



JUDICIARY OF
ENGLAND AND WALES

Government of the Republic of South Africa v Shrien Dewani

High Court (Divisional Court)

30 March 2012

SUMMARY TO ASSIST THE MEDIA

The High Court (Sir John Thomas and Mr Justice Ouseley) has today temporarily halted Shrien Dewani's extradition to South Africa on mental health grounds.

Background

Mr Dewani was arrested on 7 December 2010 under a provisional arrest warrant under s.73 of the Extradition Act 2003 (the 2003 Act). On 10 January 2011, the Government of South Africa sought his extradition of the appellant to South Africa under Part II of the Extradition Act on a charge of murder, kidnapping, robbery with aggravated circumstances and obstructing the administration of justice arising out of the murder of his wife. That request was certified by the Home Secretary on 12 January 2011.

The extradition hearing took place before the Senior District Judge in May and July 2011. Under the 2003 Act the court was not required to consider whether there was a case to answer. On 10 August 2011 the Senior District Judge dismissed all of Mr Dewani's objections to his extradition and sent the case to the Home Secretary. On 28 September 2011 the Home Secretary ordered his extradition. (para 10)

Issues in the appeal

1. Whether the appellant's mental condition and the attendant risk of suicide were such that he should not be extradited and,
2. If so, whether the prison conditions which he would experience in South Africa were such that it would be a breach of Articles 2 and 3 the Convention to extradite him.

Prison conditions

These are considered in detail in paragraphs 12 – 35.

The appellant argued that his rights under Articles 2 and 3 of the European Convention on Human Rights would be violated if he were extradited. Reliance was placed not only on the effect of his extradition on his mental illness and the lack of facilities for its treatment, but also on the high risk of HIV/AIDS infection and attack, particularly sexual violence, from other inmates. (para 12)

Sir John Thomas, President of the Queen’s Bench Division, giving judgment on behalf of the Court concluded:

“In the light of the undertakings [given by the National Director for Correctional Services] which we also accept will be honoured, we are sure on the facts that there would be no violation of Articles 2 and 3 by reason of the risk of infection by HIV/AIDS or of attack by fellow prisoners.” (para 35)

The appellant’s physical and mental health

This is considered in detail in paragraphs 36 – 86.

The appellant’s depression and PTSD worsened after his arrest on 7 December 2010. On 20 February 2011, he took an overdose. He was admitted to the Bristol Royal Infirmary; he told the staff in the A&E department that he did not want to live, but denied to others that this was a suicide attempt. The Senior District Judge found that it was a deliberate overdose to avoid engaging with the extradition proceedings.

He was discharged, as a condition of his bail, to the Priory Hospital as an in-patient. On 11 April 2011, there was a further deterioration in his condition following the onset of suspected serotonin syndrome or neuroleptic malignant syndrome. He developed psychotic symptoms and was transferred to a low secure psychiatric unit at Kewstoke. On 23 April 2011 he was admitted to the Fromeside Clinic, Bristol under s.3 of the Mental Health Act 1983; his bail conditions were varied so that he resided at the medium secure unit. (paras 36 - 37)

It was contended on behalf of the appellant before the Senior District Judge that he should order the appellant’s discharge under s.91(3)(a) or at least adjourn the hearing under s.91(3)(b) of the 2003 Act:

- (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
- (2) The condition is that the physical or mental condition of the person is such that it would be unjust or oppressive to extradite him.
- (3) The judge must—
 - (a) order the person’s discharge, or
 - (b) adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied.

It was also contended that extradition of the appellant given his mental condition would be a breach of his Convention rights by reason of the high risk of suicide and the wholly inadequate facilities in South Africa for treating him and minimising the risk of suicide. (paras 38 – 39)

The Senior District Judge accepted that the appellant suffered from two severe and mental illnesses. However, most people with his condition improved and there was every reason to believe that he would receive good medical care in South Africa, even though the Government accepted that he would be better in the UK. Although there was an attractive view (advanced by Professor Kopelman) that the appellant should continue to receive his current treatment until he was better and fit to plead, the test in s.91 was not met. Although there was hardship, it fell short of oppression. There was a strong public interest in honouring extradition treaties. The case coming to trial and the facts being determined (not least in the interests of the family of the victim) outweighed the hardship to the appellant. (para 56)

On appeal the High Court agreed with the Senior District Judge not to discharge Mr Dewani under s.91(3)(a) as psychiatric evidence pointed to a recovery within a reasonable time. (para 75)

The High Court went on to consider whether the extradition hearing should have been adjourned until it appeared that the appellant's mental condition was such that it would no longer be unjust or oppressive to extradite him.

Sir John Thomas said:

"In the present case, given the findings which we have upheld that extraditing him to South Africa would not violate Articles 2 and 3 of the Convention on the basis of the prison conditions in South Africa, his mental illness apart, it is plainly in the interests of justice that the appellant be tried in South Africa as soon as he is fit to be tried." (para 78)

After considering the facts of Mr Dewani's case, **Sir John Thomas said:**

"Thus balancing his unfitness to plead, the risk of a deterioration in the appellant's condition, the increased prospects of a speedier recovery if he remains here and, to a much lesser degree, the risk of suicide and the lack of clear certainty as to what would happen to the appellant if returned in his present condition, we consider that on the evidence before the Senior District Judge it would be unjust and oppressive to order his extradition. Despite the highest respect in which we hold decisions of the Senior District Judge, we consider that he erred and should have exercised his powers under s.91(3)(b) and ordered that the extradition hearing be adjourned." (para 83)

As a result the High Court has remitted the case back to Westminster Magistrates' Court for a further hearing.

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This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.