

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,
Breems Buildings
London

Tuesday, 17 June 2014

BEFORE:

THE HONORABLE MR JUSTICE IRWIN

BETWEEN:

W

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

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

MR 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. In giving this ruling, I begin by noting that it has been agreed that the matter should proceed by way of an application for bail today, even though the appellant is not able to be present even by video link. That has arisen because of practical arrangements with Belmarsh. As I said in the course of the submissions, it should be noted that, if there are such practical difficulties, the Commission would always prefer, if at all possible, to have the appellant able to hear and, indeed, to speak, even if that is by means of a telephone link, which is a good deal easier to arrange. We will always do our best to facilitate either a video link or a telephone link. It is perfectly proper to proceed. In fact, counsel may recall that it was normally the practice, and remains often the practice, that bail applications in the High Court are done in the absence of the client. In the Commission it is preferable to have the individual able to follow what is happening at the time.
2. The background to this case is well known to all. Here is a man who has repeatedly breached bail and has repeatedly done so as a shoplifter, sometimes giving every indication of being a professional, skilled and rather well-organised shoplifter. In the hearing in May 2013, in the course of the rulings, then, I said this:

“It seems clear that the breaches of bail that led to all of this involve three elements that are important: leaving the boundary of his permitted travel, breach of curfew hours, at least on one occasion and, of course, committing criminal offences, in terms of shoplifting with quite significant values. These breaches make absolutely no sense. Ms Stone, for the Secretary of State, describes them as 'wilful'. I am prepared to accept that term. They are not automatic, they are not compulsive, but

they are certainly not rational. What can be said with certainty is that these shoplifting escapades, which have drawn attention to W and caused trouble for him, are wholly unconnected with any issue of national security and I observe - it is just an observation not a conclusion - that it seems very unlikely behaviour for someone who represents a continuing threat to national security. It is very unlikely to be connected with any sympathy for extremism and absolutely not a means of meeting anybody else.”

It seems to me that all of that was accurate then and is accurate now.

3. The breach in this case involved professional style shoplifting. The appellant was caught with cutters and with tin foil, intended to defeat the shop's mechanisms for detecting items being removed from the shop. This is the mark of someone who is a skilled and experienced thief. The sequence was arrest for shoplifting, taken to court, released on bail, detained for detention purposes for the purposes of the SIAC hearing before Judge Gill and then subsequently sentenced to 28 days' imprisonment. When detained, after his arrest, he was found to have an unexplained sum of £870 in cash. That is a great deal of money for someone who is living on this kind of State support with limited means, which is the arrangement here. No explanation has been provided for that. That was, of course, known to W when he was detained. It seems very likely that he did not tell his solicitors about it at all, and he certainly has provided no instructions on what it was. That is enough money to achieve a considerable distance of travel and speed of travel, if he chose to use it in that way.
4. Another side of the background to this case is that huge efforts have been made by those who support W, very big efforts by the Border Agency, particularly in the question of

accommodation, and a great deal of concern and effort by the Commission in crafting bail conditions to meet W's particular circumstances; all to no avail or to little avail.

5. What this tells us is that we are in a renewed period of instability. I have come to the conclusion that at the moment and, perhaps, for some time W is simply not in a position to think clearly, to follow the bail condition, and he represents a risk of absconding. As I observed before, the risk here is not a cool, calculated plan to abscond; it is that in this kind of unstable mood W may simply take into his head to go, particularly if he has also taken it into his head that he has formed or is forming a relationship with somebody with whom he would wish to share his future, which appears to be the case on his own account. He is not in full rational control of all his actions. He is in some measure of control, yet this instability threatens a real risk of absconion. No more care could be taken on his behalf than has been taken by those who seek to support him, including, perhaps, most notably, Ms Howells. I have read her fresh statement again with great care and, although many of those who have been helping him, retrospectively detected a degree of withdrawal from them, there is absolutely no sense in which they are to be criticised, retrospectively, for that. It is not their responsibility. They are not full sureties in any ordinary sense and I suspected, after reading that material rather carefully, that there was a degree of attempting to excuse or apologise for W and to take blame unto themselves from one or two of those statements. That is not accurate and not fair and I exonerate them of any such criticism.
6. I bear in mind two or three other factors. Firstly, this residence is very critical for any possibility of future bail and stability. I am very grateful for the assurance that it will be kept for the sort of period that is likely to elapse before circumstances might be thought to have changed, so that we do not lose the possibility of a return to residence there. I put it no higher than that. I welcome also the assurance that, if there is to be any change in that, there will be forewarning to W, his

representatives and the Commission.

7. The state of the litigation here is described perfectly fairly by Mr Vaughan, that there may very well be a considerable period before it is fully resolved. I bear that in mind. It does seem to me that, with an upcoming hearing in the Court of Appeal in late July, that that is likely to be followed by a judgment in October or, possibly, November of this year, but, certainly, a judgment from the Court of Appeal that at least has the capacity to bring about a different prospect for the litigation. By then, it may well be that some more stability has established itself once again in W's life.

8. The other thing that I bear in mind is an observation in the report of last Friday from the psychologist and counsellor at the Psychology Therapy Centre in Waltham Forest, which has been giving treatment to W. On page 3 of the report of Friday, 13 June, the authors say this:

“I wonder whether perhaps one part of him is seeking the containment provided by a detention environment, when he feels very anxious, despite the risk of increased depression and hopelessness that such detention would also bring.”

The authors are not recommending detention, and I should not be misunderstood to imply they are. They are not submitting that he should be returned to detention, but that observation chimes with my own rather tentative view that that may be part of the reason for what W has done. When he enters these episodes of breaking out, he anticipates that he will be reeled back in again. That that may be part of the pattern of instability which it seems to me has peaked once more.

9. I conclude there is no added or raised risk to national security. I do think there is a raised risk of

absconsion, because of the instability that has arisen. It is an extremely difficult case to know what is the right thing to do, but, on balance, it seems to me that bail should be withheld because of that risk. The matter can, of course, be reopened by a renewed application, if there is a genuine and sensible change in circumstances. I am not encouraging renewed applications every few weeks or every month. It does seem to me that one obvious point when that might be reconsidered is when the future of the litigation becomes rather more certain after the hearing in the Court of Appeal.

10. In any event, bail is refused.
