BARBADOS

[Unreported]

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL JURISDICTION

NO. 1025 OF 2004

NO. 1028 OF 2004

NO. 1029 OF 2004

IN THE MATTER OF FREDERICK CHRISTOPHER HAWKESWORTH,JOHN SCANTLEBURY AND SEAN GASKIN AND IN THE MATTER OF AN APPLICATION FOR A WRITOF HABEAS CORPUS AD SUBJICIENDUM PURSUANT TO THE PROVISIONS OF ORDER 54 RULESOF THE SUPREME COURT OF BARBADOS

BETWEEN:

FREDERICK CHRISTOPHER HAWKESWORTH

AND

JOHN SCANTLEBURY

AND
SEAN GASKIN

(Applicants)

ATTORNEY GENERAL

(First Respondent)

AND
COMMISSIONER OF POLICE

(Second Respondent)

Before The Honourable Mr. Justice Christopher Blackman, GCM

In Chambers.

2004: July 26 and 27th

Mr. Ralph Thorne with Miss Maria Phillips for the Applicants Hawkesworth and Gaskin;

Mr. Hal Gollop for the Applicant Scantlebury;

Mr. Leslie Haynes Q.C with Mr.Charles Leacock Q.C, Director of Public Prosecutions for the First and Second Respondents

DECISION IN SUMMARY FORM

[1] The Applicants who have been arrested pursuant to warrants issued under the Extradition Act Cap.189 of the Laws of Barbados, for the purpose of being extradited to the United States of America for drug related offences, have contended that their respective detention is unlawful and unconstitutional.

[2] Inresponse, the Respondents contend that the detentions of the Applicants areauthorized by Section 10 of the Extradition Act and moreover,

even if therewere an illegality, which was not conceded, the Applicants were in lawfuldetention at the date of the return of the writs, as on that date they were incustody under valid remand orders. This position is substantiated in the Singapore case of Son Kaewsaand others v. The Superintendent of Prisons et al [1992] 1 SLR 276 whereMr. Justice Chan Sek Keongnoted at pages 281 and 282, and I quote:

"State counsel, on the other hand, contended that, in habeascorpus proceedings, past illegality was irrelevant and the only issue beforethe court was whether at the date of the return of the writ, the applicantswere in lawful custody. The court was not concerned with any prior illegal actunless it vitiated the present cause of detention. He referred to a passagefrom RJ Sharpe on The Law of Habeas Corpus (2nd Ed) at p 179 and the decisionof the Supreme Court of India in NarajanSingh v State of Punjab, 1952 AIR SC 106 which followed the decision ofthe Federal Court of India in BasantaChandra Bose v Emperor 1945 AIR FC 18 on this point. Boththe said decisions concerned preventive detention cases. State counselaccordingly contended that the applicants were in lawful detention at the dateof the return of the writs as on that date they were in custody under validremand orders.

I accepted the submission of state counsel. The principle is too wellestablished. In habeas corpus proceedings, the court is not concerned with pastillegality unless such illegality subsists and vitiates the present detention.In the Privy Council case of United States of America v Gaynor, [1905] AC 128 where the US government sought the extraditionof the respondents from Canada whose extradition law was the sameas that of the United Kingdom, the Lord Chancellor in deliveringthe judgment of the Court observed at p 134:

"Now the only question which the learned judge had to determinewas whether the accused were at the time of the issue of the writ in questionin lawful custody. If they were, he had no jurisdiction to release them, butwas bound to remand them to custody."

I also agreed with state counsel that each remand order was a freshremand order, and that as the remand orders subsisting at the return of thewrits were valid remand orders, the applicants were in lawful custody for thepurpose of these proceedings."

[3] Iadopt the foregoing statement of the law and accordingly hold that the detention of the Applicants are neither unlawful norunconstitutional. The applications for the issue of Writs of Habeas Corpus aretherefore dismissed.

[4] Notwithstanding the foregoing determination, I wish to put to rest any notionthat the constitutional safeguards inherent in the provisions ofsection 13(2) of the Constitution of Barbados are in any way "inlimbo" vis-a vissection 13(1)(i) of the Constitution of Barbados.Section 13(2) of the Barbados Constitution is equally applicable to extraditionproceedings as they are to other cases of arrest or detention in Barbados.

[5] It hasbeen conceded that in an Application for habeas corpus, bail may be granted.Recognition of this principle is found both inthe Extradition Act and in the text, Jones on Extradition (1995)at 7-025. Section 14(2) of the Act provides that

"The fugitive need not be detained in custody if he establishes tothe satisfaction of a magistrate that, having regard (in addition to any otherrelevant factors) to the length of time the fugitive has resided in Barbados,

(a) his detention isnot necessary to ensure his attendance whenever it is required for the purposesof this Act, and

(b) his detention is not necessary in thepublic interest or for the protection or safety of the public, having regard toall the circumstances, including any substantial likelihood that he might ifreleased from custody commit a criminal offence or an interference with theadministration of justice."

[6] TheApplicants have all deposed to their respective fitness to be admitted to bail.The Respondents have resisted their applications with reliance being placed onthe affidavit of Assistant Superintendent of Police, Grafton Phillips, Commander of the Drug Squad of the Royal Barbados PoliceForce, in which he contends (inter alia) that ifreleased from custody, the Applicants would be a flight risk and might alsointerfere with the administration of justice.

[7] Thoughappreciative of the sensitivities inherent in drug investigations, I am of theview that the information provided by ASP Phillips is insufficient to satisfythe concerns noted at paragraph 6 above.

[8] TheApplicant, Hawkesworth, applied for bail to the HighCourt on the 10th June, 2004 and was denied. Mr. Haynes hasreferred to the unreported Barbadian case of Crawford v. The Queen[1984] which held that where bail is refused by a Judge of the High Court, itmay not be granted by another Judge of the Court unless there has been a changein the circumstances of the Applicant or new considerations have arisen. Thedecision in Crawford has now been given statutory recognition inRule 4 of the Bail Rules 2000, S.I. 23 of 2001.

[9] I havebeen informed by Counsel for the Respondents that the preliminary mattersrelative to the extradition proceedings have now been completed and the hearingbefore the learned Chief Magistrate is due to commence on August 4th,2004. In light of the provision of Rule 4 of the Bail Rules and the fact thatthere has been no change in circumstances of the Applicant, I am constrained todeny Mr. Hawkesworth's application for bail atthis time.

[10] Withrespect to the Applicants, Gaskin and Scantlebury, Iadmit each of them to bail in the sum of $250,000 with two sureties in a likesum, jointly and severally. I further order that they report to the policestation nearest to where they reside, every Monday, Wednesday and Friday nolater than 10 a.m; in addition, I order that they beconfined to their respective homes between the hours of 10 p.mand 7.00 a.m. Bail to continue until the determination of the extraditionproceedings before the learned Chief Magistrate

Judge of the High Court