

SPECIAL IMMIGRATION APPEAL COMMISSION

Field House,
Brems Buildings
London

Friday, 24th October 2014

BEFORE:

THE HONOURABLE MR JUSTICE IRWIN

BETWEEN:

Z

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

MR S HARRISON QC (instructed by Birnberg Pierce) appeared on behalf of the Appellant.

MR A DEAKIN (instructed by the Treasury Solicitor) appeared on behalf of the Respondent.

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RULING

MR JUSTICE IRWIN:

1. The background to this case is familiar to all the parties and is spelled out both in the various rulings of SIAC in constitutions chaired by Mr Justice Mitting and in particular in the judgment from me of August 2014.
2. This is rather an unusual case. The findings that I reached speak for themselves but the conclusions are set out in paragraphs 35 to 37 of that judgment. It is at the heart of this that the appellant did deliberately damage, again, the tag that he had and that he did so on an impulse; it was not the finding that he intended all along to deliberately to remove the tag and flee, but that he does act on impulse and acts foolishly. The damage to the tag on that occasion was clearly against his interests.
3. It is also clear from a mass of material that, whatever else, he is heavily and closely engaged with his family. He has three young children, aged 10, 8 and 5, a wife with, if not dangerous then certainly intrusive, medical problems, including a degree of psychological difficulty, and what clearly appears to be a high degree of dependence on him. That is the background.
4. The application is for a renewed grant of bail and it is acknowledged by Ms Harrison to be an application that needs very careful consideration before being granted, given that there have now been two episodes of breach of bail by way of damage to tags or, rather, four episodes on the first occasion and then a more recent episode. I am told by Ms Harrison that the appellant accepts the finding of the Commission in August of this year. He has not acknowledged what he did, but he accepts the findings, and he has certainly been carefully advised, no doubt, and understands the impact of those findings. She makes several key submissions to me: firstly, she says there was not an intention to abscond at the time of the damage to the tag; secondly, there has been otherwise meticulous compliance with the conditions of bail, and that proposition was not contradicted; and, thirdly, she says this litigation is likely to carry on for a very long time in the future. There was a hearing

before the Court of Appeal in July. There may be problems with the tactical process of release of that judgment; it has not yet been given to any party, even under embargo. There are legal issues which arise, making it likely, essentially, that whichever side loses there may well be an appeal to the Supreme Court and there may very well be to the European Court of Human Rights. On any view there is going to be no likely resolution of the appellant's immigration status, and thus the basis of his detention. Hence, if he does not achieve bail, under even the strictest conditions, he will remain in detention probably for a long time.

5. Alongside those points, she notes that for breach of bail in the criminal context, the maximum sentence is six months' imprisonment, giving some point of comparison to the position here, where there has already been some ten months' detention, which, represents the equivalent of a 21-month prison sentence. She also emphasises the severe impact on the appellant's family life. I took it in two ways. Firstly, that it is a consideration that the Commission should have in mind under Article 8 and, secondly, particularly with the interests of children in mind. The second point is that his absence from his family may be something that lodges in the appellant's mind and makes him more likely in future to resist such stupid acts as those which have caused this problem.
6. Mr Deakin, for the Secretary of State, emphasises the background here. It needed emphasis and he is right to put that forward forcefully. Even if the latest interference with the tag was impulsive, the appellant lied about it and has never accepted the detail or the facts set out in my findings. He says that there is a continuing national security risk and there is a real abscond risk, and those risks taken together are too high for release on bail.
7. In addressing the impact on the wife and family, I can put the matter very shortly. Mr Deakin does not seek to minimise the evidence and accepts that the burden on the wife and the impact on the children are considerable, but they are not sufficient to outweigh the concern about this appellant, both as to the potential risk of absconding and against the background of the national security risk.

8. Mr Deakin does not in substance disagree with the anticipated future of the litigation or its time scale. He does say that one cannot assume with a high degree of confidence indefinite detention. Something may arise, which will bring that to an end: a change of heart by the appellant, further evidence or possibly the outcome of the Court of Appeal. Mr Deakin put those matters elegantly, but it seems to me that they are contingencies or possibilities rather than anything which is likely to interrupt the long future of litigation in this case.
9. In the end I have to make a judgment. I do bear in mind the impact upon the wife and family here. There is a body of material which deals with that. It does seem to me that after the equivalent of a 20-month prison sentence, even this impulsive appellant may well realise that what he did has caused a great deal of pain to the family. That will be a real disincentive to future breaches of this kind. I do bear in mind that he did not in one fell swoop remove the tag, he did not take a knife to it and flee. He damaged it impulsively and then alerted the authorities, as I have previously found, no doubt following discussion with his solicitors and anticipating that the matter would be discovered. It is important to bear in mind those specific circumstances when making the judgment about the grant of further bail.
10. I intend to grant bail under the strictest possible conditions. It will be effective from Monday, three days from now, so that the proper preparations can be made. I specify not before 2 pm on Monday next, 27th October.
11. The conditions are as follows. He will reside in his residence save for the hours as proposed in paragraph (ii) at the top of the second page of the letter from Birnberg Peirce of 17th October. I need not read those out. Those are the conditions which, if bail was to be granted, the Secretary of State agreed were appropriate. They represent four hours in 24 when he is not curfewed in his residence.

12. I have raised with both sides the possibility of applying two tags rather than one, really to emphasise to this appellant that he must not interfere with either tag, or any tag, ever again to any extent. In point of fact, neither side are attracted by that proposition and I do not propose to follow it. He will wear a GPS tag, and that is a condition of bail. That will need to be arranged and fitted on Monday.
13. I put down in conclusion, in the most black-and-white terms, to be explained to this appellant in the most black-and-white terms, that, if there is any significant breach of his bail conditions, then he is likely to lose his liberty and any application for renewal of bail after that has an infinitesimal possibility of being granted. He really does need to take on board the obligation to adhere fully to all conditions of bail.

MS HARRISON: I can confirm and undertake that your last conclusion will be clearly said to Z.

MR JUSTICE IRWIN: I know that those who instruct you will do the same. He really needs to know after this history. It seems to me that under those conditions that is the correct judgment in this case.

MS HARRISON: Thank you.

MR DEAKIN: Sir, I am just asking my instructing solicitor about the mechanism now in terms of drafting the order with the detailed conditions in it. Is that something which I should sort out with Ms Harrison?

MR JUSTICE IRWIN: I think that that is always wise, because, if the Commission does it and then there is a problem in the detail, we just have delay. Given that the timing is Monday afternoon, I think that it is essential that we have it cleared up today. I wonder if it would be possible for counsel between you to draft it and I can sign it. I will be in the Royal Courts this afternoon now, not here.

MS HARRISON: I think that the normal course is that the Treasury Solicitor undertakes the drafting because they have the template. We have his existing conditions and will have to vary them to change the hours and add the GPS tag. I do not think that it is going to be a huge task because we have already got the template and we have assumed that it will be everything else in terms of whatever else was ordered before.

MR JUSTICE IRWIN: Everything else will remain the same.

MR DEAKIN: If we can get that drafted and sent to you and then arrange to have it brought across to the Royal Courts of Justice.

JUDGE COOKE: Yes, before 5 o'clock today if at all possible. It is much better to get it done today and then everyone knows where they are.

MR DEAKIN: Certainly.

MR JUSTICE IRWIN: Thank you for your help.
