

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,
Breams
Buildings
London

Wednesday, 12th November 2014

BEFORE:

THE HONOURABLE MR JUSTICE IRWIN

BETWEEN:

W

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

MR A VAUGHAN (instructed by Public Law Project) appeared on behalf of the appellant.

MS S GRAY (instructed by the Treasury Solicitor) appeared on behalf of the Secretary of State.

Transcribed by Harry Counsell
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RULING

MR JUSTICE IRWIN:

1. The application was put very clearly by Mr. Vaughan. The key points that he makes are as follows. Firstly, the starting point should be that the breaches of bail were not related to the national security risk and that is correct. Secondly, that the appellant has genuine intellectual impairment, that is also correct. Thirdly, there is a long history of psychotic episodes and mental health difficulties. That is accepted by all. Fourthly, the Commission has previously identified the risk of absconsion as being connected with the more florid or profound cyclical episodes in the appellant's mental health condition and that is also correct.
2. Mr. Vaughan has taken the Commission to the medical notes and I accept that the medical notes released, as Mr. Gray has said, finish in mid-September, so they are some eight weeks old. That is not a criticism of the solicitors. It can be difficult to extract the material. Mr. Vaughan says, with reference to a number of those notes, that there is, as he says, an appreciable improvement in the appellant's mental health over the relevant period from May to September, supported by the appellant's own account in his statement, for what that is worth, and in an email from Miss Howells, who has been able to give some sense of an improving position in the appellant's state of mind.
3. Clearly, there are still the psychotic symptoms - notable in this case are the voices which W believes are djinns - but the thrust of the application is that there has now been quite a

long period in custody, there is no end in sight to the litigation and there is a degree of improvement in his mental health state and, therefore, to be expected an improvement in compliance with bail if granted.

4. Mr. Gray, in response, gives a rather careful analysis of the available notes and says that there is not a clear picture of improvement and it is much more mixed than is presented; without criticising the solicitors, the notes are not up to date, there are no professional reports summarising the mental health at the moment and there is no really significant change. It seems to me that there is force in those points advanced.

5. The best way of viewing the developments so far, it seems to me, is that there has been a degree of stability which may well be related to the fact that the appellant is in custody and has close supervision on the part of the health workers, the psychological social workers and nurses in the prison.

6. There are two or three concerns that are relevant in the case: accommodation, money and the stability of the group around the appellant, when he is in the community. It seems to me that this is not a good moment for release into custody, when the money issue has not been sorted, when the progress is at least moderate and cannot really be said to be more than that, when the judgment of the Court of Appeal is not yet here, and, certainly, the future course of the litigation one way or the other cannot be predicted with any precision.

7. What I invite is an application reserved to me on a day during the early part of the next term. If then the appellant and those who advise him consider that a renewed application for bail is appropriate, I will entertain that application. By then I would expect a number of things to be resolved: firstly, the outcome of the Court of Appeal hearing will be known. If that is adverse to the appellant, then future events will take one course. There will need to be a fresh decision as to his position. That fresh decision will have to take into account the national security case against him afresh.
8. Secondly, if the outcome is favourable to the appellant, then some other considerations may well be brought to bear on the bail application. Even though in either event there is likely to be long future litigation, that will be in a different context.
9. Thirdly, by then sensible arrangements must be capable of being made so that the considerable sum of money which was on the appellant's person can be properly provided for. I am not going to specify what that might be. It is clear to all those who listened today.
10. Fourthly, we are clear - and I am grateful for this indication - that the accommodation will be available to him in January.

11. Fifthly, the group of supporters who have so selflessly worked for him will be reassembling in mid-January and the most important of them will be back in the country.
12. It seems to me that, in that context, we should also have an up-to-date report from a suitable expert - that is not an indication that there should be three different experts, one would suffice - so that the Commission has a coherent up-to-date view, based on sight of the material from the prison, as to how the appellant is doing.
13. If that application is made, I will have to consider the competing considerations about the GPS tag. For the record, Mr. Vaughan's concern is that, because of the need to charge the tag, "it may set up this appellant to fail": I think that was the phrase he used. Maybe the appellant will have to think carefully about that. As I understand it, it is not such a big problem, because the equipment is relatively flexible. Although there needs to be an hour and a half charging a day, firstly, that does not have to be done in one session; secondly, it is a mobile device which means that there is a way of keeping the thing going. That we can consider on such an application in future.
14. The reason for withholding bail today is the continuing instability, as it appears to me today, and the lack of the arrangements which might provide more security mean that there is still a significant degree of abscond risk. Again, that is not because it is carefully planned and calculated, but because there is simply instability.

Mr. Vaughan, I have no power to deal with the following question, but there is something that I would like to express a view about which may help. It seems to me extremely regrettable that the phone number to the appellant's mother has not been approved for calls from prison, and I cannot understand why after this length of time that approval has not been given. Do you understand what the problem has been?

MR. VAUGHAN: My understanding is that the prison has taken time to set in train the process of approving the number and, even when it had done so, it had not been done in the presence of an Arabic interpreter and that just resulted in the prison officer talking to somebody who did not understand him. I am not sure what has happened since then. What I have just described happened four weeks ago.

MR JUSTICE IRWIN: Four weeks ago is mid-October. He has been in prison since May. Can I say publicly for communication to those responsible for making that enquiry that it seems to me highly regrettable that the prison has not been able to clear phone calls for this man - with his significant mental health problems and who is quite isolated - so that he can speak to his elderly mother. No one suggests that she is a national security risk or that communications between them will amount to that. I have heard no suggestion of that and have read it nowhere in the papers.

MR. GRAY: Can I just say that the Home Office will pass these comments on to the prison service as well.

MR. JUSTICE IRWIN: I am very grateful, because it seems to me, in human terms as well as for purposes of good administration, that communication with his mother would be highly desirable and a humane thing to do. I would be grateful if both sides can pass that on.

MR. VAUGHAN: I am grateful, sir.
