

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 10 OF 1991

BETWEEN: JAMES MAHON - Appellant

and

(1) THE GOVERNMENT OF GRENADA

(2) HIS EXCELLENCY THE GOVERNOR GENERAL - Respondents

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Hon. Mr. Justice D. Byron - Justice of Appeal
The Hon. Dr. N.J.O. Liverpool - Justice of Appeal

Appearances: Mr. Anselm Clouden for the Appellant
Mr. Keith Friday for the Respondents

1993: January 10th, 11th.

JUDGMENT

SIR VINCENT FLOISSAC, C.J.

On the 10th June 1991, the appellant filed a Notice of Appeal against a decision which was delivered by Carol Bristol C.J. on the 4th June 1991 and wherein the learned Chief Justice refused the appellant's application for a writ of habeas corpus. The appellant however failed to serve the Notice of Appeal and to file the Record of Appeal within the times prescribed therefor. Accordingly, on the 26th January 1993, the appellant filed an application by summons for extensions of those prescribed times.

The appellant's application for habeas corpus was the result of the fact that on the 17th December 1990, the Magistrate of the Southern District had made an order against the appellant under Section 9(4) of the Fugitive Offenders Act 1969 (No.3 of 1969). By that order, the appellant was committed to custody pending extradition to the Republic of Trinidad & Tobago for the purpose

of his trial on a charge of murder.

The learned magistrate's order was based principally on a deposition which Raymond Bowen made in Trinidad and wherein he implicated the appellant with the alleged murder. Recently (that is to say on the 15th January 1993), Bowen (who is now in prison in Grenada) swore an Affidavit whereby he totally retracted his deposition.

In *Alves v. D.P.P* (1992) 4 AER 787, Lord Goff (delivering the judgment of the House of Lords) said (at p793):

"There can, after all, be more than one possible explanation why a witness may retract evidence given by him on a previous occasion; and, as must have been contemplated in *R v Donat*, one possibility may be that it is the later retraction, rather than the earlier evidence, which is not worthy of belief. At all events in the present case the question whether, in the light of Price's subsequent retraction before the Magistrate, his Swedish evidence was sufficient to justify the respondent's committal was essentially a matter for the decision of the magistrate, who had heard Price give evidence before him. Indeed, if Mr. Newman was right, retraction in this country of evidence previously given in the requesting state would ipso facto discredit the evidence so given and so deprive the magistrate of any power to commit on that basis. I do not think that that can be right. If the magistrate concludes, on the evidence before him, that the previous evidence is such that a jury properly directed could not properly convict upon it, then, on the principle stated in *R v Galbraith*, he should not commit. This was the approach adopted by the Divisional Court in *R v Governor of*

Pentonville Prison, ex p Osman [1989] 3 All ER 701 at 721, [1990] 1 WLR 277 at 299-300, where it was stated that the magistrate should reject any evidence which he considers to be worthless. But

otherwise, on the principle stated by Lord Lane CJ, if the prosecution evidence is such that its strength or weakness depends on the view to be taken of its reliability, the magistrate is entitled to act upon that evidence in deciding whether there is sufficient evidence to justify an order for committal. That was evidently the conclusion reached by the magistrate in the present case. In my opinion, it was a conclusion which he was entitled to reach on the evidence before him."

In *Alves' Case*, the magistrate had the benefit of the retraction against which he could weigh the previous evidence. In this case, neither the learned Magistrate nor the learned Chief Justice had the utility of Bowen's retraction. It would be a parody of justice to deny the appellant the opportunity to argue his appeal in the light of the fresh evidence or retraction. If this application is refused, the appellant will be extradited to Trinidad where he will be tried for the capital offence of murder. There is a serious probability that he will be so tried on Bowen's deposition without reference to the retraction thereof. The danger of irrevocable prejudice to the appellant is therefore the overriding factor by reference to which the appellant's application is required to be considered.

Accordingly, although the delay in the filing of the application was inordinate and the explanation for the delay is arguably tenuous, the prospect of the appellant's success in his appeal is enhanced by the fresh evidence or retraction. Having regard to the cogency of the menacing prejudice to the appellant

in the particular circumstances of this case, justice demands that the appellant be afforded the opportunity to argue his appeal.

For these reasons, I would extend the times prescribed for the service of the Notice of Appeal and the filing of the Record. I would extend those times to 25th February 1993.



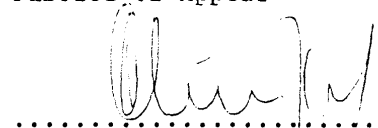
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SIR VINCENT FLOISSAC
Chief Justice

I concur.



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DENNIS BYRON
Justice of Appeal

I concur.



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Dr. N. J. O. LIVERPOOL
Justice of Appeal