

CANADA / JUDGMENT

Caplin v. Canada (Justice)

2015 SCC 32

COURT

Supreme Court of Canada

DECIDED

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Caplin v. Canada (Justice) Collection Supreme Court Judgments Date 2015-05-29 Neutral citation 2015 SCC 32 Report

[2015] 2 SCR 570 Case number 35527 Judges McLachlin, Beverley; Abella, Rosalie Silberman; Rothstein, Marshall; Cromwell, Thomas Albert; Moldaver, Michael J.; Karakatsanis, Andromache; Wagner, Richard; Gascon, Clément; Côté, Suzanne On appeal from Quebec Subjects Administrative law Notes SCC Case Information: 35527 Decision Content SUPREME COURT OF CANADA Citation: Caplin v. Canada (Justice), 2015 SCC 32, [2015] 2 S.C.R. 570 Date: 20150529 Docket: 35527 Between: David Caplin Appellant and Minister of Justice of Canada Respondent Coram: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ. Reasons for Judgment: (paras. 1 to 4) The Court Appeal heard and judgment rendered: April 23, 2015 Reasons delivered: May 29, 2015 Caplin v. Canada (Justice), 2015 SCC 32, [2015] 2 S.C.R. 570 David Caplin Appellant v. Minister of Justice of Canada Respondent Indexed as: Caplin v. Canada (Justice) 2015 SCC 32 File No.: 35527. Hearing and judgment: April 23, 2015. Reasons delivered: May 29, 2015. Present: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ. on appeal from the court of appeal for quebec Extradition — Surrender order — Judicial review — Minister of Justice surrendering accused to U.S. on charges of murder — Whether Minister’s decision to order surrender was reasonable. The Minister of Justice ordered the surrender of C and a co-accused, B, to the U.S. on charges of first and second degree murder. C was charged on those offences in 1990, but has never been tried. In 2010, the New Hampshire State authorities reopened the investigation into the alleged crimes and in 2011, evidence seized from the crime scene was submitted for DNA testing using techniques that were not available at the time of the initial investigation. C’s profile was identified. On judicial review, the Court of Appeal of Quebec concluded that there were no grounds for interfering in the Minister’s decision to extradite C to the United States. Held: The appeal should be dismissed. The Court of Appeal did not err in concluding that it was reasonable for the Minister of Justice to order surrender. The fundamental issue for the Minister was whether surrendering C to the “particular treatment” that awaits him in New Hampshire would be contrary to Canadian principles of fundamental justice. The Minister examined all of the relevant circumstances, including

the importance of international cooperation in the extradition context. In light of all of these considerations, it was reasonable for him to conclude that it would not offend Canadian principles of fundamental justice or be otherwise unjust or oppressive to leave the decision about whether there should be a trial to the New Hampshire court. Cases Cited Referred to: Canada (Attorney General) v. Barnaby, 2015 SCC 31, [2015] 2 S.C.R. 563; United States v. Burns, 2001 SCC 7, [2001] 1 S.C.R. 283; Argentina v. Mellino, [1987] 1 S.C.R. 536. Statutes and Regulations Cited Canadian Charter of Rights and Freedoms, s. 7 . Extradition Act, S.C. 1999, c. 18, s. 44(1) . APPEAL from a judgment of the Quebec Court of Appeal (Duval Hesler C.J. and Levesque and Savard JJ.A.), 2013 QCCA 1305, [2013] AZ-50991418, [2013] Q.J. No. 8752 (QL), 2013 CarswellQue 7615 (WL Can.), dismissing an application for judicial review from a surrender order made by the Minister of Justice. Appeal dismissed. Véronique Courtecuisse and Patrick Cozannet, for the appellant. Marc Ribeiro and Ginette Gobeil, for the respondent. The following is the judgment delivered by

- [1] The Court — To satisfy the Minister that extradition should be refused, Mr. Caplin must show that his surrender would “shock the conscience” and thereby violate s. 7 of the Canadian Charter of Rights and Freedoms , or be “unjust or oppressive” under s. 44(1) of the Extradition Act, S.C. 1999, c. 18 . In our view, the Court of Appeal did not err in concluding that it was reasonable for the Minister to order surrender (2013 QCCA 1305). As we explain in the companion appeal in Canada (Attorney General) v. Barnaby, 2015 SCC 31, [2015] 2 S.C.R. 563, the fundamental issue for the Minister was whether surrendering Mr. Caplin to the “particular treatment” that awaits him in New Hampshire is contrary to Canadian principles of fundamental justice: United States v. Burns, 2001 SCC 7, [2001] 1 S.C.R. 283, at para. 69. It appears from the material that the New Hampshire courts will decide whether Mr. Caplin’s trial, in all of the circumstances, is fair and just in accordance with principles that are broadly similar to those that would be applied in Canada if the issue arose here. This is not contrary to our sense of fundamental justice, but rather consistent with it.
- [2] Mr. Caplin suggests that there is no new evidence. He raises arguments about alleged weaknesses in the DNA analysis and submits that, in reality, the testimonial evidence is not new. He further submits that, in any event, the “new” evidence is of limited probative value because it does not conclusively establish his guilt. He also argues that the passage of time has caused prejudice that would justify denying extradition.
- [3] We are not persuaded by these arguments. In our view, it was reasonable for the Minister to conclude that it would not shock the conscience or be otherwise unjust or oppressive to allow the New Hampshire courts to address these concerns, rather than to preclude them from doing so by refusing surrender. Concerns about due process — including arguments related to delay — are generally a matter for the foreign court. As this Court held in Argentina v. Mellino, [1987] 1 S.C.R. 536, at p. 558: Matters of due process generally are to be left for the courts to determine at the trial there as they would be if [the accused] were to be tried here. Attempts to pre-empt decisions on such matters, whether arising through delay or otherwise, would directly conflict with the principles of comity on which extradition is

based

- [4] The Minister examined all of the relevant circumstances, including the importance of international cooperation in the extradition context. In light of all of these considerations, it was reasonable for him to conclude that it would not offend Canadian principles of fundamental justice or be otherwise unjust or oppressive to leave the decision about whether there should be a trial to the New Hampshire court. We would therefore uphold the Court of Appeal's decision to affirm the surrender order. The appeal is dismissed. Appeal dismissed. Solicitors for the appellant: Véronique Courtecuisse, Montréal; Patrick Cozannet, Longueuil. Solicitor for the respondent: Attorney General of Canada, Montréal.

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