COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

2018/CRI/HCS/0008

BETWEEN

IN THE MATTER OF THE EXTRADITION ACT, 1994

AND

IN THE MATTER OF AN APPLICATION FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

ROSCOE THOMPSON

Applicant

And

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

And

THE COMMISSIONER OF THE BAHAMAS DEPARTMENT OF CORRECTIONAL SERVICES

Respondents

BEFORE: The Hon. Mr Senior Justice Bernard Turner

APPEARANCES: Mr Murrio Ducille KC, for the Applicant

Mr Eucal Bonaby for the Respondent

HEARING DATES: 18 July & 16 August 2022

DECISION

TURNER Snr J

By an Originating Notice of Motion filed 21 February 2018, the Applicant sought:

> **"...an Order that a Writ of Habeas Corpus do be issued directing the Commissioner of The Bahamas Department of Correctional Services at Fox Hill Road, New Providence, The Bahamas, to have the body of ROSCOE THOMPSON before the Supreme Court at such time as the Court or Judge may direct upon the grounds set out in the Affidavit of ROSCOE THOMPSON and exhibits therein respectfully referred to in the Application to the Honourable Justice for such Order, copies of which Affidavit and Exhibits are served herewith.**
>
> **AND that the costs occasioned by this Motion be the Applicant's to be taxed and paid by the Respondents to the Applicant.**
>
> **AND TAKE NOTICE that on the hearing of this Motion ROSCOE THOMPSON will use the Affidavit himself and the Exhibits referred thereto."**

2. The affidavit of the Applicant, also filed 21 February 2018 indicated:

> **"2. That on the 20th day of February, 2018, the Learned Deputy Chief Magistrate, Andrew Forbes, sitting in Court Number 8, South Street Court Complex, Nassau, The Bahamas, ordered my detention to The Bahamas Department of Correctional Services at Fox Hill Road, to await my extradition to the United States of America ("US").**
>
> **3. That on the 24th day of April, 2013, the then Minister of Foreign Affairs, the Honourable Mr. Frederick A. Mitchell, issued an Authority to Proceed whereby a request was made**

by the US to have me extradited. A copy of the said Authority to Proceed is attached and marked hereto as "Exhibit-RT1."

4. That pursuant to the Authority to Proceed, I was accused of having committed the offence of Conspiracy to Import Dangerous Drugs, namely Cocaine, contrary to Sections 15(6), 29(1)(a), 29(2)(a) and 30(1) of the Dangerous Drugs Act, Chapter 228, of The Bahamas.

5. That on the 11th day of February, 2014 extradition proceedings were commenced against me before the Deputy Chief Magistrate, Andrew Forbes, in Magistrate Court Number 8, South Street Court Complex, Nassau, The Bahamas.

It then went on to detail certain other proceedings not now germane to the present proceedings and continued:

18. That I verily believe that the continuation of extradition proceedings is an abuse of the Court's process.

19. That by reason of the passage of time since it has been alleged that I committed the offence would be unjust to extradite me.

20. That in Stephen Muldrow's Affidavit dated the 7th day of May, 2012, paragraph 5, he alleged that I conspired to import cocaine into the US in the 1990's. A copy of the said Affidavit is attached and marked hereto as "Exhibit-RT2."

21. That in the Affidavit of Sergio Pantoja dated the 15th day of April, 2010, paragraph 6, he admitted that between 1998 and 1999 he participated in the illegal activity of smuggling cocaine into the US. There is no indication that I participated in the importation or conspiracy to import cocaine into the US. A copy of the said Affidavit is attached and marked hereto as "Exhibit-RT3."

22. That in the Affidavit of Nelson Fernando Contento dated the 10th day of March, 2010, paragraph 4, he admitted that from the 1990s to 2004 he participated in the illegal activity of smuggling cocaine into the US. There is no indication that I participated in the importation or conspiracy to import cocaine into the US. A copy of the said Affidavit is attached and marked hereto as "Exhibit-RT4."

23. That in the Affidavit of Guillermo De La Rosa, dated the 28th day of September, 2010, paragraph 5, I was falsely accused of smuggling cocaine between 1998 and 2004. A copy of the said Affidavit is attached and marked hereto as "Exhibit-RT5."

24. That I cannot be prosecuted, tried or punished in the US for the committal of the alleged offence in the 1990's since the Indictment was not instituted within 5 years of the date of which the offence was alleged to have been committed, pursuant to Title 21, section 3282 of the United States Code. A copy of the said Section is attached and marked hereto as "Exhibit-RT6."

25. That, notwithstanding, there is insufficient admissible evidence of me ever conspiring to import dangerous drugs, namely cocaine from the 1990's to 2004.

26. That the assertions in Nelson Fernando Contento and Guillermo de la Rosa's Affidavit in relation to me delivering cocaine to other persons, was not from their personal knowledge and therefore amounts to hearsay evidence.

27. That I maintain my innocence with respect to the allegations made against me in the US.

28. That in Sergio Pantoja, Nelson Femando Contento and Guillermo de la Rosa's Affidavit, they alleged they met me personally.

29. That their testimonies are fabricated for I do not know neither Sergio Pantoja, Nelson Fernando Contento nor Guillermo de la Rosa.

30. That in the Affidavit of Stephen Muldrow, paragraph 20, the person who committed the offence for which I am being sought for extradition was described as standing 5 feet, 4 inches tall, with black hair.

31. That I am of a different description standing about 5 feet 11 inches to about 6 feet; and I am also bald.

32.That I humbly request leave to issue a Writ of Habeas Corpus directing the Superintendent of Prisons to show cause why I should not be released immediately.

33. That the contents contained in this Affidavit are true and correct to the best of my knowledge, information and belief."

3. The applicant seeks the issuance of a writ of habeas corpus on several grounds, as detailed in the affidavit in support of the application. They will each be addressed in turn, under the general heading in relation to the ground.

a) Abuse of the Process

4. In paragraph 18 of the affidavit, the applicant asserts that "...**I verily believe that the continuation of extradition proceedings is an abuse of the Court's process."** No reason or submissions are presented as to why or how the proceedings are an abuse of the process. The paragraph follows on from a series of paragraphs which detail the results of an

application for the transfer of the extradition matter to another magistrate, made in the Supreme Court, the decision on which resulted in an appeal to the Court of Appeal. Both the application and the appeal were dismissed. The headnote of the Court of Appeal's decision, **Roscoe Thompson v Attorney-General (SCCrApp. No. 232 of 2016)** settles the issue, it reads:

> **"The Government of the United States sought the appellant's extradition for offences alleged to have been committed with its jurisdiction. Following the presentation of the prosecution's evidence in the course of the extradition proceedings Counsel for the appellant made a no case to answer submission. The magistrate found that the appellant did have a case to answer and committed the appellant without inquiring whether the appellant wanted to lead a defence. Within twenty minutes the error was brought to the attention of the magistrate who revoked his ruling, canceled his order to commit and advised the appellant that his bail continued. The matter was adjourned to a later date for the defence. However, before the adjourned date the appellant applied to the Supreme Court pursuant to section 51(1)(a) of the Criminal Procedure Code Act (CPC) to have his case heard before a different magistrate, on the basis of apparent bias. The Supreme Court heard application but refused the relief sought and the appellant appealed that refusal. In the circumstances further hearing of the extradition were stayed pending the ruling of this Court.**
>
> **Held: appeal dismissed and decision of the judge affirmed. Stay**

lifted; extradition proceedings to continue."

The circumstances of that unsuccessful application cannot constitute the basis of an abuse of the process application.

5. Nothing else is detailed as to what is supposed to constitute the abuse of the process in the matter, besides the asserted overall cumulative effect of the several issues raised, which would addressed as I consider those grounds. Having considered this application, I find that no other issue as to an abuse of the court's process has been raised before this court to cause the court to accede to any such application. This ground is therefore dismissed.

b) Passage of time makes it unjust to extradite

6. In paragraph 19 of his affidavit the applicant asserts: **"That by reason of the passage of time since it has been alleged that I committed the offence would be unjust to extradite me"** The proceeding paragraphs then go on to detail certain of the allegations contained in the affidavits in support of the extradition application, which allege drug conspiracies from the 1990's up to 2004.

7. As indicated, the ATP was issued in April 2013 by the Minister of Foreign Affairs of The Commonwealth of The Bahamas. It asserted that:

> **"I am satisfied that the offence against the laws of the United States with which Roscoe Thompson is accused is an offence provided for in the extradition treaty with the United States and**

that the acts and omissions constituting the offence would constitute the offence of:-

1) Conspiracy to Import Dangerous Drugs, namely cocaine, contrary to sections 15(6), 29(1)(a), 29(2)(a) and 30(1) of the Dangerous Drugs Act, chapter 228;

against the law of The Bahamas, if it took place in The Bahamas, the offence not being of a political character."

8. This ATP was in relation to a request for the extradition of the applicant presented under the signature and seal of the Secretary of State of the United States of America, dated 6 June 2012.

9. The seal of the Secretary of State incorporated into it, via the ribbon running through the seal, a bundle of documents inclusive of the certification by Lystra Blake, Associate Director, Office of International Affairs, Criminal Division, United States Department of Justice, of the original affidavit of W. Stephen Muldrow, Assistant United States Attorney for the Middle District of Florida, sworn 7 May 2012, before a United States Magistrate Judge, with exhibits attached.

10. That affidavit indicates that on 11 September 2007 a grand jury returned a one count indictment against Roscoe Thompson charging him conspiring with other persons, known and unknown, to distribute 5 kilograms or more of cocaine, knowing and intending that such substance would be unlawfully imported into the United States, contrary to Title 21,

United States Code, section 959 and Title 21 United States Code, sections 963 and 960(b)(1)(B)(ii).

11. It also detailed that a warrant for the arrest of Thompson was issued on the direction of a District Court Judge on 12 September 2007.

12. The affidavits of the intended witnesses, also attached to the extradition request, detail what these witnesses assert that the applicant Thompson did in participation in the alleged drug conspiracy.

13. From the information contained in this extradition request, the allegations of conspiracy to import cocaine into the United States extend to overt acts alleged to have occurred into 2003 to 2004. By 2007 the applicant had been indicted by a grand jury in the United States and by 2010 the intended witnesses had sworn affidavits in the United States.

14. By 2012, a formal extradition request had been prepared in the United States and by April of 2013 the Minister of Foreign Affairs of The Commonwealth of The Bahamas had issued an Authority to Proceed. Within five years, inclusive of the time spent for the unsuccessful challenge to the committing magistrate continuing to hear the extradition request, the applicant had been ordered to be surrendered into custody.

15. The Court of Appeal of The Bahamas has addressed this issue in the context of extradition applications. In **Nyahuma Bastian v The**

Government of the United States of America and others, SCCrApp & CAIS No. 199 of 2017 it was stated:

> **"12. In Fuller, the Board concluded that notwithstanding the passage of some twenty years it would not derail the proceedings to extradite the fugitive. The following appears at paragraph 75: "75. Mr. Fitzgerald has put at the forefront of his case on abuse of process the delay that has occurred in this case. He has submitted that this would render impossible a fair trial in the United States. The Board is in no position to evaluate this submission, nor was the Supreme Court in Belize. It was not, however, a matter for investigation by that court. Extradition proceeds on the basis that the person whose extradition is sought will receive a fair trial in the requesting State. If it is plain that a fair trial will not be possible, it will obviously be unjust and oppressive to return the person, but that is not this case. If it is alleged that the delay that has occurred, or any other matter, has rendered a fair trial in Dade County impossible, the appropriate remedy is to apply to the court there for relief." [Emphasis added]**
>
> **13. The above passage illustrates that extradition proceeds with the acceptance of the belief that the fugitive will receive a fair trial in the requesting State as a first principle. Moreover, it is for the courts of the requesting State to determine what relief should be accorded a fugitive for any alleged delay experienced in his case."**

16. In the instant case, the total period since the last asserted overt act is approximately 18 years. I adopt the above statement of the Court of Appeal and find the issue of what if any relief should be accorded the applicant for any delay is for the requesting state, there being nothing before this court to suggest that the applicant cannot still have a fair trial. In these circumstances, it cannot be said that it would be unjust to now extradite the applicant, nor can it be said that to extradite the applicant would be an abuse of the court's process. This ground is therefore dismissed.

c) The United States Indictment is statute barred

17. At paragraph 24 of the applicant's affidavit, he asserts that:

> **".. I cannot be prosecuted, tried or punished in the US for the committal of the alleged offence in the 1990's since the Indictment was not instituted within 5 years of the date of which the offence was alleged to have been committed, pursuant to Title 21, section 3282 of the United States Code...."**

18. Title 21, section 3282, attached to the requesting bundle as a part of exhibit C reads:

> **"Expect as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is**

instituted within five years next after such offense shall have been committed."

18. The affidavit of Assistant United States Attorney (AUSA) Stephen Muldrow addresses, at paragraphs 15 & 16, this issue. Those paragraphs read:

"15. I have appended to this affidavit, within Exhibit C, the true and accurate text of Title 18, United States Code, Section 3282, which is the statute of limitations for the crimes charged in the indictment. The statute of limitations requires that a defendant be formally charged within 5 years of the date that the offense or offenses were committed. Once an indictment has been filed in a federal district court, as was done in this case, the statute of limitations is tolled. The statute of limitations for a continuing offense, such as conspiracy, begins to run upon the conclusion of the offense, not its commencement.

16. I have thoroughly reviewed the applicable statute of limitations. Since the applicable limitation period is 5 years, and the indictment, filed on September 11, 2007, charges criminal violations alleged to have occurred through 2004, Thompson was formally charged within the specified five year period. Therefore, the prosecution of the charge in this case is not barred by the statute of limitations."

19. This statement of the law is supported by the intended evidence as found in the affidavits, indicating overt acts of conspiracy extending into

2003 and 2004. As in The Bahamas, the applicable limitation period in respect of a continuing conspiracy offence runs from the end of the conspiracy, not the beginning. I therefore find that the offence for which the applicant is charged in the extradition application is not statute barred. This ground is therefore dismissed.

d) Insufficient Evidence

20. At paragraphs 25 and 26 of his affidavit the applicant asserts:

> **"25. That, notwithstanding, there is insufficient admissible evidence of me ever conspiring to import dangerous drugs, namely cocaine from the 1990's to 2004.**
>
> **26. That the assertions in Nelson Fernando Contento and Guillermo de la Rosa's Affidavit in relation to me delivering cocaine to other persons, was not from their personal knowledge and therefore amounts to hearsay evidence."**

21. In relation to this ground, counsel for the applicant, in addition to commenting on the evidence, cited two cases from Jamaica, one a Court of Appeal decision and the other a High Court decision, in relation to extradition proceedings, in support of his submission that there was no evidence that the applicant participated in any drug conspiracy with the intention of importing any dangerous drug into the United States of America.

22. Counsel for the respondent submitted that each of the decisions are distinguishable on their facts from the present application.

23. The Court of Appeal decision is **Delroy Boyd v The Director of Correctional Services and The Director of Public Prosecutions, No. 47 of 2003,** where, beginning at page 9 the Court stated:

> **There is undoubtedly, evidence that the appellant was involved in a conspiracy to import marijuana and cocaine into the Bahamas from Jamaica. But was he a party to a conspiracy to the importation of those same drugs into the United States? This is the crucial question. In the affidavits of Newton and Cambridge there is only one sentence that mentions the United States. This is to be found in paragraph 2 of the Cambridge affidavit. It reads:**
>
> **"The cocaine and marijuana would then be transported into the United States."**
>
> **The Full Court appears to have placed telling significance on that sentence. Here is how it dealt with this aspect:**
>
> > **"From the affidavits of Newton and Cambridge it seems quite clear that they were involved in international narcotics trafficking as integral parts of a criminal organization. From their affidavits there is ample evidence to show that the applicant subsequently joined this organization. Bearing in mind the duration and nature of Cambridge's involvement it might well be expected that**

he would have actual knowledge of the scope of the drug operations. Consequently his assertion that the drugs supplied by the applicant would be shipped to the Bahamas and then transported to the United States of America cannot be, without more, written off as mere speculation, his words when taken at face value represent an assertion of facts and as such are capable of being accepted by a tribunal of fact."

If Cambridge had actual knowledge of the scope of the drug operation, it does not follow that the appellant was privy to that scope. What the evidence in the affidavits reveals is that the appellant was a supplier of illicit drugs which were destined for the Bahamas. Interestingly, nowhere in the judgement of the full Court was it sought to impute to the appellant knowledge of the scope of the drug operations. The Full Court seemed to have concluded that since the appellant was a party to "international narcotics trafficking" he must necessarily be aware of the ultimate destination of the drugs. This is an unwarranted leap. There is no evidential basis upon which such an inference can be drawn.

....

....

Lord Gifford's submission that there is no prima facie case that the appellant was a party to any conspiracy to import drugs into the United States was well founded. The committal court was in

error in issuing its warrant of committal on the 20th November 2002. The Full Court was also in error in dismissing the then applicant's motion for the issuance of a writ of habeas corpus.

It is for these reasons that the court at the conclusion of the hearing allowed this appeal."

24. The second decision cited, **Berkley Hepburn v The Director of Correctional Services and The Director of Public Prosecutions, Claim No. 2003 HCV 2138,** from the Full Court is of a similar effect.

25. Counsel for the respondents submitted that the factual matrix in respect of these two cases makes them distinguishable from the present matter. In those matters, as stated in the decision in Boyd, "..**There is undoubtedly, evidence that the appellant was involved in a conspiracy to import marijuana and cocaine into the Bahamas from Jamaica. But was he a party to a conspiracy to the importation of those same drugs into the United States?"** The appellant in Boyd, as stated, was involved in a conspiracy, with Bahamians, to import drugs into The Bahamas.

26. The intention of those co-conspirators, according to the evidence presented, was for those drugs to then go on from The Bahamas to the United States, but there was no prima facie evidence that the appellant (or the applicant in Hepburn) knew or was a party to any conspiracy to import drugs into the United States.

27. The respondents contend that an examination of the evidence in the instant matter reveals that the applicant was a party to a conspiracy to import directly into the United States of America the cocaine the subject of this extradition application. There was no third country involved in the removal of the drugs from The Bahamas to the United States, instead, the drugs were being transported directly to the USA.

28. The applicant had asserted, in paragraph 21 of his affidavit, that in the affidavit of Sergio Pantoja there is no indication that he, the applicant, participated in the importation or conspiracy to import cocaine into the US.

29. Contrary to that assertion however, the affidavit of Pantoja states that, at paragraph 7 thereof:

> **"The last cocaine smuggling venture that I participated in with Thompson took place during in or about 2003 and involved several hundred kilograms of cocaine. As with previous cocaine shipments, I met personally with Thompson in order to coordinate the logistics of receiving the cocaine from Thompson. That cocaine shipment was received by Thompson's organization and delivered to myself and others off the coast of The Bahamas. I then smuggled the cocaine shipment into South Florida and delivered it to other persons."**

29. That is a clear assertion of participation in a conspiracy to import cocaine into the United States. Counsel submitted that that evidence is

hearsay, but that ignores the fact that the affiant Pantoja stated that he met personally with Thompson to **'coordinate the logistics of receiving the cocaine from Thompson'.** In those circumstances, to receive the cocaine off the coast of The Bahamas, pursuant to the discussion of the logistics of receiving the cocaine, can hardly be said to be inadmissible hearsay evidence, since section 5 of Evidence Act of The Bahamas permits such evidence. That section reads:

> **"5. Where there is evidence from which an inference can be drawn that two or more persons have conspired together to commit an offence or an actionable wrong, evidence may be given against each of the persons of anything said, done or written by any one of them in the execution or furtherance of their common purpose."**

And seems to be entirely consistent with United States law on conspiracy, as detailed in paragraph 12 of the affidavit of AUSA Muldrow.

30. In the affidavit of Nelson Contento, there are portions of that affidavit which would not be admissible as evidence in furtherance of a conspiracy and are otherwise hearsay, such as the statement in paragraph 4 of his affidavit that he **"learned that Thompson had an organization in The Bahamas that was involved in receiving and delivering large cocaine shipments on behalf of other persons."**

31. However that does impact upon the admissible portions of his affidavit, (in particular paragraph 5 and 6), which admissibly speaks about his organizing the transportation of a shipment of several hundred

kilograms of cocaine from Colombia to the United States through the Bahamas. At paragraph 5 it states:

> **"5....I arranged a meeting between Thompson and another person from Jamaica (hereinafter Jamaican transporter) who was also involved in transporting that cocaine shipment. The purpose of that meeting was to introduce Thompson to the Jamaican transporter in order to facilitate their coordination of matters relating to the transportation of the cocaine shipment."**

32. There followed arguably hearsay statements, as to the delivery of the cocaine to the applicant by the Jamaican transporter and the applicant's delivery of the cocaine to others (who have themselves provided affidavits in relation to this transaction), but the paragraph continues that:

> **"6.....Because Thompson retained a greater portion of the cocaine than was agreed upon for payment related to Thompson's transportation services, a dispute arose with Thompson. As a result, I personally traveled to the Bahamas and met with Thompson and discussed the problems I had with respect to the amount of cocaine retained by Thompson as payment for his services."**

That statement amounts to admissible evidence as to the ex post facto proof of the existence of a conspiracy to import cocaine into the United States, since the affiant is speaking about talking to Thompson about the amount of the cocaine kept as payment for Thompson's services, which

services amount to participation in a conspiracy to import cocaine into the United States.

33. Further, the affidavit of Guillermo De La Rosa also provides direct evidence of the applicant's participation in an ongoing conspiracy to import cocaine into the United States. He makes the general statement that he:

> **"..personally met and dealt with Roscoe Thompson, who was responsible for receiving the cocaine shipments in the Bahamas and delivering the cocaine shipments to Sergio Pantoja, myself and others."**

He then went on to detail several overt acts, inclusive of statements that he was engaged in receiving two cocaine shipments in or about 1999 from associates of Thompson **"off the coast of the Bahamas at a location given to us by Thompson."**

34. De La Rosa further detailed that in or about 2003 he participated in another drug smuggling venture involving several hundred kilograms of cocaine, which was delivered to Thompson and his associates and then:

> **"..delivered to Pantoja, me and others off the coast of the Bahamas. A significant portion of that cocaine shipment was successfully smuggled into South Florida by boat and delivered to other persons."**

35. Given these asserted facts, the applicant's reliance on the Jamaican authorities cited is misplaced. If anything, given the evidence in the instant matter, he is, in relation to the United States, in the same position as Boyd

in relation to The Bahamas, in respect of which, as indicated, the Court of Appeal of Jamaica stated that "..**There is undoubtedly, evidence that the appellant was involved in a conspiracy to import marijuana and cocaine into the Bahamas from Jamaica."**

36. In the instant matter, there is undoubtedly evidence that the applicant was involved in a conspiracy to import cocaine into the United States from The Bahamas.

37. The applicant acknowledges, in paragraph 28 of his affidavit, that Pantoja, Contento and De La Rosa all allege that they met the applicant personally, but then goes on to assert that their testimony is fabricated as he, the applicant, does not know any of them.

38. The applicant also contended that the physical description of the fugitive provided in the affidavit of Stephen Muldrow does not accord with his description, which he describes as being approximately 5 foot 11 inches, with a bald head, as compared to the description in Muldrow's affidavit of a person approximately 5 foot 4 inches with black hair.

39. The photo exhibited which each of the purported identifying witnesses use to identify the applicant does appear to be a photo of the applicant, with at best, low, if any, hair.

40. It is to be noted that in none of the affidavits do either Pantoja, Contento or De La Rosa provide a physical description of the person

whom each of them indicate that they met with and communicated with on several occasions. They each however identify a photograph of the applicant as being the person about whom they are speaking.

41. The source of the AUSA Muldrow's physical information is not given, but he does not purport to be an identifying witness or witness to any alleged fact, his affidavit is what is usually described as the affidavit of law.

42. The assertions as to the intended evidence and the quality of the identifying evidence are all questions of fact for a jury to determine. There is nothing to suggest that any of these in person meetings with the applicant spoken about by the purported witnesses were brief or only provided an opportunity for a fleeting glance of the applicant.

43. A committing court in a preliminary inquiry is concerned with the sufficiency of the presented evidence, not its ultimate truthfulness. A committing court in an extradition application applies the same standard. The Extradition Act, chapter 96, section 10(1) states:

> **"10. (1) A person arrested in pursuance of a warrant issued under section 9 shall, unless previously discharged under subsection (4) of that section, be brought as soon as practicable before a magistrate (in this Act referred to as "the court of committal") who shall hear the case in the same manner, as nearly as may be, as if he were conducting a preliminary inquiry under the Criminal Procedure Code and as**

if that person were brought before him charged with an indictable offence committed within his jurisdiction."

And section 10(5) states

(5) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person, that the offence to which the authority relates is an extradition offence and is further satisfied —

(a) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if the offence had been committed in The Bahamas; or

(b)....

the court of committal shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his extradition under this Act; but if the court of committal is not so satisfied or if the committal of that person is so prohibited, the court of committal shall discharge him from custody."

44. This point is further established in the decision of the Court of Appeal in the applicant's appeal against the court's earlier dismissal of his applicant for the transfer of the extradition application to another Magistrate's Court. Their Lordships stated at page 9 the following:

"29. In Nyahuma Bastian v Magistrate Guillemina Archer and The Attorney General SCCrApp. No. 72 of 2011, the Court of

Appeal considered the issue of extradition applications and the application of rules of evidence and constitutional rights to such applications. At paragraph 14 the Court said:

> "14. It cannot be disputed that extradition proceedings are unusual in nature. Guilt or innocence is not being determined. The procedure does not have the same technicalities as criminal proceedings. Finality is not the function of such proceedings. Extradition proceedings are a creature of treaties entered into between the sovereign states to provide machinery for the surrender of fugitive criminals who may have committed offences abroad. Whilst governed by legislative provisions the strict rules of evidence are not always adhered to, nevertheless the fugitive is entitled to a fair hearing."

30. The observation of John, JA in Bastian is somewhat at odds with the decision of Ognall, J. in Governor of Pentonville Prison, ex parte Lee [1993] 1 W.L.R. 294 who opined at page 1300C that "fairness is not a criterion relevant to the function of the committing court."

31. John, JA went on at paragraph 26 to refer to the Canadian case of Wisconsin (State) v Armstrong [1973] F.C. 437, 10 C.C.C. (2d) 217, where the Federal Court of Appeal Canada rejected the argument that admitting affidavits into evidence without cross—examination deprived a person of his right under section 2(e) of the Canadian Bill of Rights; and the

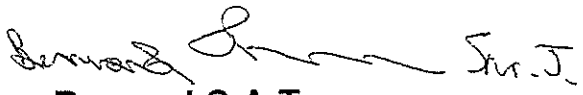
judgment of Thurlow, J. with whom Cameron, J. concurred. Thurlow, J. said:

> **"... the hearing is a mere inquiry and what the extradition judge has to determine is not the guilt or innocence of the fugitive but the question whether the evidence produced would justify his committal for trial. The fugitive is entitled to be made aware, by the reading of the affidavits presented, of the case against him, upon which his extradition for trial may be ordered, but he is not required to answer that case and even if he elects to do so, by evidence or otherwise, the judge's function remains the same. He is not empowered to decide the merits of guilt or innocence, or to pass upon the credibility of witnesses but simply to determine whether there is sufficient case against the fugitive to justify his committal. The trial and determination of the fugitive's rights with respect to the charge are left to the trial Court.""**

45. On the admissible evidence contained in the affidavits attached to the request for extradition, it cannot be said that there was insufficient evidence upon which the committing magistrate could have acted in committing the applicant into custody to await his extradition. This ground is therefore dismissed.

46. For the foregoing reasons, I dismiss the applicant's application for a Writ of Habeas Corpus and affirm the Magistrate's committal of the applicant into custody for surrender to the United States of America.

Dated this 5 day of October AD, 2022



Bernard S A Turner
Senior Justice

Postscript

Immediately upon the pronouncement of my decision in open court, counsel on behalf of the fugitive/applicant indicated that he was in the process of filing an appeal against the court's decision to the Court of Appeal and sought continuation of bail for the fugitive/applicant.

2. After consideration of the application, which was opposed by the respondent's, I determined that, having regard to the fugitive/applicant's previous compliance with the conditions of bail which were imposed by the Supreme Court after the fugitive/applicant was ordered to be committed into custody for surrender to the United States by the Learned Committing Magistrate, in 2018, that I would release the fugitive/applicant on bail on certain conditions, upon proof of the filing of a Notice of Appeal in the Court of Appeal.

3. Having received a Notice of Appeal stamped as filed on 5 October 2022 intituled Roscoe Thompson, Appellant and The Government of the

United States of America et al, No. 135 of 2022, the applicant was ordered to be released on bail pending consideration of the appeal on the following conditions:

i) Bail in the sum of $75,000.00 with two sureties.

ii) To report to the Rock Sound, Eleuthera, Police Station daily before 6:00pm.

iii) To be electronically monitored, and to comply with the Regulations for the use of such an electronic monitoring device.

Dated this 5 day of October AD, 2022

Bernard S A Turner
Senior Justice