

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF  
GUYANA

CIVIL JURISDICTION

**2018-HC-DEM-CIV-FDA-2296**

BETWEEN:

In the matter of the Constitution of Guyana

-and-

In the matter of MARVIN WILLIAMS also referred  
to as TROY THOMAS by the Guyana Police Force in  
the custody of the Guyana Police Force

-and-

In the matter of the issue of a Writ of Habeas Corpus  
Ad Subjiciendum

-and-

In the matter of an application by MARVIN  
WILLIAMS

Applicant

-and-

1. THE COMMISSIONER OF POLICE

2. THE DIRECTOR OF PUBLIC  
PROSECUTIONS

3. THE ATTORNEY GENERAL OF GUYANA

Respondents

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. C. A. Nigel Hughes and Ms. Prithima Kissoon for the Applicant

Mr. Nigel Hawke, Ms. Deborah Kumar and Ms. Beverly Bishop-Cheddie for the  
Respondents

**Delivered April 4<sup>th</sup> 2019**

DECISION

The United States of America Department of Justice requested of the Government of Guyana that Troy Thomas, a citizen of Guyana, residing in Guyana be extradited to the United States of America to stand trial on three criminal charges in the County of Queens, State of New York.

All of the offences with which Troy Thomas is charged are felonies in the State of New York.

Pursuant to this request the Minister of Public Security issued an Authority to Proceed in accordance with the Fugitive Offenders Act; CAP 10:04 of the Laws of Guyana.

Pursuant to this Authority, Magistrate Sherdel Isaacs-Marcus issued an Arrest Warrant for the arrest of Troy Thomas and in execution of the Warrant Troy Thomas was arrested and remanded to custody pending extradition proceedings.

Magistrate Isaacs-Marcus thereafter conducted Committal proceedings for the purpose of extradition in accordance with the Fugitive Offenders Act and on conclusion of those proceedings issued a Warrant of Committal on November 30<sup>th</sup> 2018 committing Troy Thomas to custody to await his extradition to the United States of America.

In accordance with section 17 of the Fugitive Offenders Act Troy Thomas has filed this Fixed Date Application [FDA] to test the authority of his committal by Magistrate Isaacs-Marcus.

Before dealing with the issues arising out of the the FDA the Court feels compelled to address certain procedural issues.

The grounds stated in the FDA stretch out over 7 pages, containing 42 substantive paragraphs, mainly containing evidence in support of the FDA. In fact the only real difference between the stated grounds and the Affidavit in Support of the FDA is that one is written using the first person pronoun and the other, the third person pronoun.

A ground in an Application to a Court is the legal principle or claim being advanced or relied upon to justify the granting of the relief being sought. It is the reason/s specified in law that form/s the basis for the relief claimed.

The **grounds**, therefore, cannot be a full discourse of the evidence relied upon. An Application drafted in the form of the present Application can and maybe ought to be struck out for not clearly stating a **ground**.

It appears, having sifted through the “grounds”, that the primary challenge to the committal is that the Minister of Public Security had no legal authority to authorise Magistrate Isaacs-Marcus to proceed with the Committal / Extradition proceedings and further Magistrate Isaacs-Marcus had no legal authority to proceed with the Committal / Extradition proceedings since they purported to act in accordance with sections of the Fugitive Offenders Act which are unconstitutional and in furtherance of a Treaty which is not incorporated into the Laws of Guyana.

In other words the Applicant is contending that the Magistrate did not have jurisdiction to conduct Committal proceedings much less issue a Warrant of Committal.

It was disclosed at paragraphs 44 and 45 of the Applicant's affidavit in support of this FDA sworn to on December 13<sup>th</sup> 2018 that during the course of the committal proceedings an FDA [**2017-HC-DEM-CIV-FDA-591**] was filed in the High Court seeking various declarations which are the very same issues/ challenges to the Magistrate's jurisdiction being raised in this FDA.

That FDA was heard and determined by the Honourable Madam Justice Jo-Ann Barlow who delivered a written judgment on May 25<sup>th</sup> 2018.

This Court fully agrees with the ruling of Madam Justice Barlow and wholly adopts that ruling.

In the circumstances this jurisdictional challenge is hereby denied.

It is further noted that the judgment of Madam Justice Barlow in **2017-HC-DEM-CIV-FDA-591** was appealed by the Applicant and is currently pending before the Court of Appeal.

In these circumstances the Court finds that it was improper and an abuse of the process of the Court for this Applicant to raise this particular issue in this FDA

The secondary challenge raised can be considered to be evidential.

The Applicant has denied that he is Troy Thomas, the person named in the Warrant of Arrest issued on June 22<sup>nd</sup> 2012 by the Honourable Justice Gregory L. Lasak, Judge of the Supreme Court of the State of New York.

In proceedings **2017-HC-DEM-CIV-FDA-591** Madam Justice Barlow examined the evidence before the Court to first ascertain whether the Applicant before her

was in fact Troy Thomas and in fact Madam Justice Barlow found that that the Applicant was Troy Thomas.

The Applicant now contends that such finding by Madam Justice Barlow effectively determined that issue which was a live issue before Magistrate Isaacs-Marcus in the Committal proceedings.

It is the Applicant's contention that the Learned Magistrate was bound by Madam Justice Barlow's finding that the Applicant was indeed Troy Thomas.

It is clear that Madam Justice Barlow was bound to satisfy herself that the Applicant [before her] was properly the subject of the Committal proceedings.

A Court would not proceed to determine the legality or constitutionality of legislation in vacuo, there must be a proper party with an actual cause before the Court.

In this regard the Learned Trial Judge properly satisfied herself as to the Applicant's identity before considering the Application.

Further the Learned Trial Judge was very clear in her ruling that it was incumbent on the Learned Magistrate to make her own determination as to identity of the person before her [the Magistrate] as is evidenced at page 5 of the decision;

*“The Magistrate would have other material before her on which she will make her own finding as to the person before her. For extradition purposes, the Magistrate must be satisfied for herself that there is sufficient evidence before she makes her decision.”*

In these circumstances the Court finds that the Learned Magistrate was not bound or directed by the Learned Trial Judge on the issue of the identity of the Applicant.

In addition to the foregoing, this Court is duty bound to determine whether the Learned Magistrate had sufficient evidence before her to determine that the Applicant is in fact Troy Thomas.

This Court finds that based on the records made on the case jacket by the Learned Magistrate and the statement of Detective Assistant Superintendent of Police Simeon Reid the Learned Magistrate was possessed of sufficient evidence to determine that the person before her and the subject of the Committal proceedings for the purpose of extradition is Troy Thomas, the same said person named in Warrant of Arrest issued on June 22<sup>nd</sup> 2012 by the Honourable Justice Gregory L. Lasak, Judge of the Supreme Court of the State of New York.

Finally, although not specifically raised in the FDA before this Court, it is the duty of this Court on an Application of this nature to ensure that the Magistrate had sufficient evidence before her to commit the Applicant.

Kirt Kyte claims to be an eyewitness to Troy Thomas shooting Keith Frank to the torso inflicting an injury that Dr. Maloney opines is the cause of Keith Frank's death.

This Court finds that based on the affidavits of Kirt Kyte and Dr. Katherine Maloney there was more than sufficient evidence before the Learned Magistrate to commit the Applicant, as she did, for the offence of Murder in the Second Degree, an extraditable offence under section 5 of the Fugitive Offenders Act.

In fact the Court finds that there was sufficient evidence to commit the Applicant for all of the offences on which extradition was requested by the United States of America and all of the offences stated are extraditable offences under section 5 of the Fugitive Offenders Act.

In the circumstances, for all of the reasons afore-stated, this Application is refused.

The Court awards costs to each Respondent against the Claimant in the sum of \$150,000.00.

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Justice N. A. Singh