R v Geesteranus

Supreme Court, Nuku'alofa
Ward CJ
Civil case C.704/92

18 & 21 September, 1992

Bail - ability of magistrate to consider further applications
Certiorari - lies if magistrate has exceeded his jurisdiction
Time - computation of - Interpretation Act - section 19 - when time runs and when a period is complete.

See the case reported immediately above (Geesteranus v R) for background.

On remittance back to the magistrate a period of time was fixed for the issue of the (Extradition Act) authority to proceed. The period was miscalculated by the magistrate who ruled it had expired on a day earlier than it actually did and then granted bail.

The Crown took certiorari proceedings arguing that the given time had not expired.

HELD (granting certiorari and quashing the magistrate's decision):

1. Pursuant to s.19 Interpretation Act the time began to run on the day following and the magistrate accordingingly acted prematurely and incorrectly.
2. Certiorari accordingly lay to quash the decision and bail was therefore refused.
3. The magistrate had the same power to reconsider bail at each remand hearing as he had previously.

Statutes considered : Extradition Act, s.7
Interpretation Act, s.19

Counsel for Crown : Mrs Taumoepeau
Counsel for Respondent : Mr Macdonald

Judgment

This is an application by the Crown for review, by way a mandamus or certiorari, of the grant of bail by a Magistrate sitting as a court of committal in extradition proceedings.

The person charged, John Maas Geesteranus, was arrested on a provisional warrant on 20th August 1992 following a request by the authorities in the United States of America for his extradition on drug offences. Following various applications, the details of which need not be recited here, the court of committal considered an application for bail and refused it on 3rd September. That afternoon and the following day, a judge of the Supreme Court heard an appeal against that order. The appeal was dismissed on 4th September.

When the Magistrate refused bail on 3rd September, he also fixed the reasonable period for issue of the authority to proceed under section 9(3) of the Extradition Act as 14 days and so the person charged was remanded eventually to 17th September at 10:00 a.m.

At the hearing, the magistrate was informed there was still no authority to proceed and he was asked by Mr. Macdonald, counsel for Mr Geesteranus, to order his discharge. Despite the fact Mrs Taumoepeau for the Crown had calculated that the reasonable period had not expired, it appears the case proceeded as the basis that the 14 days expired on 16th September. Mrs Taumoepeau sought and was given an adjournment until 2:00 p.m. At that adjourned hearing the court was informed an authority to proceed had been issued at midday.

The Magistrate then considered the application for bail and granted it subject to a number of conditions. In his written judgment, he pointed out that, when the court fixed a reasonable period it was not to be taken lightly and the Prime Minister was bound by it. He commented that the accused had, by that time, been in custody for 27 days and continued:

> "The following were seriously considered and upon which this court made the decision:
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> 1. That the accused has been in custody for 27 days and his liberty has been injured while on the other side, the Crown and Prime Minister have failed to give the authority to proceed within reasonable period.
> 2. As this court understood, as counsel for Crown submitted at almost a month the relevant document and evidence be ready for hearing.
> 3. Court has considered the late produced authority to proceed as a change in the circumstances of this hearing."

The Crown seeks orders of certiorari or mandamus to correct what they say was an incorrect and therefore improper basis for saying there had been a change of circumstances.

That the basis of the decision was incorrect is clear. In his ruling on 3rd September, the magistrate ordered, inter alia:

> "2. A reasonable period of 14 days is fixed and runs from 3rd September 1992."

By section 19 of the Interpretation Act, the first day of that period would be the day following and so the Prime Minister had until the end of 17th September to issue the authority to proceed. It was issued at midday on that day. When the magistrate granted bail because the Prime Minister had failed to issue the authority within 14 days, he was acting prematurely.

In his judgment of 3rd September when refusing bail, he had set out the reasons for

his refusal. I do not repeat them but it is apparent none of those matters had changed by the hearing on 17th September and, had those been the only grounds raised, there is no reason to believe he would have altered his earlier decision. What caused the change was, as he stated in his judgment, the apparent failure to issue an authority to proceed. Had he made that decision a day later, I would have no reason to interfere as he would have been under a duty to discharge the person accused under section 9(3). However, on 17th, the reasonable period had not expired and so he was considering a circumstance that had not arisen.

The Crown applies alternatively for certiorari or mandamus but, as the other circumstances have not changed, there is no purpose in directing the magistrate to consider the point again. The appropriate order is one of certiorari. I order that the magistrate's decision be removed into this Court for the purpose of quashing it. I substitute an order that bail is refused and the person charged is remanded in custody. As this was an application for judicial review and not an application for bail, I have not made an order on the merits of the bail application and so the person accused should be remanded only for 8 days under section 31 of the Magistrates Courts Act. I therefore direct he must be produced before the court of committal on 28th September at 10:00 a.m.

Before leaving this matter, I should mention two other matters that were raised.

Mr Macdonald asked the Court to consider that the issue of the authority to proceed was an abuse of process and his client should still be discharged. Such an application should have been made in the proper manner and, as it was not, I did not seek Mr Taumoepeau's views on it. However, it is appropriate to comment briefly now.

Mr Macdonald pointed out the terms of section 7(3) make it clear the issue of an authority to proceed is not an arbitary act but requires a decision based on the material submitted by the requesting state. That is correct. He goes on to suggest that, in this case, as no authority had been issued at 10:00 a.m. and it was at midday, the Prime Minister must have been his mind up within that period and cannot, as a result, have had time to consider the matter in accordance with section 7(3). I cannot accept that. This Court cannot dictate the minimum time required to make such a decision nor can it speculate when the decision was made as opposed to the issue of the authority. It would require clear proof before the Court will find such a failure.

The second matter relates to the suggestion by Mrs Taumoepeau that as a there had been an appeal to the Supreme Court, the magistrate is now bound by that decision and cannot review bail unless new circumstances have arisen since the Supreme Court considered it.

In a case where an accused has exercised his right to apply to the Supreme Court for bail following a refusal by the Magistrates Court, the magistrate will be bound by the Supreme Court decision and cannot reconsider it but, in the case being considered here, the hearing before the Supreme Court on 3rd and 4th September was not an application for bail but an appeal against the order of the magistrate refusing bail. The notice of appeal shows it was based on a number of suggested errors by the magistrate none of which the learned judge considered had sufficient merit to allow the appeal.

His decision to dismiss the appeal was based on the and not on the merits of the application before the lower court. He was not refusing an application for bail and so there is no Supreme Court decision on that. Thus the magistrate has the same power to reconsider bail at each remand hearing as he had previously.