scotland Act, as the question whether it could be incompatible with article 8 for them to be extradited raises a devolution issue. So the appeal is competent.

The offences that have been alleged against the Appellants are very serious, attracting penalties of up to 20 years' imprisonment. The allegation is of a sustained and deliberate course of unlawful conduct, during which the Appellants are said to have sold around \$133,000 worth of chemicals to about 400 customers in the United States over a two year period [22-23]. Great weight must be given to the public interest in giving effect to a request for extradition. The more serious offence the greater will be that weight. The approach to Article 8 rights in extradition cases need not be radically different from that adopted in deportation or expulsion cases. Where, as here, the family life of children is involved, the best interests of the children are a primary consideration. The question is therefore: 'Is the Article 8 right outweighed by the strength of any other considerations?' [49].

In view of the likely length of their sentences following conviction, and the lack of certainty as to the possibility of a transfer to prison in Scotland, the prospect has to be faced that in the event of conviction the Appellants are likely to be kept apart from their children, and their children perhaps apart from each other, for a very long time [53].

In relation to Mr H, the children's family relationship with him has effectively been brought to an end by the breakdown of the parents' relationship; the two elder children's refusal to visit him in prison; the 2004 order that he have no contact with Mrs H's three elder children; and the placing of all six children on the child protection register from July 2009 to December 2011. The prospect of their ever resuming family life together is remote. The argument that it would be contrary to their best interests for him to be extradited is, at best, very weak. Mr H's case does not come close to meriting his discharge under section 87(2) of the 2003 Act [53-54].

Mrs H's case is more difficult. The children's best interests clearly lie in continuing to live with their mother. There is a risk that they will be taken into care after she is extradited and that, if this happens, they will no longer be able to live together. Resuming family life after a prolonged separation is likely to be very difficult. The gravity of the situation is compounded by the fact that the children are, for practical purposes, now fatherless [57]. On the other hand there is no escape from the fact that the crimes alleged, which were persisted in over a substantial period, are very serious. The interests of justice must be given effect to. It is well established that extradition may amount to a justified interference under Article 8(2) if it is in accordance with the law, is pursuing the aims of the prevention of crime or disorder and is necessary in a democratic society. If there are grounds for leniency, or for mitigation of sentence on the grounds of her family circumstances, it is for the authorities in the United States, not for this court, to make that assessment [58-59].

Cases where both parents of young children are at risk of being extradited may be regarded as being of an exceptional character, so the court must be satisfied that the interests of justice cannot be served equally well by prosecuting the parents in this country [60 & 65]. However, there are strong practical reasons for concluding that the United States, where most of the witnesses reside and the degree of criminality involved is best assessed, is the proper place for the Appellants to be tried. Taking all of the relevant considerations into account, it would not be appropriate for the Appellants to be tried here. Nor would it be acceptable for Mrs H not to be prosecuted at all for the crimes with which she has been charged. And it would not be sensible to prosecute Mrs H here while sending Mr H to the United States for prosecution. The proper forum in which both prosecutions should be brought is the United States. The best interests of the children, even when weighed together with Mrs H's own Article 8 right to respect for her family life with them, are not strong enough to overcome the overwhelming public interest in giving effect to the extradition request [70-71].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html