

IN THE WESTMINSTER MAGISTRATES' COURT

**AN APPLICATION BY JULIAN ASSANGE
TO CANCEL AN ARREST WARRANT**

**RULING OF THE SENIOR DISTRICT JUDGE (THE CHIEF MAGISTRATE)
EMMA ARBUTHNOT,
6TH FEBRUARY 2018**

Introduction

1. This is an application made by Mark Summers QC leading Ms Helen Law on behalf of Julian Assange that I withdraw an arrest warrant issued at this court when Mr Assange did not surrender for extradition to Sweden. Mr Assange is not present at court today. He is aware of the application and has chosen to stay in the Ecuadorian Embassy where he has been since June 2012.
2. I have been assisted by written and oral submissions from Mr Summers and by written and oral observations made by Mr Aarons Watkins on behalf of the Crown Prosecution Service. The oral submissions were made on Friday 26th January 2018 at Westminster Magistrates' Court and I gave judgment on Tuesday 6th February 2018.

Background

3. The extradition of Mr Assange to Sweden was ordered by this court on 24th February 2011. Various appeals were then dismissed and on 28th June 2012 a notice to surrender to Belgravia Police Station was served on Mr Assange who by then was resident in the Ecuadorian embassy. He did not attend the police station and a warrant for his arrest was subsequently issued by this court.
4. On 26th May 2017 following discontinuance of the underlying Swedish proceedings and the cancellation of the arrest warrant issued in Sweden, the European Arrest Warrant was withdrawn before Westminster Magistrates' Court.

Issue

5. The sole issue for me to consider at this stage is whether the warrant issued under section 7 of the Bail Act 1976 ("the Act") can remain in force when the extradition proceedings have terminated and no proceedings under section 6 of the Act have been initiated.

Submissions

6. Mr Summers for Mr Assange contends that the warrant is not issued with a view to bringing him before the court to face a charge of failing to surrender under section 6

of the Bail Act 1976. He says it is a warrant issued under section 7 of the Act to bring the defendant to court to decide whether he should be remanded in custody or on bail in the extradition proceedings, following his failure to surrender. Mr Summers argues that the arrest warrant has no independent life outside the extradition proceedings which have now concluded. Section 7(1) and (2) have the aim of bringing a defendant before the court that is currently seized of the case so it is clear that the court has power to reconsider bail upon production. Section 7(3) and (4) are about bringing a defendant before the court for an anticipated breach. Mr Summers contends that those subsections feed into section 7(5). This subsection concerns the impact of breaching bail conditions or absconding on the bail/custody decision in the predicate proceedings, here the extradition request.

7. In argument, Mr Summers has relied on a number of authorities. He contends that no section 6 Bail Act proceedings have been initiated and the section 7 warrant in this case is now obsolete as there are no underlying proceedings.
8. The authorities he relies on are to be found in the bundle. *Schiavo v Anderton* [1987] QB 20 at tab 21 concerns a defendant brought before the magistrates' court on a charge of absconding and the question of whether the magistrates' court has a jurisdiction of its own motion in relation to section 6 of the Bail Act 1976. The appellant said the magistrates could have proceeded only with an information laid within six months but the High Court held there was no such requirement. *Schiavo* did not assist Mr Summers in his arguments.
9. I was referred to *R (DPP) v. Havering Magistrates' Court* [2001] 1 WLR 805 (tab 17). This case concerned how breach of bail conditions are proved. The question was whether Article 5 and 6 of the European Convention of Human Rights applied to the procedure adopted by courts when dealing with such cases (see paragraph 12 page 810). The case concerned an arrest under section 7(3) of the Act and considered whether oral evidence was needed under section 7(5) to prove the breach. I was not persuaded that this case supports the point argued by Mr Summers.
10. *R v (Hart) v Bow Street Magistrates' Court* [2002] 1WLR 1242 is the next relied upon by Mr Summers (tab 19). This case was about the forfeiture of a recognisance after a requested person had left this country and had returned to the requesting country. *Polanski v Conde Naste Publications Ltd* [2005] 1WLR 637 (tab 20) is about whether Mr Polanski was able to bring civil proceedings and give evidence by video link from France when he was a fugitive from justice in America. *Regina v Ashley* [2003] EWCA Crim 2571 (tab 16) concerns bail conditions and whether a defendant could be imprisoned for contempt for breaching the conditions when he attended his trial. The answer given by the court was no. I did not find the authorities helped in the light of the facts in this case.
11. The last case relied on by Mr Summers was *R v Evans* [2012] 1 WLR 1192 at tab 18. This is a case about whether surrender to an usher counts as a surrender to the custody of the court after a defendant met his advocate who told the usher that he was there.

He then left the court. He was given 14 days consecutive to another sentence for absconding under section 6 of the Bail Act 1976. The court in this case examined the application of section 7(2) of the Bail Act in the particular circumstances of the case. Mr Assange's case does not concern a surrender to the usher.

12. Mr Summers QC and Mr Watkins have sent further written submissions in which they consider the cases of *Clarke* [2000] 1 Cr. App. R 173 and *Cockburn-Smith* [2009] 2 Cr. App. R (S) 20. Both cases concern sentences imposed for failing to surrender when the predicate criminal proceedings have dropped away. In each case a warrant of arrest for failing to appear was issued before the cases dropped away; when sentenced neither defendant faced other proceedings. Neither case supports the arguments put forward by Mr Assange.

13. Mr Watkins observes that on an ordinary reading of the Bail Act the warrant under section 7 of the Bail Act is valid. Section 7(1) makes a person liable to arrest and section 6 sets out the offence of absconding by a person released on bail. Mr Watkins points out the authorities relied on by Mr Summers refer to different provisions and do not assist. It is irrelevant that the proceedings have not yet been initiated under section 6. Mr Watkins says that the failing to surrender is a stand-alone offence whilst the warrant of arrest is the means by which a person can be brought before the court, for the court to decide whether to raise a section 6 prosecution or not.

Decision

14. I set out below the relevant parts of sections 6 and 7 of the Bail Act 1976, including the subsections that are mentioned by Mr Summers in argument:

Section 6 Offence of absconding by person released on bail.

(1) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.

(2)...

(3) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.

Section 7 Liability to arrest for absconding or breaking conditions of bail.

(1) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to surrender to custody at the time appointed for him to do so the court may issue a warrant for his arrest.

(2) If a person who has been released on bail in criminal proceedings absents himself from the court at any time after he has surrendered into the custody of the court and before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for his arrest; but no warrant shall be issued under this subsection where that person is absent in accordance with leave given to him by or on behalf of the court.

(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court may be arrested without warrant by a constable—

(a) if the constable has reasonable grounds for believing that that person is not likely to surrender to custody;

(b) ...

(c)....

(4) a person arrested in pursuance of subsection (3) above—

(a) shall, except where he was arrested within 24 hours of the time appointed for him to surrender to custody, be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace for the petty sessions area in which he was arrested; and

(b) in the said excepted case shall be brought before the court at which he was to have surrendered to custody.

(5) A justice of the peace before whom a person is brought under subsection (4) above may, subject to subsection (6) below, if of the opinion that that person—

(a) is not likely to surrender to custody, or

(b) has broken or is likely to break any condition of his bail, remand him in custody or commit him to custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions, but if not of that opinion shall grant him bail subject to the same conditions (if any) as were originally imposed.

15. The offence of absconding by a person released on bail is set out in section 6 of the Bail Act. If a person who is on bail fails without reasonable cause to surrender he shall be guilty of an offence. On a straightforward reading of the section, which makes no mention of any underlying proceedings, 1. Mr Assange has been released on bail, 2. He has failed to surrender and 3. If he has no reasonable cause he will be guilty of an offence.

16. Section 6(3) ensures that it is for the accused to prove he has reasonable cause for his failure to surrender. Authorities make it clear that the section 6 procedure can be raised by the court of its own volition or it can be instigated by the Crown.

17. Mr Assange failed to surrender to custody and the court decided to issue a warrant for his arrest. On plain reading, section 7(1) of the Bail Act sets out the liability to arrest for absconding. I find that section 7(1) allows the court to issue a warrant for arrest for a person who has failed to surrender to custody.

18. Subsection 7(2) is not of relevance to this case and neither is subsection 7(3).

19. In criminal proceedings as opposed to extradition, an absconder will be arrested under section 7 of the Act and brought to court where the court then decides whether an offence under section 6 should be laid. In extradition proceedings the power is contained in section 7(1A) and (1B) of the Bail Act. Once at court, the defendant would be given the opportunity to explain his failure to surrender and that is when Mr

Assange would be able to place before the court his reasonable cause for failing to do so.

20. I do not accept the argument that section 7(1) is solely for the purpose of reconsidering bail conditions in cases where there are underlying proceedings nor do I accept that the authorities relied on by Mr Summers support his argument. It is not uncommon for Bail Act offences to be pursued when the substantive proceedings are no longer in existence. Section 7 is the method by which an absconder is brought to court for the court to decide whether to proceed under section 6 of the Bail Act whether in criminal or extradition proceedings.
21. Many authorities underline the importance of a defendant attending court when bailed to do so and they describe the way that the administration of justice can be undermined by defendants who fail to attend.
22. Having considered the arguments set out above (and by agreement at this stage not having considered the public interest arguments raised by Mr Summers) I am not persuaded that the warrant should be withdrawn.

Senior District Judge (Chief Magistrate) Emma Arbuthnot

6th February 2018