

JERSEY / JUDGMENT

AG v Reid [2018] JRC 193 (18 October 2018)

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JUDGMENT

THE commissioner: 1. On 14 th September, 2018, the Court directed the Attorney General to instruct the Viscount to carry enforcement of a US Forfeiture Order into effect and we now set out our reasons. 2. The respondent is a serving prisoner at FCI Fort Dix, New Jersey, United States. He pleaded guilty in the United States District Court for the Middle District of Florida to one count of conspiracy to commit money laundering and was sentenced on 27 th May, 2009, to 168 months' imprisonment, to be followed by a 36 month period of supervised release. A Forfeiture Order of US\$1 million was made against him, representing the criminal benefit of the respondent and his co-conspirators ("the US Order"). 3. In brief, the case involved identity theft and fraud on a large scale, the proceeds being laundered through the United States, which took place from April 2005 to October 2007, when the respondent was extradited from Bogota, Columbia to the United States. 4. A representation by the Attorney General seeking to register and enforce the US Order was first presented to the Royal Court on 7 th April, 2017, when it was adjourned until 19 th May, 2017, to allow for personal service of a copy of the representation and supporting papers on the respondent in prison in the United States. 5. On 2 nd May, 2017, the respondent wrote to the Court, complaining that the papers served upon him by the US authorities on 27 th April, 2017, were unbound, in disarray and missing references to a list of lawyers in Jersey. Accordingly, on 19 th May, 2017, the Court further adjourned the matter until 14 th July, 2017, to allow the papers to be re-served. The papers were re-served on the defendant by a deputy US marshal on 16 th June, 2017, following which the respondent did not make contact with either the Court or the Law Officers' Department. Accordingly, on 14 th July, 2017, the Court ordered that the US Order be registered and enforced, subject to a delay of 28 days, to allow for representations to be made to the Court by persons holding any interest in the property in Jersey, comprising bank accounts held by the respondent at the Royal Bank of Canada in the total sum of US\$746.89 and £50,358.92. 6. Subsequently, numerous letters were sent by the respondent under cover of e-mails from the British Consulate, from which it appeared that the respondent had unsuccessfully attempted to contact Crown Advocate Belhomme and others in advance of the return date of 14 th July, 2017, contesting the registration of the US Order, and seeking legal representation by a Jersey solicitor, Mr Robin Troy. Mr Troy declined to represent him, and suggested that he approach the Jersey Legal Aid office. 7. In light of these developments, the Attorney General notified the Viscount, and requested that no further steps be taken to enforce the Order of 14 th July, 2017 until further notice. On th February, 2018, Crown Advocate Belhomme wrote to Commissioner Clyde-Smith to

apprise him of the developments, and he advised that the Attorney General should formally apply to the Court for confirmation that he can enforce the Order and fix a date for the hearing of the application, giving due notice to the respondent. 8. Accordingly, Crown Advocate Belhomme wrote to the respondent on 6 th June, 2018, informing him that 16 th July, 2018, had been fixed for a further hearing. The letter stated, inter alia :- " In summary, all that is required from you at this stage is to consider the content of my letter dated 13 February 2018 to Commissioner Clyde-Smith and to indicate (either through counsel or by written communication in advance of the 16 July 2018 hearing) whether or not you wish to contest enforcement of the Court's 14 July 2017 Orders ." (His underlining) 9. The letter went on to state that if he indicated he wished to oppose the enforcement of the US Order, the Attorney General would fix a further date for a fully contested hearing, but if he failed to appear, the Attorney General would apply forthwith to enforce the US Order. 10. There followed difficulties on the part of the US authorities in serving upon the respondent Crown Advocate Belhomme's letter of 6 th June, 2018, and its enclosures, and the Fort Dix Prison mail room had no record of receipt of his letter and enclosures by post. Accordingly, a new date of 14 th September, 2018, was fixed for the hearing, and Crown Advocate Belhomme wrote a further letter to the respondent, dated 6 th July, 2018, and explained the position again. 11. On 12 th July, 2018, Crown Advocate Belhomme received confirmation that the letter of 6 th July, 2018, notifying the respondent of the re-scheduled date of 14 th September, 2018, and enclosing a copy of the previous letter of 6 th June, 2018, and attachments consisting of approximately 125 pages had been served upon the respondent personally, and we have a copy of the acknowledgement of receipt duly signed by the respondent dated 12 th July, 2018. 12. There has been no response from the respondent, who was not represented at the hearing on 14 th September, 2018. The Legal Aid office has confirmed that no application has been made by him for legal aid, and his last communication was received on 10 th August, 2017. The respondent's complaints 13. The respondent's correspondence sets out a number of complaints comprising claims of injustice and breaches of human rights. The Attorney General suggests that the various complaints may fairly be summarised as follows:- (i) The respondent claims that he was illegally arrested and detained in Colombia on the basis of a 'note verbal' (sic) from the US authorities which stated that he was wanted to stand trial on charges of fraud and money laundering but that the money laundering charges did not exist at that time. (ii) He complains of alleged defects in the subsequent extradition process. In this respect he claims that the US authorities made an extradition request to the Colombian authorities which was based on ten Counts of fraud and two Counts of money laundering. The Colombian Court ordered extradition to the US based on the money laundering offences only. However, the defendant claims that on arrival in the US he was indicted on all twelve Counts (ie, including the ten fraud charges for which the Colombians had refused to extradite); (iii) The respondent claims he was coerced and blackmailed into entering into a subsequent Plea agreement which resulted in his conviction on Count 11 (money laundering). In this respect he alleges that the sum mentioned in Count 11 was arbitrarily increased by the US authorities from US\$2 million (as shown on the extradition papers) to US\$2.5 million (as shown in the Plea agreement); and (iv) He complains generally that his lines of communication have been interfered with which has resulted in him being denied his "day in Court". 14. These complaints were aired by the respondent before the US Court in connection

with a Motion filed by him to vacate, correct or set aside his sentence and were addressed by the US Court in its Order and judgment of 15 th February, 2011. In its judgment, the US Court considered the respondent's claim that the terms of the Colombian extradition treaty with the US had been violated in that the respondent had been indicted in the US on all twelve counts of the indictment. At pages 6 and 7 of its judgment, the following appears:- "Reid accuses the Court of violating the terms of the Colombian extradition treaty and international law by arraigning Reid on all twelve counts of the indictment. Reid accuses his counsel of being ineffective for failing to challenge this alleged violation The terms of the extradition and the limiting scope of prosecution set forth in the extradition agreement was discussed at Reid's change of plea hearing: MR HANSEN: ... Looking at para A-4 of the plea agreement where we indicate that we will dismiss certain counts, we, in fact, will dismiss all the counts we indicate that we are going to, however, Mr Reid was in custody of the Colombian authorities and extradited to the United States. As part of that extradition, the Colombian Government required that only the two money laundering counts be prosecuted, and that is Counts 11 and 12. So, notwithstanding the fact that we are dismissing the other counts as part of the plea agreement, in effect, the only other count that he is actually facing here in the US would be Count 12, which will be dismissed under the plea agreement, also. THE COURT: Okay. The bottom line being that all the charges will be dismissed, but you understand this unwritten position that the Colombian Government takes here that has limited what you can be prosecuted for. In the end, you're looking at one charge. REID: I do, sir, thank you." 15. The US Court then continued:- "The record is clear that the Government, the Court, and Reid each understood, pursuant to the terms of the extradition, that Reid was only facing prosecution as to Counts 11 and 12 and that Count 12 would be dismissed as agreed in the plea agreement." 16. The US Court went on to consider the respondent's claim that he was coerced into entering his guilty plea to Count 11 by the Government's offer not to proceed with the remaining eleven counts on the indictment. At page 8 of its judgment the US Court said this:- "The record nullifies Reid's allegations of coercion and lack of understanding. As discussed above, Reid understood he was facing prosecution as to Counts 11 and 12 alone, therefore by entering into the plea agreement, he was benefiting by the government's agreement to dismiss Count 12, not the other ten counts of the indictment. The record also demonstrates Reid's understanding as to the charges against him and the proceeding of entering his guilty plea." 17. At page 9, the US Court continued: "The record is clear that Reid had a full understanding of the charges against him and the consequences of entering his guilty plea. Regarding his allegation that counsel failed to explain the role of the PSR at the time of the guilty plea, his assertion meritless (sic). Reid asserts that had he known the Court could have used relevant conduct against him, he would not have entered his guilty plea and surrendered his right to trial However, Reid does not provide any support for his allegation; he does not even address the "unadmitted" relevant conduct to which he refers." 18. In concluding the Rule 11 colloquy, the Court found: "[Reid is] alert and intelligent [he is] coherent, that [he] understand[s] the allegations against [him] As well as the potential punishment on [his] charges ... It does not appear that there are any inappropriate promises or inducements, nor does it appear that the Defendant has been threatened, forced or coerced in any way into pleading guilty ... [Reid's plea is] being entered freely and voluntarily, with an understanding of the consequences." 19. As to the

respondent's complaint regarding the increase in the amount laundered (as set out in Count 11) the US Court said:- "Reid claims the Court and the government violated his rights by changing the fact of his case after his change of plea proceedings by holding him accountable for \$2.5M instead of \$2M as charged ... Reid's claims are vague ... In his next claim that the government or Court erred in holding him accountable for \$2.5 million as opposed to \$2 million, his allegation has no merit. The facts Reid agreed to in his plea agreement, and again at his change of plea hearing before this Court, simply state he was involved in a conspiracy to fraudulently obtain over \$2.5 million, not \$2 million ... thus his counsel cannot be held ineffective for failing to challenge this meritless issue." 20. For the sake of completeness, the correspondence received from the respondent was forwarded by the Attorney General to the US authorities for comment, and on 22 nd September, 2017, they replied by e-mail, advising as follows:- "According to the prosecutor, Reid did in fact plead guilty to conspiracy to commit money laundering. He was sentenced on May 27, 2009. On May 17, 2010, he filed a Motion to Vacate his sentence under 28 U. S. C. section 2255. Reid made several arguments in this motion, including arguments related to the propriety of his extradition from Colombia. On February 15, 2011, the Judge entered an Order Denying the Motion to Vacate. The Court noted that pursuant to his plea agreement, Reid expressly waived his right to appeal his sentence. In accordance with the terms of his plea agreement, Reid did not file a direct appeal, but instead filed the Section 2255 motion. The Court denied his Motion to Vacate on all grounds, including those related to his extradition. The Court also held that he was not entitled to a Certificate of Appealability, and thus he cannot appeal the denial of his motion to vacate." 21. Crown Advocate Belhomme contended and the Court agreed that the various arguments raised by the respondent constitute an attempt by him to re-litigate his US criminal case, and that the principal claims made by him in the correspondence clearly received proper judicial consideration in the US proceedings. In this respect, he referred us to this extract from the judgment of Sir William Bailhache, then Deputy Bailiff of 17 th November, 2010, in the case of *In re Johnson*

[2010] JRC 206A at paragraph 13:- "The requirement in Article 39(1)(c) to form a view as to whether enforcing the order in Jersey would be contrary to the interests of justice should not in our judgment generally lead to re-litigating the matters which have been decided by the Court in which the External Confiscation Order was first made. It is clear that that Court was seized of the issues which led to the making of the order, and it is before that Court that all the evidence would have been produced. It would, other than in exceptional circumstances, be inappropriate to anticipate the same evidence having to be produced again in the Royal Court. The rationale of these provisions is to enable the Courts of one jurisdiction to give assistance to the Courts of the original jurisdiction in order to prevent criminals benefiting from the worldwide financial system and being able to hide their proceeds of crime for their benefit. One cannot of course anticipate all factual circumstances which might arise in any hypothetical case, and it therefore would be unhelpful to go further than saying that in our view the risks of re-litigation seem to us to be small. Article 39(1)(c) requires the Court to consider the interests of justice and the starting point subject to argument to the contrary, would be that justice had been done at

the time the external confiscation order was made in the court exercising that jurisdiction." 22. The only matter not addressed by the US Court is the respondent's complaint that his lines of communication have been interfered with, which has resulted in him being denied his day in Court. In his last communication of 1 st August, 2017, he questioned whether it was possible that the US Department of Justice might be playing games with his communications. However, numerous communications have been received from the respondent, and there was no evidence that anyone was interfering with his lines of communication in any way. In any event, as concluded above, his communications simply sought to re-litigate complaints that had received proper judicial consideration by the US Court. 23. In the circumstances, the Court concluded that the respondent should not be given an opportunity to contest the registration and enforcement of the US Order, and we directed the Attorney General to instruct the Viscount to carry enforcement of the US Order into effect, in accordance with the Court's order of 14 th July, 2017. Authorities In re Johnson

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Prepared on 26 October 2026 · Esheria