JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 91 OF 2006

BEFORE: **THE HON. MR. JUSTICE PANTON, P.**
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A.

BETWEEN	**PRESTLEY BINGHAM**	**APPELLANT**
AND	**COMMISSIONER OF CORRECTIONAL SERVICES**	**1ST RESPONDENT**
AND	**THE DIRECTOR OF PUBLIC PROSECUTIONS**	**2ND RESPONDENT**

Mrs. Jacqueline Samuels-Brown, and Mrs. Tameka Jordan for the Appellant.

Miss Tasha Manley, instructed by the Director of State Proceedings for the 1st Respondent

Donald Bryan, Deputy Director of Public Prosecutions for the 2nd Respondent.

JULY 3, 4, 31 and September 28, 2007

PANTON, P.

On July 31, 2007, we made the following order in this matter:

> "Appeal allowed. Decision of the Full Court set aside. Appellant to be discharged from custody forthwith. Costs in this Court and below to be the appellant's. Written reasons to follow."

We now fulfill our promise in respect of the reasons for our decision. Having read the reasons that have been written by my learned colleagues, Cooke, J.A., and Harris, J.A., I have concluded that there is nothing to be added thereto.

COOKE, J.A.

1. On the 28th December, 2005, the appellant was committed to custody to await his extradition to the United States of America. He was to face drug related charges. On the 14th March, 2006, he applied to the Supreme Court for his release from custody pursuant to section 13 of the Extradition Act (the Act). This application, erroneously sought a Writ of Habeas Corpus, but in substance was sufficient to invoke the aid of that section of the Act. The Full Court on October 27, 2006, dismissed his application in two sentences.

"Application dismissed. Sufficient cause shown."

It is from this dismissal that this appeal now lies.

2. I begin this judgment by setting out section 13 of the Act:

> "13.– (1) If any person committed to await his extradition is in custody in Jamaica under this Act after the expiration of the following period, that is to say –
>
> (a) in any case, the period of two months commencing with the first day on which, having regard to subsection (2) of section 11, he could have been extradited; or
>
> (b) where a warrant for his extradition has been issued under section 12, a period of one month commencing with the day on which that warrant was issued,

> he may apply to the Supreme Court for his discharge.
>
> (2) If upon any such application the Supreme Court is satisfied that reasonable notice of the proposed application has been given to the Minister, the Supreme Court *may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody and, if a warrant for his extradition has been issued under section 12, quash that warrant.*" (Emphasis mine)

3. For the purpose of computing time within the time frame postulated by section 13, it is 13 (1) (a) which is pertinent. Therein is reference to section 11 (2) which states:

> "11. (1) ...
>
> (2) A person committed to custody under section 10 (5) shall not be extradited under this Act –
>
> (a) in any case, *until the expiration of the period of fifteen days commencing on the day on which the order for his committal is made*; and
>
> (b) if an application for *habeas corpus* is made in his case, so long as proceedings on the application are pending. [Emphasis supplied]"

section 11 (2) (b) is not relevant to this case as the appellant did not avail himself of his right to apply for habeas corpus. It is therefore clear that the fifteen day time period mentioned in section 11 (2) (a) expired on the 12th January, 2006. Consequently the two month period designated in section 13 (1) (a) expired on the 12th March, 2006. It will be recalled that the appellant filed his application for his discharge on the 14th March, 2006.

4. It is not in dispute that the words "may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody" in section 13 (2) of the Act are to be construed in such a manner that "may" should be interpreted as mandatory, resulting in the discharge of the person awaiting extradition in the absence of sufficient cause being shown to the contrary. This has been so since **Re Shuter** (No. 2) [1959] 3 All E.R. 481. In that case the Court (Q.B.D) was considering section 7 of the English Fugitive Offenders Act 1881 in which the excerpted words appear. The construction put upon those words in **Re Shuter** has been accepted, without the slightest qualification. It follows that there is a burden on the respondents to show "sufficient cause to the contrary" otherwise the Court is obliged to accede to the application for discharge. Therefore once the time period mandated by section 13 (1) (a) has expired and there is an application for discharge pursuant to section 13 (2) it is for the respondents to demonstrate that although the period fixed by the legislature had expired, there were

circumstances which showed that there was sufficient cause why there had not been obedience to the statute. It is my view that in dealing with section 13 (2) the approach should be that on an application for discharge the applicant at the beginning is in the 'driver's seat' as it were. It is for the respondents by relevant evidence to displace him therefrom.

5. In an effort to show that there was sufficient cause to the contrary, reliance was placed on the affidavit of Donald Bryan who described himself as an acting Deputy Director of Public Prosecutions in the Office of the Director of Public Prosecutions. He had responsibility for extradition matters in that office. The relevant paragraphs of this affidavit dated the 24th May, 2006 are now reproduced.

> "5. On January 25, 2006 I wrote to the Registrar of the Supreme Court enquiring of the status of Mr. Bingham's case, that is, whether he had filed a writ of *habeas corpus* or not. A copy of the letter is exhibited hereto and marked "DB—1" for identity.
>
> 6. On March 23, 2006 the Registrar of the Supreme Court, formally wrote to the Director of Public Prosecutions advising that their records did not reveal that an application for writ of *habeas corpus* was filed on behalf of Prestley Bingham. I exhibit hereto the letter from Registrar marked "DB—2" for identity.
>
> 7. Between writing to the Registrar of the Supreme Court on January 25, 2006 and receival [sic] of the response by letter dated March 23, 2006, I have instructed Mrs.

Yvonne Young, Secretary in the Office of the Director of Public Prosecutions, to make follow-up telephone calls on numerous occasions to the Registrar's Office on the matter. To the best of my knowledge and belief such calls were made by Mrs. Young as on occasions I observe her making the calls. However, she was not successful in securing the letter in a timely manner.

8. In mid March, I also made a telephone call to Registrar and was advised that the letter was being prepared.

9. On March 23, 2006 I personally visited the Registrar's Office where I awaited the completion of the letter which was delivered to me.

10. Once the letter was in my possession I immediately forwarded a letter to the Permanent Secretary in the Minister of Justice [sic] with a draft of the Surrender Warrant for the attention and signature of the Honourable Minister, as also a copy of the Warrant of Committal, information that Mr. Bingham has no local charges in this jurisdiction, and a copy of the letter from the Registrar that no writ of *habeas corpus* has been filed by Mr. Bingham. I exhibit hereto letter marked "DB—3" for identity.

11. At the time when the draft Surrender Warrant was forwarded to the Honourable Minister for his signature, to the best of my knowledge and belief, Mr. Bingham had not filed a writ of *habeas corpus*.

12. During the period from Mr. Bingham's committal to the draft Surrender Warrant being forwarded for the attention and signature of the Honourable Minister, there was no indication by or on behalf of Mr.

> Bingham in writing or otherwise, that he would not be challenging his extradition."

6. Counsel for the appellant submitted that:

> "... the matters set out in the affidavit of Donald Bryan (the requesting state's representative) cannot be said to amount to sufficient cause as they plainly indicate administrative inaction, incompetence, lack of any or any sufficient regard for the Appellant's fundamental right to liberty and inexcusable lethargy."

She emphasized the following inadequacies.

(a) In the two month period following the fifteen days period i.e. from the 12th January, 2006 to the 12th March, 2006:

> "... no warrant was issued, no step preparatory to the issue of a warrant was taken by the Minister, no arrangement for the Appellant's travel or transportation to the requesting state was made."

(b) During the two month period the failure to act as regards sending the appellant to the United States was uninfluenced by any act which could be attributed to the appellant. It was submitted that:

> "There was no history to the matter by way of steps taken or indicated to be taken by the Appellant or any third party, no legal or administrative bar, no logistical obstacle in the path of either the requesting or requested state that would account for him not being extradited as provided for by law."

(iii) The Office of the Director of Public Prosecutions displayed an "active interest" in the case and took steps to further the extradition process. (See affidavit of Bryan).

(iv) There was "due diligence' bearing in mind that it was incumbent on the Minister to satisfy himself that no writ of Habeas Corpus had been filed before the issuance of the Warrant of Surrender. There was no bar to the appellant filing a writ of Habeas Corpus after the expiry of the initial fifteen day period.

(v) There was no *mala fides* or impropriety which was directed to the appellant.

(vi) The "necessary urgency" had been displayed by Mr. Bryan.

(vii) Delay by itself is not the sole criterion in determining whether or not sufficient cause had been shown to the contrary. There should also be consideration of:

(a) The seriousness of the offence(s)

(b) The fact that the appellant did not challenge the committal order and the appellant's admission, as contained in his affidavit evidence, that he had no intention to do so as he wanted 'to face his accusers'.

8. In the determination of whether or not sufficient cause to the contrary has been shown it should be readily recognised that there was no obligation on the fugitive to facilitate his transportation to the United States. The fact that the appellant did not challenge the committal order is not a relevant consideration as to the performance of the Minister as mandated by section 13 of the Act. Further the wish of the appellant to face his accuser is equally irrelevant. These circumstances should have been a catalyst for expedition. Instead they are, surprisingly, being put forward as factors indicating a sufficiency of cause to the contrary. To ascertain if the appellant had taken any legal step which could affect his transportation to the United States was essentially a mechanical and routine task. It is impossible to conceive of the slightest difficulty which could have been encountered in making a search of the Index Book (Suit Book) which records the filing of legal actions. Implicit in the stance of the respondents is that blame should be attached to the Registry. Even if this is so, that would not assist the respondents as the Registry can be considered as a part of the state.

9. I am of the view that there was a serious want of responsibility in the approach of the authorities as to compliance with section 13 of the Act. The Bryan affidavit does not speak to 'urgency' or 'active interest' or 'due diligence' in carrying out the statutory stipulations embodied in section 13 of the Act.

After the initial fifteen days had elapsed a Warrant of Surrender should have been in the immediate contemplation of the authorities. This contemplation demanded that positive action should have been taken and maintained to ensure obedience to the dictates of section 13 of the Act. Unfortunately the Bryan affidavit does evidence lethargy. It does not reveal the promptitude that is envisioned by the Act. I would therefore find favour with the submissions on behalf of the appellant that the delay in this case was quite unreasonable. The appellant in no way contributed to this delay. Further it could not be said that the delay was triggered by any consideration of the appellant's interest (see **Re Levin** [1997] EWHC Admin 789). Perhaps it all comes down to administrative inefficiency. I do not consider the seriousness of the offences as a factor which should give me reason to pause. Section 13 of the Act pertains to all offences concerning which the fugitive has been committed to await his extradition. If anything, the more "serious" the offence is the more reason for action within the statutory time framework. The "seriousness" of the offence does not permit inertia.

10. The appellant submitted that the Minister's function was "separate from the requesting state and its representative". The representative of the requesting state in this case was the Office of the Director of Public Prosecutions. Accordingly, the argument ran, since Mr. Bryan was a representative of the requesting state there was no evidence from the Minister

which was capable of consideration in determining whether sufficient cause has been shown to the contrary. I do not agree. Broadly speaking it is the Office of the Director of Public Prosecutions which represents the requesting state at the committal hearing. Once there is a decision in that hearing the role of the Director of Public Prosecutions ceases as being the representative of the requesting state, except of course, there are legal challenges to the committal of the fugitive. In the scheme of things it would appear that in respect of the issuance of the Warrant of Surrender it is the Office of the Director of Public Prosecutions who advises the Minister. Therefore, I am of the view that the affidavit of Mr. Bryan contained material which was properly put forward on behalf of the Minister. In the filing of his affidavit he was the representative of the Minister.

11. The appellant further submitted that, in endeavouring to show that there was sufficient cause to the contrary the Minister had to do so "beyond reasonable doubt". This standard, it was said, followed from the fact that extradition proceedings were essentially criminal in nature. I am not moved by this contention. The standard suggested by the appellant is peculiar to verdicts in criminal trials. It is the burden on the prosecution to satisfy a jury that an accused is guilty "beyond reasonable doubt" or as is the modern formulation "satisfied so that they feel sure". There is no warrant either on authority or good sense for imposing the proffered standard as suggested by the appellant.

Section 13 (2) of the Act does not prescribe this standard. The Court in its experience is more than well equipped to determine if sufficient cause to the contrary has been shown.

12. As earlier mentioned the Full Court, regrettably, did not provide reasons for its decision. Its views have therefore not been transmitted to this Court. I have approached this appeal as a rehearing of the matter as I am entitled to do within Rule 1.16 (1) of the Court of Appeal Rules, 2002 which states that:

"An appeal shall be by way of re-hearing."

It is only left for me to state that the respondents have failed to show that "sufficient cause is shown to the contrary". I would uphold the appeal and direct that the appellant be discharged from custody. Finally I would award costs to the appellant both here and in the Court below.

HARRIS, J.A:

This appeal challenges a decision of the Full Court (Wolfe, C.J., McIntosh, J and Hibbert, J), dismissing an application by the appellant for his discharge from custody.

On December 28, 2005, a Committal Order for the extradition of the appellant to the United States of America to answer drug

related charges was made by His Honour Mr. Martin Gayle. He remains in custody awaiting extradition.

On March 14, 2006, the appellant, by way of a Fixed Date Claim Form, sought the issuance of a Writ of *Habeas Corpus* for his release from custody. An affidavit filed by the appellant sworn on March 14, 2006, in support of his claim reveals that the claim ought to have been grounded on section 13 of the Extradition Act. The claim as sought, although mispleaded, would not have precluded him from praying in aid section 13 of the Act.

In paragraphs 6 and 7 of the appellant's affidavit, he states:

> "6. I initially did not challenge the order of the Magistrate as I wished to face my accusers as early as possible and defend my innocence in a trial court.
>
> 7. However, it is now over seven weeks since the Magistrate ordered my extradition and I still remain in custody in Jamaica. This is causing me great hardship and suffering and is unfair to me".

An affidavit filed by Mr. Donald Bryan, Acting Deputy Director of Public Prosecutions, contains averments outlining steps taken by him between January 25 and March 23, 2006 to arrange for the appellant's extradition.

On October 24, 2006, the Full Court heard the matter and made the following order:

"Application dismissed. Sufficient cause shown."

No reason for their pronouncement was advanced by the Full Court. This court however, may embark on a rehearing of the claim by virtue of Rule 1.1 (6) of the Court of Appeal Rules 2002.

Two grounds of appeal were filed. They state:

> "(a) The Honourable Court erred in holding that the Defendant has shown that sufficient cause for the delay in extraditing the Claimant.
>
> (b) As a matter of law the reason given for the delay in extraditing the Claimant do not amount to sufficient cause as provided for in **Section 13** of the Extradition Act."

The thrust of Mrs. Samuels-Brown's submissions is that the appellant has been detained in custody beyond the permissible statutory period and sufficient cause had not been advanced by the Minister to warrant his continued confinement in custody.

Section 13 of the Extradition Act makes provision for the discharge from custody of a fugitive who has been ordered extradited but has been detained beyond a period during which he ought to be extradited. The section, so far as relevant to this appeal, reads:

> "13.-(1) If any person committed to await his extradition is in custody in Jamaica under this Act after the expiration of the following period, that is to say-

(a) in any case, the period of two months commencing with the first day on which, having regard to sub-section (2) of section 11, he could have been extradited; or

(b) where a warrant for his extradition has been issued under section 12, a period of one month commencing with the day on which that warrant was issued,

he may apply to the Supreme Court for his discharge.

(2) If upon any such application the Supreme Court is satisfied that reasonable notice of the proposed application has been given to the Minister, the Supreme Court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody and, if a warrant for his extradition has been issued under section 12, quash that warrant."

Section 11 (2) of the Act to which reference has been made in section 13 (1) (a) provides:

"(11).-(1) ...

(2) A person committed to custody under section 10 (5) shall not be extradited under this Act-

(a) in any case, until the expiration of the period of fifteen days commencing on the day on which the order for his committal is made; and

(b) if an application for *habeas corpus* is made in his case, so long as proceedings on the application are pending."

Under section 11 (2) of the Act, on committal, a fugitive offender in custody cannot be extradited until after fifteen days after his committal inclusive of the date of his committal. In the instant case the appellant was committed and has remained in custody since December 28, 2005. He would not have become subject to extradition until January 12, 2006. The two month period within which he could have been extradited as prescribed by the Act would have expired on March 12, 2006.

There is no dispute as to the delay in surrendering the appellant to the Requesting State. I must pause here to state that it is to be observed that section 13 (2) of the Act speaks to the fact that the court, "may, unless sufficient cause is shown to the contrary order the discharge from custody" of a person committed pursuant to a request for extradition. There is no question that the word "may" as used in the context of the foregoing phrase, means "must". Judicial authorities have shown that this is the construction which the 'may' attracts in these circumstances. See ***Re: Shutter*** No 92) [1959] 3 All E.R. 481 ***& Jerome Lloyd Lindley*** [1997] EWHC Admin. 935.

The critical issue in this appeal is whether the Minister (the Minister of Justice) has shown sufficient cause why the appellant

should not be released from custody. It is incumbent on the Minister to adduce evidence to justify the retention of the appellant in custody beyond the permissible period. Was there evidence to satisfy the Full Court that sufficient cause had been shown for the appellant to have remained in custody? I think not.

Mr. Bryan's affidavit was the only one filed in response to the appellant's claim. The respondents placed reliance on that document. Interestingly, Mrs. Samuels Brown maintained that the Minister ought to have filed an affidavit establishing that he had 'sufficient cause' and that the Director of Public Prosecutions could not act in a representative capacity for the Minister.

It is perfectly true that the Minister himself failed to furnish an affidavit showing sufficient cause why the appellant should not be discharged. However, the Minister, in the administration of government is encumbered with a wide array of duties. It is impossible for him to personally undertake all functions which he is required to perform in the course of his duties. In the interest of expediency, he is compelled to delegate some of his functions to responsible officials in his department. This proposition finds support in a dicta of Lord Green, M.R. in ***Carltona, Ltd., v Comrs. of Works*** 1943 2 All E.R. 560 when at page 563 he said:

> "In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials."...

The Director of Public Prosecutions' department falls under the umbrella of the Ministry of Justice. It follows therefore that a duly

authorized officer of that department would be competent to make investigations on behalf of the Minister into matters relating to the detention of someone who, on committal, is subject to extradition and to assist with matters preparatory to his surrender. In the execution of these activities, Mr. Bryan would be endowed with the right to swear an affidavit on behalf of the Minister. As a consequence, Mr. Bryan's affidavit would have been admissible and could have been entertained by the Full Court.

Mr. Bryan's quest to ascertain whether the appellant had challenged his extradition began on January 25, 2006, and ended on March 23, 2006, as revealed in paragraphs 5-10 of his affidavit, which states as follows:

> "5. On January 25, 2006, I wrote to the Registrar of the Supreme Court enquiring of the status of Mr. Bingham's case, that is, whether he had filed a writ of *habeas corpus* or not. A copy of the letter is exhibited hereto and marked "DB-1" for identity
>
> 6. On March 23, 2006 the Registrar of the Supreme Court, formally wrote to the Director of Public Prosecutions advising that their records did not reveal that an application for writ of *habeas corpus* was filed on behalf of Prestley Bingham. I exhibit hereto the letter from the registrar marked "DB-2" for identity.
>
> 7. Between writing to the Registrar of the Supreme Court on January 25, 2006

and receival of the response by letter dated March 23, 2006, I have instructed Mrs. Yvonne Young, Secretary in the Office of the Director of Public Prosecutions, to make follow-up telephone calls on numerous occasions to the Registrar's Office on the matter. To the best of my knowledge and belief such calls were made by Mrs. Young as on occasions I observe her making the calls. However, she was successful in securing the letter in a timely manner.

8. In mid March, I also made a telephone call to the Registrar and was advised that the letter was being prepared.

9. On March 23, 2006 I personally visited the Registrar's Office where I awaited the completion of the letter which was delivered to me.

10. Once the letter was in my possession I immediately forwarded a letter to the Permanent Secretary in the Minister (sic) of Justice with a draft of the Surrender Warrant for the attention and signature of the Honourable Minister, as also a copy of the Warrant of Committal, information that Mr. Bingham has no local charges in this jurisdiction, and a copy of the letter from the Registrar that no writ of habeas corpus has been filed by Mr. Bingham. I exhibit hereto letter marked "DB-3" for identity.

11. At the time when the draft Surrender Warrant was forwarded to the Honourable Minister for his signature, to the best of my knowledge and belief, Mr. Bingham had not filed a writ of habeas corpus.

> 12. During the period from Mr. Bingham's committal to the draft Surrender Warrant being forwarded for the attention and signature of the Honourable Minister, there was no indication by or on behalf of Mr. Bingham in writing or otherwise, that he would not be challenging his extradition."

Could the facts outlined in the affidavit, be said to be satisfactory foundation for the Minister to have postponed his decision to surrender the appellant to the United States of America? Does the affidavit proffer a plausible explanation to show sufficient cause why the appellant had not been surrendered?

It was submitted by Miss Manley that the delay was only two days and the term "sufficient cause" being wide in scope, is not limited to the question of delay. The delay, she argued, must be balanced against all the circumstances, that is, the gravity of the offence, the fact that the appellant had not challenged the Committal Order and that Mr. Bryan's affidavit shows that active steps were taken to complete the extradition process as well as the factor of international comity.

In an effort to bolster her submission she maintained that the court, in the exercise of its discretion as to whether sufficient cause has been shown, must examine all the circumstances of the case.

She sought to rely on the case of ***Re Akbar*** [1996] EWHC (Admin) 165.

It cannot be disputed that the *ratio decidendi* of ***Re Akbar*** is that where there is a delay in extraditing an accused, in deciding whether sufficient cause has been shown consideration must be given to all the circumstances. In that case, a Committal Order for the applicant's extradition was made on August 8, 1997, under the English Extradition Act 1989. Paragraph 10 of Schedule 1 of that Act makes provision for the discharge of an accused who had been ordered to be extradited if a *Writ of Habeas Corpus* is filed following his committal and he is not extradited, within two months of his committal or of the return of the Writ, unless sufficient cause is shown to the contrary.

The Home Office was of the mistaken belief that an offence for grand larceny by extortion was incorporated in an agreement between France and the United Kingdom for the applicant's re-extradition to the United States. He remained in custody for fourteen months by reason of delay as a result of protracted consultations between the French Ministry and the Home Office.

Although the court was of the view that the requirements of international comity could furnish sufficient cause within the context

of paragraph 10 of Schedule 1 of the Act, Lord Justice Rose, at paragraph 30 said:

> "What matters is whether, taking all the circumstances into account, sufficient cause has been shown."

The evidence established that there were several opportunities open to the Home Office, of which they could have and had not availed themselves in expeditiously resolving the applicant's case. It was held that the Home Office was under an obligation to have acted with dispatch in the surrender of the applicant. The applicant was accordingly discharged from custody.

In the instant case, the appellant has remained in custody since December 28, 2006, awaiting extradition. The law accords him fifteen days within which he may appeal against the Committal Order. Immediately after the expiration of the fifteen days on January 12, 2006, it would have been incumbent on the Minister to have acted with dispatch in ensuring his surrender. There was adequate opportunity for the Minister to have done so. A search of the Suit Book in the Supreme Court Registry which could have been made on January 13 or 16, 2006, would have revealed that there was no pending application before the court by the appellant. This Suit Book bears a record of all suits filed in the civil division of the Court's Registry.

It is of interest that the respondents contended that the appellant failed to inform the Minister that he intended to face his accusers. The appellant was under no obligation to have done so. It was obligatory on the part of the Minister to have satisfied himself that the appellant had not availed himself of any process open to him within the fifteen days prescribed and not for the appellant to have informed him that he had not done so.

There is nothing in Mr. Bryan's affidavit to disclose that the attention which the appellant's case required had been expeditiously and fairly addressed. In light of this, I am of the view that the seriousness of the offence and international comity are not factors which would demand the court's indulgence. I am not persuaded that sufficient cause has been shown which would warrant the appellant remaining in custody. The Minister having failed to act with alacrity and due diligence in surrendering the appellant, this court would find it unjust to permit the State to benefit from its tardiness and apathy.

I would allow the appeal and discharge the appellant from custody.

PANTON, P.

ORDER:

Appeal allowed. Decision of the Full Court set aside. Appellant to be discharged from custody forthwith. Costs in this Court and below to be the appellant's.