

SPECIAL IMMIGRATION APPEALS COMMISSION

Field House,  
Brems Buildings  
London

Wednesday, 28th May 2014

BEFORE:

UPPER TRIBUNAL JUDGE GILL

BETWEEN:

W

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents.

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

MR S KOVATS QC (instructed by the Treasury Solicitor) appeared on behalf of the Respondent.

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Transcribed by Harry Counsell  
Tel: 020 7269 0370

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RULING

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UPPER TRIBUNAL JUDGE GILL:

1. This hearing was listed following the Secretary of State's application for W's bail to be revoked following his arrest for an offence of shoplifting at a shop in the West End. He was charged with an offence of theft and bailed to appear at Westminster Magistrates' Court on 10 June 2014. This event means that W has breached the conditions of his bail.
2. Mr Vaughan, on W's behalf, informed me that he was unable to take full instructions today as there was no interpreter present to assist him. He informed me that he was able to take some basic instructions. In addition, W's leading counsel is away. Mr Vaughan, therefore, suggested that the tribunal impose a 24-hour curfew in order to stabilise matters until a full revocation hearing could take place at a time when W and his representatives will have full instructions.
3. There can be no dispute, in my view, that W was arrested in the West End with equipment on his person, so the issue is not whether the bail conditions have been breached per se. I appreciate that that is not the only consideration. There are other considerations upon which I was addressed by Mr Vaughan today.
4. Although the question for me today has turned out to be the question of whether the proposal that a 24-hour curfew be imposed is the correct course to take, pending a full revocation hearing, the reality is that, if I decide that it is not, then I will effectively have revoked W's bail in circumstances where he and his representatives have not been able adequately to prepare for the hearing. That weighs heavily with me. In any case

involving the deprivation of liberty, I remind myself that there is a presumption in favour of the individual not being detained.

5. In reaching my decision today, I have taken into account the background in this case. There is a complicated history. There have been previous breaches of bail. The instant breach is the ninth breach of its nature. On a previous occasion, in July 2010, W breached bail by being in possession of passports and a mobile phone outside the terms of his bail. I mention that fact to distinguish that breach from the instant breach, which was one committed by a shoplifting offence outside his bail boundary.
  
6. It is clear from the transcripts of the previous bail hearings, as well as revocation of bail hearings and the open judgment of 25 January 2013, that W suffers from psychological and psychiatric problems. I have taken into account paragraphs 46 to 50 of the open judgment of January 2013 and noted, in particular, paragraph 47 to which my attention was particularly drawn. I have also noted from a previous transcript of a hearing chaired by the President that the medical experts then were not entirely agreed upon everything. Nevertheless, it was clear that W is of limited intelligence. The President formed the view, as recorded in the transcript of the hearing on 13 May 2013, that there was some risk of suicide, but that it was not very high. That transcript also records the view that there is a level of paranoia that is associated with W's mental health problems. It records that W's mental health problems have meant that he was not fully in control of his actions and that there was a risk of absconson, precisely because W was not behaving rationally. It is not necessary for me to deal in greater detail with the findings of the President then.

7. My attention has also been drawn to the fact that W's national security case before the courts is one that is likely to take years to conclude. That is a factor to which Mr Vaughan drew my attention. On the other hand, if I were to decide that the correct course today is not as proposed - i.e. to impose a 24-hour curfew until a full revocation hearing can take place - there is no reason why an application for him to be admitted to bail cannot be made soon. I say "an application for W to be admitted to bail", because I recognised and acknowledged earlier that an adverse decision on the question I am to answer today, effectively, means I will be revoking bail. What the decision would be upon such an application is not something I need to decide today.
  
8. In deciding whether the interim measure proposed is the correct course today, I have, of course, taken into account the lapse of time since the last breach by way of the commission of an offence of shoplifting. On the information before me, it appears that the last such breach took place on 23 February 2012 and, indeed, it appears that the evidence is that W has not breached bail by shoplifting outside his bail boundary since the revocation of bail on 1 March 2013; that is until 24 May 2014, which is the incident that relates to today's hearing.
  
9. I take into account the fact that, if W is taken into detention, if I were to decide that a 24-hour curfew is not an appropriate interim measure, then there is a risk that he will lose his accommodation. Mr Vaughan submitted that his mental health may also be affected because his current treatment in the community will be interrupted. On the other hand, it is correct to say that he will receive treatment in detention.

10. I also take into account, in reaching my decision today, the fact that W was told in clear terms on the occasion of the hearing on 13 May 2013 that, if he breached his bail again, he will return to prison. This has also weighed heavily with me.
11. I have taken into account the fact that on a previous occasion a 24-hour curfew was imposed from about 23 February 2013 to 1 March 2013 in order to stabilise matters until a hearing could take place. That much is indicated at paragraph 5 of the transcript for the hearing on 1 March 2013. However, since that time, W was told at the hearing on 13 May 2013 that, if he breached his conditions of bail, he will go to prison.
12. I have considered everything and weighed all of the considerations for and against W on the question of whether a 24-hour curfew should be imposed today as an interim measure, pending a full revocation hearing. Reminding myself, in particular, of the fact that a negative answer will, effectively, mean that bail is revoked in circumstances where W has not had a full opportunity to prepare and, having carefully considered everything, I have decided not to impose a 24-hour curfew even with a GPS tag. Therefore, W will be detained until, effectively, an application is made for him to be admitted to bail.

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