IN THE COURT OF APPEAL OF BELIZE AD 2020

CIVIL APPEAL NO 31 OF 2018

DEON BRUCE **Appellant**

v

ATTORNEY GENERAL **1st Respondent**

SUPERINTENDENT OF PRISONS **2nd Respondent**

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BEFORE:

The Hon Sir Manuel Sosa — President
The Hon Madam Justice Minnet Hafiz-Bertram — Justice of Appeal
The Hon Mr Justice Murrio Ducille — Justice of Appeal

A Sylvestre for the appellant
B Williams for the 1st and 2nd respondents

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17 June 2019 and 29 September 2020

SIR MANUEL SOSA P

[1] I am of the opinion that this appeal should be allowed. I have read the judgment, in draft, of my learned Sister, Hafiz Bertram JA, and wish only to say that I concur in the reasons for judgment given, and the orders proposed, therein.

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SIR MANUEL SOSA P

HAFIZ- BERTRAM JA

Introduction

[2] This is an appeal against the order of the learned Madam Justice Arana dated 18 December 2017, dismissing the application of Deon Bruce (the appellant) for *habeas corpus ad subjiciendum* (*habeas corpus*). The trial judge further ordered that it was lawful for the Superintendent of Prisons (2nd Respondent) to keep the appellant detained at the Hattieville Prison, awaiting his extradition.

[3] By an order dated 17 September 2018, Arana J, as she was then, granted leave to the appellant pursuant to sections 14(4)(a) and 14(6) of the Court of Appeal Act, Chapter 90 of the *Laws of Belize*, to appeal against her decision made on 18 December 2017, in which she refused to issue an order of *habeas corpus* discharging the appellant from his remand by the then Chief Magistrate, to await surrender by the Minister of Foreign Affairs to the United States.

[4] It was further ordered by the trial judge, on the granting of leave, that her decision made on 18 December 2017, which was perfected on 25 January 2018, refusing to issue an order of *habeas corpus*, be stayed pending the outcome of the appeal. The judge also ordered that the surrender of the appellant to the United States be stayed pending the outcome of the appeal.

[5] This Court heard the appeal on 18 June 2019 and reserved its decision.

Background

[6] On 2 July 2013, the appellant was detained by members of the Belize Police Department on a warrant of apprehension issued by the then Chief Magistrate, Ann Marie Smith (the Chief Magistrate) pursuant to a request for the extradition of the appellant to the State of Illinois, United States of America (the Requesting State). The requisition had been made by the Requesting State pursuant to Article 6 of the Extradition Treaty between Belize and the United States of America, dated 30 March 2000. The warrant of

apprehension shows that the request for the extradition was made because the appellant was wanted to stand trial in the Requesting State where he was charged for the offences of (1) first degree murder; (2) attempted first degree murder; (3) aggravated battery with a firearm; (4) aggravated discharge of a firearm; (5) aggravated unlawful use of a weapon; and (6) unlawful use or possession of a weapon by a felon ('the offences').

[7] The appellant was arraigned on the 2 July 2013, before the Chief Magistrate and remanded in custody at the Hattieville Prison until the hearing and determination of the extradition proceedings.

[8] On 2 December 2013, the Chief Magistrate heard the extradition proceedings and reserved her decision. On 17 January 2014, she handed down written reasons dated 14 January 2014, in which she concluded that sufficient basis had been made out for the extradition of the appellant to the Requesting State and granted the application of the respondent for the extradition of the accused to the Requesting State to stand trial.

[9] Following the decision dated 14 January 2014, the Chief Magistrate issued a warrant titled "Warrant Remanding A Prisoner" (the warrant). The appellant has been detained at the Hattieville Prison since 17 January 2014, pursuant to this warrant.

[10] On 3 February 2014, the appellant filed an application for a writ of *habeas corpus* proceedings in Claim No. 52 of 2014, challenging his extradition and detention. He also filed an application for Judicial Review in Claim No. 178 of 2014 in relation to the Order of the Chief Magistrate to extradite him. Both of these claims were consolidated and heard by the Hon. Justice Abel on 5 and 6 June 2014. In an oral decision on 6 June 2014, both claims were dismissed by the judge.

[11] The appellant filed a notice of appeal, Civil Appeal No. 15 of 2014, in relation to the Judicial Review decision in Claim No. 178 of 2014, which upheld the decision of the Chief Magistrate to order the extradition. A notice of withdrawal of this appeal was filed on 20 July 2018.

[12] On 1 July 2014, Abel J granted a stay of execution of the Chief Magistrate's order dated 17 January 2014, to extradite the appellant to the requesting state in order for the appellant to proceed with the appeal.

[13] On 24 November 2017, the appellant applied in Claim No. 724 of 2017, for a fresh writ of *habeas corpus* which was heard by the Hon. Madam Justice Arana. The application was brought pursuant to section 5(2) of the Belize Constitution and section 30 of the Supreme Court of Judicature Act. These provisions entitle a person to challenge the validity of his detention. The application was supported by an affidavit of the appellant sworn on 24 November 2017.

Evidence supporting application before Arana J

[14] In the affidavit sworn on 24 November 2017, the appellant deposed as to new developments after Abel J upheld the decision of the Chief Magistrate. He stated that the Court of Appeal of Belize had allowed the appeal of Gary Gordon Seawell, in relation to an extradition request by the Requesting State, and issued a writ of *habeas corpus* directed to the Superintendent of Prisons, ordering Seawell's discharge from extradition proceedings and his immediate release. The central issue in that matter was whether the warrant issued by the Chief Magistrate at the conclusion of the extradition proceedings was in compliance with the Extradition Act.

[15] The appellant further deposed that in the month of April 2017, Mark Anthony Seawell, who is the brother of Gary Gordon Seawell, successfully challenged in a *habeas corpus* application, the extradition order of the then Chief Magistrate, Margaret McKenzie, made on 30 September 2011. The application was heard by the Chief Justice in Claim No. 41 of 2011 and a similar order was made by the Chief Justice as was done by the Court of Appeal.

[16] The appellant exhibited the order made by the Court of Appeal and the Order made by the Chief Justice. He also exhibited the Warrants issued in Mark Anthony Seawell

matter and the Gary Gordon Seawell matter. Further, the appellant exhibited the affidavit evidence in both Seawell matters.

The decision of the trial judge

[17] The trial judge gave an oral decision in which she gave her reasons for the dismissal of the application by the appellant for *habeas corpus.* The judge said the following: (page 371 of the transcript)

> "…. Mr. Sylvester ask this Court to issue a Writ of *Habeas Corpus* to release the prisoner Deon Bruce from prison on several grounds, the most important arising from new developments in the law which flow from the Gary Seawell and Mark Seawell decisions of the Court of Appeal.
>
> The gravamen of his arguments is that the warrant issued by the Chief Magistrate Ann-Marie Smith is defective and therefore invalid as it was not issued in compliance with the requirements of the *Extradition Act* in section 10 and the form set out in the *Second Schedule* to the Act. The warrant issued is a warrant of remand and not a warrant of committal and does not reflect whether the Chief Magistrate has considered and determined whether the offences for which the Defendant extradition is being sought are in fact extraditable offences and whether those offences are proven in keeping with the terms of the Act. He says these deficiencies make the warrant invalid and the detention of the prisoner unlawful and that Mr. Bruce should therefore be released immediately under a writ of *habeas corpus.*
>
> Ms. Briana Williams on behalf of the Government of Belize strenuously resists this application. She contends that this court has no jurisdiction to hear this matter as there is a pending appeal of the judicial review decision of Justice Abel which is yet to be decided by the Court of Appeal. She argues that it is an abuse of the process of the court for the applicant to bring this *habeas corpus* application instead of waiting for the Court of Appeal to decide the judicial review matter.

The effect of a *habeas corpus* application and an appeal of the judicial review decision, if successful, would be the same. The Applicant has not withdrawn his appeal nor has he sought removal of the stay of execution granted by Justice Abel. She further contends that section 10 of the *Extradition Act* does not require that the Chief Magistrate state on the warrant which offences have been proven, as argued by Mr. Sylvester. The Chief Magistrate has listed the offences on the warrant for which the Applicant is to be extradited as required by the *Extradition Act*. The warrant is valid. The application should be dismissed.

I agree with the submissions of Ms. Williams on this application, There is a process which the Applicant has put in place by launching his appeal. The new matters raised before this court are matters which should be determined by the Higher Court, especially in light of the fact that the Applicant has already filed an appeal the effect of which, if successful, will result in his freedom.

With respect, I also find very little merit in the Applicant's submissions regarding the requirement of proven offences being listed on the warrant. I do not see that the *Extradition Act* reflects any such requirement but that is a matter for the Court of Appeal to determine. The application is therefore dismissed and the Commissioner of Police and the Superintendent of Prisons may continue to hold the Applicant and not to release him pending his removal and extradition to the United States of America. There will be no order as to costs."

Amended Grounds of appeal

[18] The appellant appealed against the whole decision of Arana J. The grounds of appeal, as amended, are:

(1) The learned judge erred in dismissing Claim No. 724 of 2017 on the basis that the appellant had a pending appeal before the Court of Appeal;
(2) The judge erred in law in holding that the extradition of the appellant was lawful because:

(i) the Chief Magistrate's order/ruling is unlawful in that she did not set out in her reasons the offence/offences proved by the evidence and

(ii) the warrant titled "Warrant Remanding A Prisoner" issued by the Chief Magistrate at the conclusion of the extradition proceedings on 17 January 2014, was not an extradition committal Order as is required by the 1870 Extradition Act which is incorporated in Part 1 of the Extradition Act, 2000. Further, there was no Extradition committal order made.

Relief sought

[19] The appellant sought from the Court (i) an order setting aside the decision and order of the trial judge; and (ii) an Order granting the application for the issue of writ of *habeas corpus* and (iii) costs.

Issues for determination

[20] The issues for determination are as follows:

(1) Whether the trial judge erred in dismissing Claim No. 724 of 2017 on the basis that the appellant had a pending appeal before the Court of Appeal;
(2) Whether the judge erred in holding that the extradition of the appellant was lawful.

Whether the trial judge erred in dismissing Claim No. 724 of 2017 on the basis that the appellant had a pending appeal before the Court of Appeal

[21] Mr. Sylvester submitted that at the time of the filing of the claim in the instant matter, the appeal which was pending before the Court was in relation to judicial review proceedings, Civil Appeal No. 15 of 2014 (Claim No. 178 of 2014). Further, the Chief Magistrate was the respondent in that matter which has since been withdrawn. The Superintendent was not a respondent in that matter.

[22] Learned counsel further submitted that Claim No. 52 of 2014 was the first *habeas corpus* claim which was not appealed. The instant appeal, (Claim No. 747 of 2017) is the second habeas *corpus* matter in relation to the appellant. The Superintendent is the respondent in both matters since the writ of *habeas corpus* is issued to the person who has custody of the person. See *Halsbury's Laws of England*, 4th Edition, 2001 Reissue Vol. 1 (1) for the General scope of writ.

[23] Mr. Sylvester contended that *habeas corpus* proceedings are therefore different in nature from judicial review proceedings. That the *habeas corpus* proceedings concern the question of the lawfulness of the detention while judicial review proceedings concern the lawfulness of the decision made. He submitted that the former proceedings is directed to the detainer while the latter proceedings are directed to the decision maker whose decision led to the detention of the person. For these reasons, counsel submitted that it cannot be that the appellant has a subsisting appeal in December 2017, which was similar to the proceedings in Claim No. 724 of 2017, which was before the judge.

[24] Counsel further submitted that an appeal from a decision in *habeas corpus* application is not as of right and leave must be sought pursuant to *section 14(4) (a) and 14(6) of the Court of Appeal Act.*

[25] Mr. Sylvester contended that the trial judge could have entertained a new *habeas corpus* application as shown in the cases of *Eshugbayi Eleko v The Officer Administering the Government of Nigeria and another* [1931] PC Appeal No. 42 of 1930, and *Eshugbayi Eleko v The Officer Administering the Government of Nigeria and the Chief Secretary of the Government of Nigeria*, PC, handed down on 19 June 1928.

[26] Ms. Williams for the respondents conceded that judicial review and *habeas corpus* are normally different in nature. Counsel further conceded that *habeas corpus* proceedings concern the lawfulness of the detention. *See Rhett Fuller v Attorney General of Belize [2011] UKPC 23 at para. 50*. However, she contended that the *habeas corpus* matter which was before the trial judge, is similar to the judicial review matter before the Court since the desired outcome would have been the same for the appellant.

[27] Learned counsel also submitted that the appellant was granted a stay of enforcement of the Chief Magistrate's decision by Abel J so as not to render his appeal nugatory but, did not seek to have the stay lifted before applying for *habeas corpus*.

[28] In reply, Mr. Sylvester submitted that there was no subsisting appeal relating to *habeas corpus* application and as such the appellant was not barred from instituting Claim No. 724 of 2017. He made further arguments in relation to the dichotomy between *habeas corpus* and judicial review applications. He relied on the case of **Gibson v The Government of the United States of America (The Bahamas) [2007] UKPC 52.** The Board explained the difference between an order for *habeas corpus* and an order for judicial review (certiorari or a declaration). Counsel submitted that the *habeas corpus* order is an order directing the release of a detainee. The judicial review order is the quashing of the decision of the decision maker which led to the detention. Further, a judicial review order does not automatically lead to an order for release.

[29] Counsel further argued that Gibson's case also shows that while there is a right of appeal in respect of judicial review proceedings there is no automatic right in relation to *habeas corpus,* as is the position in Belize. As such, at the time of instituting Claim No. 724 of 2017, there was no subsisting appeal in respect of the *habeas corpus* application but only an appeal in relation to the judicial review application in the Court. Therefore, counsel contended that the judge had jurisdiction to hear Claim No 724 of 2017.

Discussion

[30] The learned trial judge agreed with the entire submissions of Ms. Williams. One of those arguments was that the court had no jurisdiction to hear the *habeas corpus* application since there was a pending appeal of the judicial review decision before the Court of Appeal. The judge also agreed with the respondents that it would be an abuse of process of the court for the applicant to bring the *habeas corpus* application instead of awaiting the outcome of the judicial review appeal.

[31] The learned judge did not consider the new matters raised in the *habeas corpus* application which was before her in relation to the two Seawell extradition matters. It was her view that the new matters should be determined by this Court, "*especially in light of the fact that the Applicant has already filed an appeal the effect of which, if successful, will result in his freedom."* As shown by the evidence of the appellant, these new matters concern, *Claim No. 41 of 2011 Mark Seawell v Attorney General and Anor*, *and Civil Appeal No 20 of 2014*, *Gary Ggordon Seawell v Superintendent of Hattieville Prison and Attorney General of Belize* (the Seawell matters). Both Seawells' were granted *habeas corpus* on the same arguments made by Mr. Sylvester before Arana J. The evidence in those two matters were before the judge.

[32] In my view, the learned judge erred by not considering the new matters raised in the evidence supporting the *habeas corpus* application. As shown by the evidence and the arguments before the trial judge, the new matters concern the failure of the committing magistrate to issue an extradition committal warrant in accordance with the Extradition Act, Chapter 112 of the laws of Belize, 2000. It was open to the judge to explore this legal argument. There was no certainty that the appellant would have succeeded in the judicial review appeal. As such, it is my opinion, that the appellant who is in custody, was deprived of the opportunity of having his application for *habeas corpus* matter determined on the new matters. The submissions by Mr. Sylvester on the new matters shed light on the interpretation of section 10 of the Extradition Act 1870. This interpretation is nothing new, but it is new in terms of its application to matters in Belize.

[33] Further, it is my view, that the judicial review and *habeas corpus* matters cannot be treated as one and the same, for the sole reason, that the prisoner can be released on an order of *certiorari*. The case of **Gibson** *relied* upon by Mr. Sylvester shows that there are differences between *habeas corpus* and judicial review applications.

[34] The *habeas corpus* matter was the second application made by the appellant. The first was dismissed but not appealed. The question arises as to whether this was an abuse of process. As was submitted before the trial judge, by Mr. Sylvester, *habeas*

corpus applications may be made to successive judges. Lord Atkin in **Eleko No. 2,** discussed the refusal of the lower court to hear an application for *habeas corpus* because a similar application was made previously. At page 1, he stated that the Board decided that there is a well-established rule that applications in *habeas corpus* may be made to successive judges in Nigeria and remitted the case to the Supreme Court. In the instant matter, it is my view that the trial judge in this jurisdiction could have heard a second *habeas corpus* application if there is no evidence of abuse of process.

[35] A second application in the instant matter cannot be considered an abuse of process, especially in light of the appellant's evidence (which had not been disputed) that the Seawells' were discharged because no committal warrant was issued by the Chief Magistrate. This is an issue that the trial judge should have considered in the instant matter. The case of **Re Sheikh** [2000] All ER 2164, relied upon by Ms. Williams can be distinguished from the instant matter. In Re **Sheikh**, the principle of finality of litigation was applied and the appeal dismissed. The court found that it was an abuse of process because the issues raised could have been litigated in earlier proceedings. Further, no explanation had been advanced either on instructions or in the evidence in relation to the *habeas corpus* application as to why the issues were not raised. Also, the applicant in **Re Sheikh** was not in custody and his asylum application had been found to be groundless. In the instant matter, the appellant is in custody and new matters were raised, that is, the discharge of the Seawells' because no committal warrant was issued by the Chief Magistrate. As such, it is my view that the trial judge erred in agreeing with the argument of Ms. Williams that it was an abuse of process of the court for the applicant to bring the habeas *corpus* application instead of awaiting the outcome of the judicial review appeal.

[36] The trial judge in making her decision also considered that the appellant had not withdrawn his appeal of the judicial review matter and also he did not remove the stay of execution in that matter. In my view, it was irrelevant to consider the pending judicial review appeal for reasons already discussed. The learned judge should have considered the new evidence and the submissions made by Mr. Sylvester on the interpretation of

section 10 of the Extradition Act 1870. Further, it should be noted that at the leave stage of the instant appeal, as a condition for the granting of leave, the trial judge requested that the appellant discontinue the judicial review appeal. The said appeal was withdrawn on 20 July 2018 as stated by both parties during arguments.

Whether the trial judge erred in holding that the extradition of the appellant was lawful

[37] The second ground concerns the lawfulness of the extradition. The trial judge found that the Chief Magistrate had listed the offences on the warrant for which the Applicant is to be extradited as required by the *Extradition Act*. The learned judge accepted the argument of Ms. Williams that section 10 of the *Extradition Act* does not require that the Chief Magistrate state on the warrant which offences have been proven.

[38] Before this Court, Mr. Sylvester relied on the arguments he made before the judge. He submitted that the Extradition warrant issued at the conclusion of the extradition proceedings must be in accordance with the *Extradition Acts* and failure to issue a warrant of committal in accordance with the *Second Schedule* of the *Extradition Act* 1870, results in the immediate discharge of a prisoner.

The relevant statutory provisions and treaty provisions

[39] The law governing extradition in Belize is the *Extradition Act*, Chapter 112 of the laws of Belize ("Extradition Act"). Section 1 of the *Extradition Act* states that reference to *Extradition Acts* in the *Extradition Act* means the 1870, 1873, 1895, 1906, and 1932, *Extradition Acts* and the Counterfeit Currency (Convention) Act, 1935. The 1870 *Extradition Act* of England is incorporated into the laws of Belize and forms part of the *Extradition Act*.

Definition of extradition crime

[40] Section 26 of the Extradition Act 1870, which is the Interpretation section, states that the term "*extradition crime*" means "*a crime which, if committed in Belize or within Belize jurisdiction, would be one of the crimes described in the first schedule to this Act.*" The first Schedule shows a list of the crimes.

First Schedule to the Extradition Act 1870 and introductory words as to how crimes should be construed

[41] The First Schedule to the 1870 Act listed the crimes generically subject to the opening words: **'The following list of crimes is to be construed according to the law existing in Belize, ….**.. (as the case may be,) at the date of the alleged crime."

Powers of examining Magistrate

[42] Section 3 of the *Extradition Act* provides for the powers of an examining Magistrate in Belize. These powers are equivalent to the powers as exercised and vested in the Chief Metropolitan Magistrate at Bow Street, London. Section 3 states:

> "3. All powers vested in and acts authorized or required to be done by the Chief Metropolitan Magistrate at Bow Street, London, in relation to the surrender of fugitive criminals in the United Kingdom under the *Extradition Acts* are hereby vested in and may in Belize be exercised and be done by the Chief Magistrate, and any powers vested in and acts authorized to be done under the said Acts in the United Kingdom by any justice of the peace other than the Chief Metropolitan Magistrate at Bow Street, London, are hereby vested in and may in Belize be exercised and done by any senior justice of the peace."

Sufficiency of evidence for committal

[43] Section 10 of the 1870 *Extradition Act* provides for the committal or discharge of a criminal accused of an extradition crime. There is a committal only if there is sufficient evidence produced from the requesting state, which according to the laws of Belize, would justify the committal of the criminal for trial, as if the offence had been committed in Belize. Section 10 provides:

> "10. Committal or discharge of prisoner.
>
> In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged." (emphasis added)

The test for sufficiency of evidence

[44] The evidence sent to Belize by the requesting state must establish a *prima facie* case against the fugitive criminal sought to be extradited. The Chief Magistrate addressed that test in her decision.

Extradition treaty between Belize and USA

[45] Section 9 of the *Extradition Act* provides for Extradition of fugitive criminals between Belize and the United States of America (USA). It states:

> "9. Extradition of fugitive criminals between Belize and the United States of America shall be as directed in accordance with the Extradition Treaty ("Treaty") between the Government of Belize and the Government of United States of America signed on the 30th day of March, 2000, a copy of which is set out in the Schedule hereto."

Article 2 of the Treaty

[46] Article 2 of the treaty states that:

> "An offense shall be an extraditable offense if it falls within any of the descriptions listed in the Schedule annexed to this Treaty, which is an integral part of the Treaty, or any other offense, provided that in either case the offense is punishable under the laws in both Contracting States by deprivation of liberty for a period of more than one year or by a more severe penalty." (emphasis added).

The Schedule annexed to the Treaty shows a list of 40 offences, which are extraditable offenses.

Article 6 of the Treaty

[47] Article 6 provides for Extradition Procedures and required documents. Article 6(3) states:

> "6 (3) A request for extradition of a person who is sought for prosecution shall also be supported by:
>
> > (c) such evidence as would be found sufficient, according to the law of the Requested State, (Belize) to justify the committal for trial of the person sought if the offense of which the person has been accused had been committed in the Requested State (Belize). (emphasis added)

Discussion

[48] Ms. Williams for the respondents submitted that this ground appealing Arana J's order cannot be fully ventilated before this Court as a consequence of the findings made by the judge. That is, that the appellant was barred from making the writ of *habeas corpus* because of the pending judicial appeal before this Court (which has now been withdrawn). Further, that the applicability of the new information, emanating from Mark

Seawell v Attorney General and Anor, and Gary *Gordon Seawell v Superintendent of Hattieville Prison* and Attorney General of Belize, can only be determined by this Court. Counsel argued that pursuant to **section 13** of the **Court of Appeal Act,** this Court is limited to deliberating only on the contents of Arana J's oral decision. Further, that the order of the trial judge does not speak to the lawfulness of the warrant. It merely orders that it is lawful for the second respondent to keep the applicant (appellant) detained at the Hattieville Prison, awaiting his extradition.

[49] The order of Arana J made on 18 December 2017 and dated 25 January 2018, shows that it was ordered that:

> "(1) The Application is dismissed.
>
> (2) It is lawful for the 2nd Respondent, Superintendent of Prisons to keep the Applicant detain at the Hattieville Prison, awaiting his extradition.
>
> (3) There are no order as to costs."

[50] In my view, the effect of paragraph 2 of the order, is the same as ordering that the extradition is lawful. In her decision, the judge said, "*The application is therefore dismissed and the Commissioner of Police and the Superintendent of Prisons may continue to hold the Applicant and not to release him pending his removal and extradition to the United States of America. There will be no order as to costs*." In the order, the trial judge did not state that this Court is to decide on the lawfulness of the extradition. The ground of appeal is that the judge erred in law in holding that the extradition of the appellant was lawful. In my view, this Court therefore, has jurisdiction to decide whether the learned judge erred in making the order.

[51] Further, the trial judge agreed with the submissions of Ms. Williams on the application for *habeas corpus* before her. One of those submissions being that the warrant is valid. The judge also agreed with Ms. Williams that section 10 of the *Extradition Act* does not require that the Chief Magistrate state on the warrant which offences have

been proven. The judge said, "With respect, I *also find very little merit in the Applicant's submissions regarding the requirement of proven offences being listed on the warrant. I do not see that the Extradition Act reflects any such requirement but that is a matter for the Court of Appeal to determine."* In my view, this is a finding that the Court must address, regardless of the statement "*but that is a matter for the Court of Appeal to determine."* This point as to the proven offences to be listed in the warrant of committal is of great importance, as will be shown below. The trial judge, in my respectful view, should have explored this issue.

Offences according to the laws of Belize not stated in decision of Magistrate

[52] There were two points advanced by Mr. Sylvester in relation to the unlawfulness of the extradition of the appellant. The first point being that the Chief Magistrate's order/ruling is unlawful in that she did not set out in her reasons the offence(s) proved by the evidence. A perusal of the decision shows that the Magistrate listed the charges by the requesting state (Illinois) for which the appellant is to be extradited. But, she did not list the offences for which there was sufficient evidence to justify a committal under the laws of Belize as required by section 10 of the *Extradition Act* 1870. The Chief Magistrate addressed the sufficiency of the evidence in a general manner but did not address each offence in accordance with the laws of Belize.

[53] The Chief Magistrate's decision, under the heading of, "*The test to be applied and is the evidence sufficient?"* cited Article 6(3) of the Treaty which speaks of supporting documents in making a request for extradition and the sufficiency of evidence according to the law of the Requested State (Belize). She also cited section 10 of the *Extradition Act* 1870 and correctly stated that her duty was to consider "*whether the evidence produce would, according to the law of the requested state (Belize), justify the committal for trial of the prisoner if the crime of which the defendant* (appellant*) is accused had been committed in Belize."* She said that she must therefore decide whether there was sufficient evidence to make out a *prima facie* case against the appellant.

[54] In considering whether a *prima facie* case had been made out, the Magistrate applied the well known test in *R v Galbraith*. The Magistrate then concluded that sufficient basis had been made out for the extradition of the appellant to stand trial for the charges. In her decision dated 14 January 2014, she concluded as follows:

> ….. "*sufficient basis has been made out for the extradition of the accused, Deon Bruce, to the United States of America. All the matters which were required to be proven under the Treaty and the Extradition Act have been duly proven."* She then stated that, "*This Court hereby grants the application of the Government of the United States of America for the extradition of the accused to the United States to stand trial on the charges as aforesaid."*

[55] The Chief Magistrate did not focus on the conduct of the appellant in Illinois for each charge and consider whether that conduct amounts to a crime in Belize, pursuant to the Criminal Code, Chapter 101 of the laws of Belize. The correct approach was to look at (i) the conduct of the appellant which is alleged to be a crime in Illinois; (ii) whether that conduct constitutes a crime under the laws of Belize and (iii) If it is a crime in Belize, whether it is one of the crimes listed in the description of the crimes in the Second Schedule of the *Extradition Act* 1870.

[56] The Chief Magistrate under the heading of 'Brief Facts' merely considered the similarity of the offences in the requested State and Belize. She referred to Article 2 of the Extradition Treaty, which states that an offence shall be an "*extraditable offence if it falls within any of the descriptions listed in the schedule annexed to this Treaty, which is an integral part of the treaty,.."* Relying on Article 2, the Chief Magistrate said, "*All said charges have similar offences in Belize and it has been established that all offences outlined in the extradition request are extraditable under the Treaty and under the laws of both the Requesting and Requested State."* Although she said that the offences are extraditable under the Treaty, there is nothing in her decision to show that she considered the conduct of the appellant for each of the offences pursuant to the laws of Belize. The

similarity of the offences is not sufficient to establish that the crimes, for which the appellant allegedly committed, are extraditable crimes.

The introductory words to the schedule of crimes

[57] The first Schedule of the 1870 Extradition Act, provides for a list of Extradition crimes. The introductory paragraph shows the law under which the list of crimes is to be construed. As shown at paragraph 41 above, it states that: *'The following list of crimes is to be construed according to the law existing in Belize* **…"** **In re Nielsen [1984] 1 AC 606**, relied upon by Mr. Sylvester in the court below and this Court, Lord Diplock at page 616, addressed those introductory words. His Lordship explained what a Magistrate is required to do in order to determine whether the conduct of an accused constitutes an "extradition crime". At page 616 his Lordship states the following:

> "The introductory words to both the 1870 and the later list provide that the list of crimes is to be **construed according to the law existing in England (Belize) at the date of the alleged crime.** So in order to determine whether conduct constitutes an "extradition crime" within the meaning of the Acts of 1870 to 1932, and thus a *potential* ground for extradition if that conduct had taken place in a foreign state, <u>one can start by inquiring whether the conduct if it had taken place in England would have fallen within one of the 19 generic descriptions of crimes in the 1870 list. If it would have so fallen the inquiry need proceed no further …"</u>

[58] Further, at page 618 F, Lord Diplock explained the **importance for each crime to be construed according to the law in England (in the instant matter Belize).**

> "My Lords, the definitions of "extradition crime," "fugitive criminal," "fugitive criminal of a foreign state" and "warrant" in section 26 of the Extradition Act 1870, read in conjunction with the introductory words of Schedule 1 which require **the description of each listed crime to be construed according to the law existing in England** at the date of the alleged crime, are **all-important**. They are:

> "The term 'extradition crime' means a crime which, **if committed in England** or within English jurisdiction, would be one of the crimes described in the first Schedule to this Act: … The term 'fugitive criminal' means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty's dominions; and the term 'fugitive criminal of a foreign state' means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state: …

[59] In my opinion, the Chief Magistrate failed to construe the charges against the appellant according to the laws of Belize at the date of the alleged crime. Therefore, the learned trial judge erred in not interpreting section 10 of the *Extradition Act* 1870, which shows the offences has to be considered pursuant to the laws of Belize. This is sufficient basis to set-aside the decision of the Chief Magistrate dated 14 January 2014. It follows that the learned trial judge erred when she found that the offences proven in accordance with Belize Laws do not have to be stated in the warrant.

Committal warrant not issued by Magistrate

[60] The second point is that the warrant titled "Warrant Remanding A Prisoner" issued by the Chief Magistrate at the conclusion of the extradition proceedings on 17 January 2014, was not an extradition committal Order as is required by the 1870 *Extradition Act* which is incorporated in Part 1 of the Extradition Act, Chapter 112. The appellant is detained at the Hattieville prison pursuant to the said warrant after the conclusion of the extradition proceedings. The Chief Magistrate issued the warrant on the same date she handed down her decision. The issue to be considered is whether the warrant is in compliance with the *Extradition Acts*. The warrant dated 17 January 2014, which is an exhibit to the affidavit of the appellant shows the following:

“COURT NO. 1

No. 18

WARRANT REMANDING A PRISONER

BELIZE TO WIT:

BELIZE JUDICIAL DISTRICT

TO: A.C.P. E. Aragon and every other constable and peace officers

Of the said country, and to the keeper of the district of Belize City.

WHEREAS DEON BRUCE was this day charged before the undersigned Magistrate in and for the said country, Deon Bruce born on September 5, 1985, and last known to be residing in Belize City, Belize, wanted to stand trial in the United States of America on indictment Case No. 13CR-5128 filed on March 7 charges for (1) First Degree Murder, in violation of Chapters 720 and 730 of Illinios Complied Statutes, (2) Attempted First Degree Murder in violation of Chapters 720 and 730 of Illinios Complied Statutes, (3) Aggravated Battery with a Firearm in violation of Chapters 720 and 730 of Illinios Complied Statutes, (4) Aggravated Discharge of Firearm in violation of Chapters 720 and 730 of Illinios Complied Statutes, (5) Aggravated Unlawful Use of a Weapon in violation of Chapters 720 and 730 of Illinios Complied Statutes, (6) Unlawful Use of Possession of a weapon by a Felon in violation of Chapter 720 and 730 of Illinios Complied Statutes.

And it appears to me necessary to **remand** the said DEON BRUCE

THESE are therefore to command you, such constables or peace officer in Her Majesty’s name forthwith to convey the said DEON BRUCE to prison at BELIZE CITY and there to deliver him to the Keeper thereof together with this precept

AND I hereby command you the said keeper to receive the said DEON BRUCE Into your custody, the said prison and there safely keep him ….. day of

2014, when I hereby command you to have him this day at Magistrate Court No. 1 at 9 o'clock in the forenoon the same day before me or such other with according to law unless you shall be otherwise ordered to in the meantime

GIVEN under my hand this 17th day of JANUARY in the Year of Our Lord 2014 at Belize City in the country aforesaid.

AWAITING EXTRADITION TO THE UNITED STATES OF AMERICA."

[61] The above warrant issued by the Magistrate lacked substance as will be discussed below. The specimen form of the warrant of committal in the *Second Schedule* of the *Extradition Act* 1870, offers guidance as to what is required to be considered by a Magistrate, though only in terms of substance and not to be followed slavishly. The form is shown below:

"FORM OF WARRANT OF COMMITTAL

Metropolitan police district, ….. To ……. one of the constables of the metropolitan police or borough of force [or of the police force of the county or borough of] to], and to the keeper of the ….

Be it remembered that on this ……. day of , in the year of our Lord late of is brought before me the chief magistrate of the metropolitan police courts [or one of the police magistrates of the metropolis] sitting at the police court in Bow Street, within the metropolitan police district [or stipendiary magistrate for] **to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870,** on the ground of his being accused [or convicted] of the commission of the crime of …….. within the jurisdiction of ……. **and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:** This is therefore to command you the said constable in Her Majesty's name forthwith to convey and deliver the body of the said ……into the custody of the said keeper of the …… at …….., and you the said keeper to receive the said ……. into your custody, and him there **safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act,** for which this shall be your warrant.

Given under my hand and seal at Bow Street, one of the police courts of the metropolis [or at the said] this day of …….

J.P."

[62] As shown in **Nielsen's case**, the form is important. At page 619, Lord Diplock explained the **importance of the forms in the Second Schedule**.

> "**Important too are the forms set out in Schedule 2 to the Act of 1870** the use of which, or of forms as near thereto as circumstances admit, is authorised by section 20 of the Act. The form of order to proceed issued by the Secretary of State to the police magistrate pursuant to section 7 contains a space in which the Secretary of State specifies the crime (which, ex hypothesi, for the list so requires, **must be described in terms of a crime according to the laws of England**) as being the crime for which the magistrate is required to issue his warrant for the apprehension of the fugitive criminal under section 8. Likewise, the form of warrant of apprehension addressed to the constables of the police area in which the fugitive criminal is, or is suspected of being, recites the Secretary of State's specification of the crime for which he is to be apprehended; **so does the form of warrant of committal of the fugitive criminal to prison to await surrender that is issued by the magistrate under section 10, if at the hearing under section 9 such evidence is produced as would according to the law of England justify his committal for trial if the crime of which he is accused had been committed in England."** (emphasis added)

[63] I respectfully adopt the interpretation given by Lord Diplock and apply it to the instant matter. The forms are indeed important and the crimes, as discussed under the first point, must be described according to the laws of Belize.

[64] The Magistrate failed to state whether sufficient cause has been shown to her for the accused to be surrendered to the requested state. Also, the warrant of committal did not state the offence(s) in accordance with Belize laws, for which the requested person

is to be surrendered and not merely the charges for which the appellant is alleged to have committed in Illinois.

[65] The warrant issued by the Magistrate also shows the following shortcomings: (a) At the heading, the words, "*WARRANT REMANDING A PRISONER*" instead of 'WARRANT OF COMMITTAL'; (b) In the body of the warrant, "And it appears to me necessary to remand the said DEON BRUCE instead of showing some finality of the extradition proceedings by using the word 'commit'; (c) "*AND I hereby command you the said keeper to receive the said DEON BRUCE Into your custody, the said prison and there safely keep him ….. day of 2014, when I hereby command you to have him this day at Magistrate Court No. 1 at 9 o'clock in the forenoon the same day before me or such other with according to law unless you shall be otherwise ordered to in the meantime"*. Again, this does not show finality of the extradition proceedings; and (d) "*AWAITING EXTRADITION TO THE UNITED STATES OF AMERICA*". This statement is dubious as one cannot be certain that the appellant was already committed and ready for delivery to the requesting state in accordance with the Extradition Act, subject to his rights to apply for *habeas corpus.*

[66] The importance of the forms and the offences proven are also explained in *Extradition* by Ivor Stanbrook and Clive Stanbrook, relied upon by Mr. Sylvester. At page 29, the learned authors state that, "*The warrant of committal should state the extradition crime in terms of English law, setting out the facts* of *which the offence consists and avoiding any generalized description of the foreign term which may be wider than its English counterpart. It should say also that it constitutes the offence listed in the foreign version of the treaty: Re Arton (No. 2) (1896) 1 Q.B. 509 DC, Ex parte Kohn [1900] 35 L Jo 173 DC; R v Dix [1902] 18 TLR 231 DC. The date of the offence should be given: R v Ashforth [1892] 8 TLR 283 DC.*

… ….It must state the offence proved by the evidence…"

[67] At page 57-58, also relied upon by Mr. Sylvester, the learned authors state that:

" Having considered the evidence the magistrate must commit the accused person to custody to await his return if he is satisfied that all formal matters have been proved, that the evidence reached the required standard and that there is no statutory restriction on the return. The warrant of committal must be signed by the magistrate who heard the evidence and made the decision: **Kossekechaiko v Attorney General** for Trinidad [1932] AC 78 PC. It should state the offence in terms of the law of the requesting country which the Magistrate is satisfied is a relevant offence according to the United Kingdom law. A warrant of committal which stated the offence in terms of English law only, when the order to proceed expressed it in terms of Australian law only was held to be invalid in **Re Llewellyn Dance** [1977] May 6 (unreported) DC."

[68] Also, In **re Neilsen,** the House of Lords explained that the magistrate must issue a committal warrant if she finds that there is sufficient evidence and further the magistrate must specify in the committal warrant the offences for which the accused or fugitive is to be extradited. In the instant matter, the Chief Magistrate did not issue a committal warrant in **accordance with section 10 of the Extradition Act 1870.** The wording need not be the same but as near to as circumstances admit (See section 20 of the Extradition Act 1870).

[69] In my opinion, the failure to issue a committal warrant and one which specifies the offences proven in accordance with the laws of Belize, justifies the discharge of the appellant. The remand warrant issued by the Magistrate cannot be considered a committal warrant. Although it may be considered as an irregularity, it is one that cannot be fixed, so to speak. The Magistrate is no longer in this jurisdiction. But more fundamentally, not stating the offences in accordance with the laws of Belize in a committal warrant, is fatal. As such, there is no justification for the detention of the appellant and therefore, he should be discharged. See the case of **Kossekechaiko** relied upon by Mr. Sylvester, where it was held that the appellants should be discharged because the legal authorities in Trinidad failed to issue a valid order justifying the detention of the appellants in custody.

[70] Based on the foregoing discussion, the Order of the Chief Magistrate granting the application of the Requesting State for the extradition of the appellant to the United States to stand trial on the charges, is unlawful. It follows that the learned trial judge erred in making an order for the extradition of the appellant. In my opinion, the trial judge ought to have set aside the order of the Chief Magistrate. That decision of the Chief Magistrate cannot stand and ought to be set aside by this Court. It follows that the stay of enforcement of the Chief Magistrate's decision, granted by Abel J, so as not to render the appeal nugatory, falls away.

Order

[71] I would propose the following orders:

(i) The Appeal is allowed;

(ii) The Orders of the trial judge below, are set aside;

(iii) The Order of the Chief Magistrate is set aside;

(iv) The appellant is to be discharged from Extradition proceedings forthwith;

(v) The Writ of Habeas Corpus directed to the Superintendent of Hattieville Prison is issued.

(vi) The costs of the appellant's appeal are to be paid by the Attorney General to be agreed or taxed.

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HAFIZ-BERTRAM JA

DUCILLE JA

[72] I have had the benefit of reading the draft judgment of Hafiz-Bertram JA in the above captioned matter and I am in total agreement with the reasoning and disposition. I can add nothing further.

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DUCILLE JA