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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2020] EWHC 229 (Admin)

No. CO/4354/2018

Royal Courts of Justice

Tuesday, 4 February 2020

Before:

MR JUSTICE HOLMAN

B E T W E E N:

DAVID JAMES ROACH — Appellant

- and -

REPUBLIC OF SINGAPORE — Respondent

MR S. GLEDHILL (instructed by HP Gower) appeared on behalf of the appellant.

MS C. BROWN (instructed by the Crown Prosecution Service) appeared on behalf of the respondent.

J U D G M E N T
(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

1 These are extradition proceedings in relation to a request to the Secretary of State to extradite the appellant to Singapore to face trial there. After a hearing in August 2018, District Judge Nina Tempia concluded, on 29 August 2018, that there were no bars to extradition and sent the case to the Secretary of State for his decision. The appellant sought permission to appeal from the decision of District Judge Tempia.

2 Before the district judge, three lines of defence had essentially been raised and relied upon, but they were all rejected by the district judge. One related to prison conditions in Singapore and Article 3 of the European Convention on Human Rights. Another related to Article 8 of the Convention. The third related to an argument founded on double jeopardy, and/or that there was, in the circumstances which I will shortly describe, an abuse of process in relation to one of the two offences for which the extradition of the appellant is requested. The appellant applied for permission to appeal on all three of those grounds. At a hearing on 31 December 2019, Jay J refused permission to appeal on grounds relating to prison conditions in Singapore and Article 3, and also on the ground under Article 8. He did, however, consider that there was an arguable case on the ground relating to double jeopardy and/or abuse of process, and gave permission to appeal limited to that ground. Today is the hearing of that substantive appeal.

3 The underlying factual situation is as follows. The appellant is a citizen of Canada. I mention that although he personally, being in custody, is not present today, there are present in the courtroom as observers two representatives of the Canadian High Commission, and I am pleased that they should be here, protective of the interests of their citizen. The appellant appears to have entered Singapore on or about 28 June 2016. It is

alleged that around 11:20 am on 7 July 2016 the appellant committed a robbery at a branch of a bank in Singapore. The gist of the allegation is that he threatened a cashier or bank official that he was carrying a gun in a bag, and demanded that she pay money to him. Whether or not he actually had a gun is unclear and not relevant to today. At all events, the cashier handed over, in an envelope, S$30,450 which had an equivalent value on that day of about US$22,797. The appellant was able to flee from the bank with the money without being caught, although the cashier had activated a silent alarm.

4 The first offence for which the extradition of the appellant to Singapore is sought is one of robbery of the bank and the theft of that sum. That is an offence which, under the law of Singapore, attracts a sentence of not less than two years' nor more than ten years' imprisonment.

5 It is alleged that at about 1:46 pm the same day – that is, less than two and a half hours later – the appellant (who meantime had returned to his hotel room) left Singapore on a flight to Bangkok in Thailand. It is alleged that he still had with him the actual notes that he had robbed from the bank, probably still in the envelope in which they had been given to him. Under the law of Singapore, it is an offence to remove from Singapore money which represents the proceeds of criminal conduct. If the appellant had stolen the Singapore dollars from the bank in the course of the robbery, then on the face of it, he was committing a separate, discrete offence when he removed that money from the jurisdiction of Singapore by flying out with it.

6 The flight landed in Bangkok, and the appellant disembarked from the plane still with the money which he had allegedly robbed from the bank. Later that day, the appellant was arrested in Bangkok and subsequently prosecuted for, and convicted of, three offences in Thailand, in respect of which he served a sentence of 14 months' imprisonment. The first of

those offences was an offence under the Thai Exchange Control Act or Currency Exchange Act of 1942. Under that Act, it appears to be an offence to bring into Thailand money having a value of over US $20,000 and not to declare it to the customs checkpoint on arrival. As I understand it, that particular offence is not related to any particular national currency, and is committed if a person passes the customs checkpoint without declaring the money of any other currency if its value exceeds $20,000. That offence was one of not declaring the money in question, which did exceed US $20,000 in value, to the customs.

7 Secondly, and separately, the appellant was convicted of an offence under section 27 of the Thai Customs Act 1926, which appears to be an offence specifically in relation to bringing Singapore currency into Thailand, as was later explained in an opinion as to Thai law obtained by the Deputy Chief Prosecutor of Singapore from a senior associate in the office of Baker McKenzie in Bangkok, Mr Pumma Doungrutana. At paragraph 2.7 to paragraph 2.11 of that opinion, dated 22 April 2018, Mr Doungrutana explains that Singapore cash amounts to "restricted goods" for the purposes of section 27 of the Thai Customs Act 1926. The appellant committed a separate and discrete offence under the law of Thailand when he brought into Thailand, without declaring it, specifically Singapore dollars.

8 After leaving the airport, the appellant exchanged all or part of the Singapore dollars at two banks into Thai baht. He then used all or part of those Thai baht to pay for accommodation at a hotel into which he booked, and also to buy a notebook computer from a shop. In the process, he converted property, namely the Singapore dollars which were connected with the commission of an offence, namely the two offences under section 8 of the Thai Exchange Control Act and section 27 of the Thai Customs Act. This was the third offence of which he was convicted in Thailand, being an offence under section 5 of the Thai Anti Money Laundering Act.

9 The original submission of Mr Simon Gledhill to the district judge on behalf of the appellant – then acting on behalf of the appellant, as he does today – was that, in relation to the second of the two Singapore alleged offences, namely removing the money from Singapore, there was double jeopardy because that act had already been the subject of – or, at any rate, was immersed in – the offences of which the appellant was convicted in Thailand. Before the district judge, and again today, Mr Gledhill also put the case on the broader basis of an abuse of process.

10 Today, Mr Gledhill accepts that the law in relation to double jeopardy is not strictly engaged in this case, and he no longer pursues an appeal from paragraph 101 to paragraph 105 of the decision and judgment of District Judge Tempia, where she rejected the argument based on double jeopardy. However, Mr Gledhill continues to maintain that, more generally, there is an abuse of process in this case and that, accordingly, the district judge should have stayed these proceedings and that I should do so on this appeal. The way Mr Gledhill put it in his attractive submissions this afternoon is that the court should "take a holistic approach". He submits that "underpinning the Thai judgment is the importance of criminalising the movement of criminal property between jurisdictions." He submits that the second Singapore offence, namely removing the money from Singapore, is "aimed at the same mischief." Mr Gledhill submits that I should give to the Thai judgment, read as a whole, a wider interpretation than that literally of the three Thai statutes in play in this case. He submits, overall, that the conduct for which the appellant's extradition is now sought in relation to the second offence in Singapore "essentially amounts to the same conduct as that for which he was prosecuted in Thailand."

11 It is perfectly true, as Mr Gledhill says, that in at least two places in the judgment of the Thai court there are references to the cash having been originally obtained by a theft. At the very outset of their judgment, now at bundle page 216, the court said (in translation):

> "It is admissible that on 7th July, 2016, during the daytime, the defendant had committed an act of theft to obtain cash at an amount of 30,450 Singaporean Dollar... from [the bank is named] and fled to Thailand with the aforementioned 30,450 Singapore dollars..."

On internal page 3 of the translation, now at bundle page 218, the judgment says:

> "The defendant brought the money... which the defendant had obtained through an act of theft in Singapore into the Kingdom of Thailand."

12 It is perfectly true, as Mr Gledhill says and relies upon, that as part of the background context to which the Thai court referred in their judgment which fixes the sentence for the various offences committed in Thailand, there are those reference to "an act of theft". Having said that, it seems to me that completely separate and discrete offences are involved in this history. This may be considered, first, from the perspective of periods of time. The appellant committed and completed the whole of the alleged offence of removing the proceeds of crime from Singapore at the point when the aircraft took off for Bangkok or, at the very latest, when it left Singapore airspace. At that point, he did not commit any offence at all under the law of Thailand. He did not commit any offence at all under the law of Thailand when the plane entered Thai airspace or landed at Bangkok. He did not commit any offence at all under the law of Thailand when he left the plane and passed from it into the terminal building. The point, and the first point, at which the appellant committed any offence for which he was subsequently prosecuted under the law of Thailand, was the point when he passed through customs control (or alternatively passed through a 'Nothing to Declare' exit) and chose not to declare that he was carrying foreign currency to a value of more than US$20,000, and also that he was carrying Singapore dollars.

13 It seems to me that those offences under Thai law are completely separate and discrete in point of time from the second of the two offences alleged in the request, which the appellant had already committed when he left Singapore. So far as the third Thai offence of converting the property is concerned, he committed that later when he chose to change the Singapore dollars into Thai baht. If, indeed, he had kept the money in Singapore dollars and left Thailand still with that money intact, he would still have committed the first two Thai offences, but not the third offence. It seems to me quite clear from the documents, and in particular the opinion of Mr Doungrutana, that the conviction for converting property connected with the commission of an offence, was a conviction predicated on the offences of smuggling currency into Thailand contrary to the Thai Exchange Control Act and the Thai Customs Act. It was not, of itself, predicated on an offence previously committed in Singapore.

14 Quite apart from that gap in the time, it is helpful to consider whether or not the appellant would have committed, and could have been convicted of, exactly the same offences in Thailand even if he had obtained the money entirely lawfully in Singapore. As it seems to me, the fact that he had obtained the money by robbery made no difference. Even if he had obtained the money entirely lawfully, for instance as the proceeds of selling property, such as a car, in Singapore – or indeed if the money had been given to him as a gift – he would still have committed all three offences in Thailand. He would have committed the exchange control and customs offences at the point when he failed to declare the money on arrival in Bangkok, and he would have committed the offence under section 5 of the Thai Anti-Money Laundering Act at the point when he converted the money into Thai baht and then expended it on hotel accommodation and a computer.

15 For these reasons, I entirely agree with the reasoning of District Judge Tempia in both paragraph 101 to paragraph 105 (double jeopardy) and paragraph 134 to paragraph 139 (abuse of process) in her decision and judgment of 28 August 2018. It follows that this appeal is dismissed.

MR JUSTICE HOLMAN: Will you be able, between you, to draw up some suitable form of words – very, very short?

MS BROWN: Yes, my lord.

MR JUSTICE HOLMAN: Type it up and lodge it with today's associate?

MS BROWN: Yes.

MR JUSTICE HOLMAN: Thank you very much. Is there anything else that you would like to raise or say, Ms Brown?

MS BROWN: No, thank you, my lord.

MR JUSTICE HOLMAN: Anything else you would like to raise or say, Mr Gledhill?

MR GLEDHILL: No, my lord. Thank you.

MR JUSTICE HOLMAN: Thank you very much. Thank you very much for coming from the Canadian High Commission. I will keep these papers because I have to correct a transcript of it. Thank you.

CERTIFICATE

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

** This transcript has been approved by the Judge (subject to Judge's approval) **