



Case No. CO/150/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

-v-

JULIAN PAUL ASSANGE

SUMMARY OF THE DECISION OF THE DIVISIONAL COURT

This summary is provided to assist in understanding the court's decision. It does not form part of the decision. The full judgment of the court is the only authoritative document. Judgments are public documents and are publicly available. A copy of the judgment in final form as handed down can be made available after 1015 on 10 December 2021 on request by email to – press.enquiries@judiciary.uk

1. The Government of the United State of America ("the USA") requested the extradition of Mr Assange to stand trial on charges alleging that he acted illegally in obtaining and publishing classified documents. Mr Assange resisted extradition on a number of grounds. One of the issues raised on Mr Assange's behalf was whether extradition was barred under section 91 of the Extradition Act 2003 because of his mental condition. After a lengthy hearing in the Westminster Magistrates' Court a District Judge (Magistrates' Courts) ("the DJ") decided all but one of the issues in favour of the USA. She decided that Mr Assange's mental condition was such that it would be oppressive to extradite him because of the harsh conditions in which he was likely to be detained. The DJ therefore ordered that Mr Assange be discharged.
2. The USA appealed against that decision. The appeal was heard by a Divisional Court (Lord Burnett of Maldon, Lord Chief Justice and Lord Justice

Holroyde) on 27 and 28 October 2021. Mr Assange has indicated that he challenges the DJ's decisions on the issues which were decided against him, and will seek to raise those issues at a later stage, but they were not before the court at this hearing.

3. This hearing was limited to the issue of whether the DJ was wrong to find that Mr Assange's mental condition was such that it would be oppressive to extradite him. The USA argued that the DJ was wrong in her conclusions about Mr Assange's mental condition and that in any event the USA had given a number of assurances which met the DJ's concerns. Mr Assange argued that the DJ was entitled to reach the conclusion she did and that the assurances were not sufficient to lead to a different conclusion.
4. In the context of extradition proceedings, a state which is requesting extradition may give assurances as to matters such as the conditions in which the person concerned will be detained if he is extradited. Assurances of this kind are solemn undertakings offered by one government to another.
5. For the reasons given in the judgment which is today handed down, the court allowed the appeal on the grounds that
 - a. the DJ, having decided that the threshold for discharge under section 91 of the Extradition Act 2003 was met, ought to have notified the USA of her provisional view, to afford it the opportunity to offer assurances to the court; and
 - b. the USA has now provided the United Kingdom with a package of assurances which respond to the DJ's specific findings.
6. Four assurances have been offered by the USA, in a Diplomatic Note dated 5 February 2021. The court held that it had the power to receive and consider the assurances notwithstanding that they were only offered after the DJ had given her decision. The court was satisfied that the assurances –
 - a. Exclude the possibility of Mr Assange being made subject to "special administrative measures" or held at the "ADX" facility (a maximum security prison in Florence, Colorado, USA), either pretrial or after any conviction, unless, after entry of the assurances, he commits any future act which renders him liable to such conditions of detention;

- b. Undertake that the USA will consent to an application by Mr Assange, if he is convicted, to be transferred to Australia to serve his sentence; and
 - c. Undertake that whilst Mr Assange is in custody in the USA he will receive appropriate clinical and psychological treatment as recommended by a qualified treating clinician at the prison where he is held.
7. The court rejected various criticisms of those assurances which were argued on Mr Assange's behalf, and was satisfied that the assurances were sufficient to meet the concerns which led to the DJ's decision.
8. The court therefore allowed the appeal and ordered that the case must be remitted to Westminster Magistrates' Court with a direction that a DJ send the case to the Secretary of State, who will decide whether Mr Assange should be extradited to the USA.