

IN HIGH COURT OF BELIZE, A.D. 2023

CLAIM No. 680 of 2022

BETWEEN

OSMAR ELIASAR CORREA

CLAIMANT

AND

**GOVERNMENT OF THE
UNITED STATES OF AMERICA
ATTORNEY GENERAL OF BELIZE**

DEFENDANTS

BEFORE THE HONOURABLE MADAM JUSTICE PATRICIA FARNESE

HEARING DATE: 17 May 2023

APPEARANCES:

Mr. Anthony G. Sylvestre, Counsel for the Claimant.

Mrs. Cheryl-Lyn Vidal SC and Ms. Stacy Martinez, Counsel for the Defendants.

DECISION ON EXTRADITION

[1] The issues before the Court arrived as a case stated filed by the Honourable Chief Magistrate on 29 August 2022, and a Fixed Date Claim Form filed on 24 August 2022, and served on the Defendants on 11 January 2023. Mr. Osmar Eliasar Correa requests that his order of extradition to the United States of America (United States) to face charges from 1998 be stayed. Mr. Correa is wanted to stand trial for the death of two people and causing serious bodily injury to three others while he was driving

intoxicated. He argues that the United States and Belize's failure to initiate the extradition application earlier is a violation of his right to a fair hearing within a reasonable time as protected by subsection 6(2) of the *Belize Constitution (Constitution)*. Mr. Correa asks that I declare his constitutional right has been violated and that the extradition proceedings are an abuse of process.

[2] The Defendants state that the responsibility for any delay rests solely with Mr. Correa. He was charged and was scheduled for trial within 5 months, but he fled to Belize while out on bail. As a fugitive, he is not entitled to invoke the constitutional protection in subsection 6(2) and rely on delay to avoid extradition. The Defendants caution the Court about the incentive that would be created if Mr. Correa is permitted to avoid standing trial after deliberately failing to appear for trial and fleeing the jurisdiction where he was charged. They further argue that to proceed with the extradition is not an abuse of process because Mr. Correa's whereabouts were not known until 2017. Mr. Correa has not presented any evidence that, but for the delay, his ability to receive a fair trial is at risk.

[3] I find that the extradition proceedings can proceed before the Chief Magistrate. Although an inordinate time has passed between the offence and the extradition request, Mr. Correa cannot rely on much of that time to argue that his constitutional right to a trial in a reasonable time has been violated. He has also not proven that the delay has made a fair trial impossible. Similarly, I find that the extradition request is not an abuse of process.

Issues

[4] The two questions stated for the Court are:

- 1. Are the extradition proceedings in violation of the Claimant's fundamental right protected by subsection 6(2) of the *Constitution*?**
- 2. Are the extradition proceedings an abuse of process?**

Analysis

Are the extradition proceedings in violation of the Claimant's fundamental right protected by subsection 6(2) of the Constitution?

[5] No. The jurisprudence is clear. As a fugitive, Mr. Correa's ability to rely on delay as a ground for preventing his extradition are severely limited. While I cannot allow the extradition to proceed if he will not receive a fair trial in the United States because that would violate subsection 6(2) of the *Constitution*, this Court will only find that delay will prevent a fair trial if a fair trial is an impossibility.¹ Mr. Correa has not convinced me that any impacts from the delay cannot be adequately addressed during his trial.

[6] A summary of the timeline of Mr. Correa's case gives context to the arguments raised by the parties. On 23 March 1998, Mr. Correa was involved in a motor vehicle accident. The vehicle he was driving struck an ambulance in Keene, Texas. The patient being transported in the ambulance and the passenger in Mr. Correa's vehicle died. Three other persons in the ambulance were injured. The Police took Mr. Correa into custody after he allegedly showed signs of intoxication. He was subsequently administered a breath test that allegedly confirmed that he had more alcohol in his system than permitted by State law. Mr. Correa remained in custody until 3 April 1998 when a grand jury indicted him. He was released on bond to return to court for his trial on 10 August 1998. Mr. Correa failed to appear for his trial.

[7] In September 2018, the United States made the request for extradition through the appropriate diplomatic means. As required by section 7 of the *Extradition Act*,² a letter was sent to the Minister of Foreign Affairs from the Ambassador of Belize in Washington. The letter certified that the extradition papers were duly authorized and made the formal request for extradition. The Minister of

¹ *Gomes v. Trinidad and Tobago* [2009] UKHL 21 at para 33 [*Gomes*].

² Cap. 112, the Substantive Laws of Belize, Rev. Ed. 2020.

Foreign Affairs signed the consequential order for Mr. Correa's extradition on 25 January 2022. Chief Magistrate Sharon Fraser issued the warrant for Mr. Correa's arrest on 1 February 2022 and Mr. Correa was arrested shortly thereafter and committed to the Belize Central Prison where he remains in custody. After the matter was adjourned before the Chief Magistrate a few times at Mr. Correa's request, the fixed date claim to hear the present case stated was filed in November 2022.

[8] Mr. Correa claims that both the delay between his failure to appear at trial and the initiation of the extradition proceedings by the United States (US Delay) and Belize's process to consider and implement the extradition (Belize Delay) are unreasonable and violate his constitutional right to a fair trial in a reasonable time.

[9] Mr. Correa's extradition will be unlawful if it will violate his constitutional rights. In *Smith v. AG*,³ I outlined that the Caribbean Court of Justice (CCJ) has held that "the mere lapse of an inordinate time will raise a presumption, rebuttable by the state that there has been undue delay."⁴ Normally, however, Mr. Correa would have the burden to show the Court that there has been an unreasonable delay in his extradition. If he meets that burden, the onus shifts to the Defendants to explain the reasons for and justify the delay. To decide if a violation of subsection 6(2) of the *Constitution* will occur, I "must weigh the competing interests of the public and those of the accused and apply principles of proportionality."⁵ The reasons for the delay, the complexity of the case, the conduct of the accused and State, and the stage of the proceedings are all relevant factors for the Court to consider.⁶

[10] I find that the combined time of the US Delay and the Belize Delay (approximately 24 years) is inordinate, but the Defendants have proven that the delay is not undue in the circumstances. With respect to the US Delay, Mr. Correa

³ HC Claim no. 368 of 2022 [*Smith*].

⁴ *Attorney General v Gibson* [2010] CCJ 3 (AJ) at para 58 [*Gibson*].

⁵ *Gibson* at para 60.

⁶ *Gibson* at paras 58 and 61.

deliberately fled the jurisdiction of the United States to avoid standing trial on serious charges. Even without clear jurisprudence that a fugitive cannot rely on delay of his own making, the delay is not undue when I balance the factors the Court must consider. Mr. Correa fled on the eve of trial after a grand jury reviewed the evidence and decided there was enough evidence to indict him. Mr. Correa's status as a fugitive who absconded on bond distinguishes his case from the cases he cited as comparable.⁷ Allowing Mr. Correa to avoid trial on these serious charges would create an incentive for people to flee and would not be proportionate and in the public interest.

[11] With respect to the Belize Delay, the Defendants explained that the process was initially stalled pending the outcome of a constitutional challenge of the extradition process in *Bennett v. Government of the United States of America*.⁸ That decision was released on 25 July 2021 and the Minister of Foreign Affairs signed the consequential order in Mr. Correa's case 6 months later. Mr. Correa's arrest followed less than a month after the order was signed. He was not in custody or aware that the United States requested his extradition. I find nothing unreasonable in the decision to wait until the Supreme Court, as it was then called, confirmed the legality of the extradition process. If the court held that the existing process was unlawful, the validity of Mr. Correa's extradition would be challenged.

[12] Likewise, the Minister taking 6 months to issue the extradition order is not unreasonable. Section 9 of the *Extradition Act* incorporates the *Extradition Agreement between Government of Belize and Government of the United States of America*. The fact that Article 6(1) of the *Agreement* specifies that the request must be submitted through "diplomatic channels" signifies that the decision to extradite may have a political dimension and engages the executive branch of government. Six

⁷*Bruce v. AG* Civ. App. No. 31 of 2018; *Bennett v. Government of the United States of America* SC Claim no. 852 of 2019 [*Bennett*]. Mr. Correa referenced a case involving a Mr. Khaled El Turk, but the decision in that case was not uploaded for the court to review.

⁸ *Bennett*.

months is not an unreasonable time for the Minister, who has other pressing issues, to consider the request.

[13] My conclusion that the delay is not undue in the circumstances reflects that when reviewing delay, I must also consider the trial and appellate process should Mr. Correa's case end in an appeal.⁹ The only evidence before me is that the American justice system was set to try Mr. Correa within months of his arrest. I have no reason to find that Mr. Correa's case will not expeditiously move to trial. Allowing the extradition is proportionate given the seriousness of the offence and Mr. Correa's conduct in causing the delay.

[14] Mr. Correa has also not convinced me that the delay in his case will prevent him from having a fair trial. His submissions on the impact of the delay are speculative at best. He speaks of having no possibility to source witnesses to testify on his behalf but did not provide evidence of unsuccessful efforts to locate witnesses. I cannot accept, on face value, that no witnesses can be found. A car crash involving an ambulance and the death of two persons in a small town is likely a memorable event.

[15] That the delay will impact the recollection of affiants who did not provide contemporaneous reports or statements is likewise speculative at this point and ought to be addressed at trial. In *AG v. Fuller*,¹⁰ the Privy Council confirmed that unless it was "plain that a fair trial will not be possible," Mr. Correa must seek a remedy for the impact of any delay from the Texas court that will try him.¹¹

Are the extradition proceedings an abuse of process?

⁹ *Bridgelall v. Hariprashad* [2017] CCJ 8 (AJ).

¹⁰ [2011] UKPC 23 [*Fuller*].

¹¹ *Fuller* at para 75.

[16] No. I do not find that the delay in pursuing extradition is an abuse of process that would justify imposing a stay of the extradition proceedings. Mr. Correa has not proven that the delay in pursuing his extradition is unjust or oppressive in the circumstances. There is no evidence to suggest that the Defendants led Mr. Correa to believe that he would not have to stand trial. I also do not find that the United States knew where Mr. Correa was but chose not to pursue his extradition. While I appreciate that his current detention and extradition is a hardship for his family, this hardship is not an exceptional circumstance that would provide grounds for staying the extradition.

[17] An abuse of process can justify a permanent stay of proceedings in exceptional circumstances. In extradition proceedings, an abuse of process can arise when the requesting state is using the court: (1) in an improper manner, such as by relying on false evidence; (2) for an improper purpose or motive, such as for a political motive; or (3) in a way that is an affront to the Rule of Law.¹² Respect for the Rule of Law is called into question where the court finds that proceeding after an undue delay is oppressive or unjust. Mr. Correa calls on this Court to find the delay in his case was oppressive or unjust.

[18] It is the delay in pursuing, not commencing the extradition proceedings that is relevant to assessing whether there is an abuse of process.¹³ As outlined in *Gomes v. Trinidad and Tobago*, for the Court to find an abuse of process, Mr. Correa must demonstrate, in addition to the delay, that law enforcement intentionally stopped pursuing the charges and communicated that decision to him:¹⁴

This is an area of the law where a substantial measure of clarity and certainty is required. If an accused...deliberately flees the jurisdiction in which he has been bailed to appear, it simply does not lie in his mouth to suggest that the requesting state should share responsibility for the ensuing delay in bringing him to justice because of some subsequent supposed fault

¹² *Fuller* at para 5.

¹³ *Fuller* at para 76.

¹⁴ *Gomes* at para 26.

on their part, whether this be, as in his case, losing the file, or dilatoriness, or, as will often be the case, mere inaction through pressure of work and limited resources.... Only a deliberate decision by the requesting state communicated to the accused not to pursue the case against him, or some other circumstance which would similarly justify a sense of security on his part notwithstanding his own flight from justice, could allow him properly to assert that the effects of further delay were not 'of his own choice and making'.

A finding that more effort or resources likely would have resulted in finding his location is not sufficient.

[19] Mr. Correa asserts that he has been living openly in Belize since 1999. In 2009, he incorporated a business and has been paying taxes since 2014 using his real name. His wife and children have also made several visa applications for the United States where his real name was listed on the applications. The implication of these assertions is that with minimal effort, he could have been located and extradition pursued. Mr. Correa argues that he has now established a family and professional life in Belize which would now be unjust and oppressive to force him to leave.

[20] Mr. Correa has failed to prove that the United States decided to stop pursuing him or gave him any reason to believe that was the case. The evidence establishes the contrary. Deputy US Marshal, Mr. William Hicks, testified that in 2000, he investigated a lead they received about Mr. Correa's possible presence in Orange Walk. The United States explained that limited human and financial resources for law enforcement within the Keene, Texas Police and competing law enforcement priorities prevented ongoing, active investigation into Mr. Correa's whereabouts before 2017. Mr. Correa was ultimately located in 2017 when resources were dedicated to resolving 'cold cases'.

[21] Furthermore, I do not accept that Mr. Correa was living openly in Belize using his real name. Mr. Hicks found Mr. Correa using his mother's maiden name on his Facebook profile. Mr. Correa has not provided an explanation for why he was not using his real name. The Facebook profile demonstrates that he chose to selectively

conceal his identity. It is not lost on this Court that Facebook is a forum where Texas law enforcement could have easily searched for him had he been using his real name. It is beyond belief that Mr. Correa would not have been aware of that fact when he established his Facebook Profile

[22] I also cannot ignore the fact that at the time that Mr. Correa fled, his immediate family, including his parents and a child resided in Texas. While the police were aware that Mr. Correa had family in Belize, they did not know that he left the country and anticipated that if he did, he would reappear in Texas to reunite with his family. I cannot find fault with that belief in the circumstances.

[23] The present case can be distinguished from others where extradition was held to be an abuse of process because there was communication between law enforcement and the accused that indicated that the accused was no longer being pursued for their charges.¹⁵ Mr. Correa had no communication with law enforcement until his arrest in Belize and, therefore, no reason to believe that the United States had abandoned their pursuit of him for these charges.

[24] Finally, I have no reason to doubt the witnesses Mr. Correa presented that speak to his good character and that Mr. Correa's family is devastated by his arrest and extradition. I have found no legal basis, however, to take Mr. Correa's character or the impact of his extradition on his family's lives into my analysis of whether the Defendants' request is an abuse of process. Those factors may become relevant to sentencing if Mr. Correa is convicted, but it would be unjust and an affront to the Rule of Law if this Court were to rely on those factors to stay the extradition in these circumstances. It is also improper to identify the extradition as the cause of the hardship his family is now experiencing. Mr. Correa is solely responsible for how his conduct is now affecting his family.

¹⁵ See eg. *Pillar-Neumann v. Public Prosecutor's Office of Klagenfurt* [2017] EWHC 3371 (admin).

Disposition

[25] It is ordered that:

1. The extradition proceedings have not violated Mr. Correa's right to a trial in a reasonable time as guaranteed by subsection 6(2) of the *Constitution*.
2. The extradition proceedings are not an abuse of process.
3. The extradition proceedings are to continue before the Chief Magistrate.
4. Costs are to be paid by Mr. Correa to the Defendants as agreed or assessed.

August 25, 2023



Patricia Farnese
Justice of the High Court