In the High Court of Justice
King's Bench Division
Administrative Court

CO/2334/2022

In the matter of an application for permission to appeal pursuant to the Extradition Act 2003

JULIAN PAUL ASSANGE

Appellant

-and-

GOVERNMENT OF THE UNITED STATES OF AMERICA

Respondent

NOTIFICATION of the Judge's decision (Crim PR 50.22)

Following consideration of the documents lodged by the Appellant and the Respondent

ORDER by the Honourable Mr Justice SWIFT

1. The application for permission to appeal is refused.

2. The application to rely on fresh evidence is refused.

3. If this application for permission to appeal is renewed (in whole or in part), the grounds of renewal (a) shall be self-contained (i.e., shall not cross-refer to the existing grounds of appeal); (b) shall not exceed 20 pages; and (c) shall set out, clearly and concisely, the precise propositions of fact and law relied on in support of each ground of appeal pursued.

Reasons

1. An appeal under the Extradition Act 2003 is not an opportunity for general rehearsal of all matters canvassed at an extradition hearing. The issue is the one posed by section 103 of the 2003 Act: ought the judge to have decided a question at the extradition hearing differently (such that she would have been required to order discharge)? That is not a general invitation to the Administrative Court simply, or on all matters, to stand in the shoes of the judge who conducted the extradition hearing (see *Love v Government of the United States of America* [2018] 1 WLR 2889 per Lord Burnett CJ at §25), in particular when the issue decided by that judge was the application of a legal standard that depended on an evaluation of facts, either primary, secondary or both (see the same case at §§23, 24 and 26).

2. There are 8 proposed grounds of appeal. They are set out at great length (some 100pp.), but the extraordinary length of the pleading

serves only to make clear that the proposed appeal comes to no more than an attempt to re-run the extensive arguments made to and rejected by the District Judge. To the extent that the proposed grounds invite this court to revisit her evaluative judgments (and this is the essence of most of the proposed grounds of appeal), the starting point now must be that those matters have already been very carefully considered by her during her thorough written judgment. In that context, having considered each of the proposed grounds of appeal, I do not consider any raises any properly arguable case.

3. *Ground 1: the decision on section 81(a) of the 2003 Act*. There is no arguable basis to go behind the Judge's assessment of this matter: see her judgment at §§156 – 192. The issue is one of fact and evaluation. I accept the submission in the Respondent's Notice that the substance of the arguments now pursued are all matters canvassed at the extradition hearing but rejected by the District Judge. The criticism that particular matters were "not dealt with" in the reasons is not a valid point. A judgment is not required to address every point put, but rather to set out the reasons for the conclusion reached. In this case the conclusion reached by the Judge is not, even arguably, capable of being undermined by any of the arguments raised.

4. The "new evidence" point is not a point of substance. I accept the submission at §§25 – 30 of the Respondent's Notice that the *Fenyvesi* criteria are not met; I also accept the further submissions at §§156 – 161 concerning Mr Rusbridger's evidence. In the premises, the proposed new article 2 and/or 3 grounds of appeal (Notice of Appeal, section 17), do not arise.

5. *Ground 2: article 7*. The submission on whether the District Judge applied the correct test is not arguable: see the judgment at §245 where she correctly concluded that the observation at §38 of the judgment of the Divisional Court in *Arranz v Spain* does not (and was not intended to) detract from the principle stated by the House of Lords in *Ullah*. The Appellant's submission on the application of the facts is not, even arguably, correct: see the Judge's analysis from §252.

6. *Ground 3: article 10*. The District Judge's reasoning in support of her conclusion that the Appellant's extradition would not entail flagrant breach of article 10 is set out in 2 parts of the judgment, from: (a) §§109 – 137; and (b) §§272 – 277. There is no error of principle in either part of the judgment; I do not consider the District Judge's evaluation of the facts of this case to be arguably wrong.

7. *Ground 4: article 5 and/or 6*. Neither of the matters raised by this ground of appeal is arguable. The submission on plea bargains is addressed at §§230 – 232 of the judgment; the submission on excessive sentencing at §236. There is no error apparent in the District Judge's reasoning.

8. *Ground 5: denial of rights under the US constitution because the Appellant is an "alien"*. The treatment of this point, at §§263 – 265 does not show any error. The appeal is no more than an attempt to

re-run an argument of fact rejected by the District Judge.

9. *Ground 6: disproportionate sentence*. This is a point of no substance for the reasons at §§225 – 228 of the Respondent's Notice. The submission that this point was not "dealt with" by the District Judge is opportunistic: I accept the submission at §231 of the Respondent's Notice.

10. *Ground 7: extradition prohibited by the US/UK extradition treaty*. This ground of appeal covers materially the same matters as Ground 1 of the appeal against the Home Secretary's decision. It is unarguable for the same reasons. Insofar as there is any discrete issue in this appeal, it is a point of no substance – there is no error in the District Judge's reasoning on this matter, at §§41 – 60 of the judgment, or her conclusion that the treaty does not give rise to any justiciable right. The 2003 Act is the governing instrument.

11. *Ground 8: abuse of process*. This ground repeats submissions made to the District Judge. She concluded, and I agree, that each part of the submission was no more than the Appellant advancing an "alternative narrative" setting out contentions that were matters to be decided at trial (see the judgment at §§366 – 402). None of the points relied on raises any arguable ground of appeal.

12. Paragraph 3 of the order is a direction that will apply if the application for permission to appeal is renewed. It is essential, for grounds of appeal to be pleaded concisely and clearly. This is the only way to ensure that one party's case can be properly and proportionately addressed by the other parties to the claim. The present grounds of appeal are unwieldy and do not comply with any known principles of pleading.

Signed

Sent to the Appellant, and Respondent

Date: 06/06/2023

Solicitors:
Ref No.

Notes for the Appellant

If you wish to renew the application for permission to appeal at a hearing in open court, you must complete, file and serve the enclosed FORM EXREN within 5 business days of the service of this Order. See Crim PR 50.22(2) and (3).

The date of the hearing of any renewed application will be fixed by the Listing Office. Save in exceptional circumstances, regard will not be given to an advocate's existing commitments (Criminal PD Part 50, 50B.13)

All renewal hearings will be fixed with a time estimate of 30 minutes. Any party who disagrees with that time estimate must inform the Listing Office within 5 business days of the notification of the listing and must provide a time estimate of their own.