

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

The Director of Public Prosecutions: Cape of Good Hope

v

Trevor Claud Robinson

CCT 15/04

Media Summary

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Mr Robinson is a South African citizen who was convicted by a Canadian court in 1996 of sexually assaulting a fourteen year old girl in Canada. He fled to South Africa immediately after conviction and was then sentenced in his absence by the same court to three years imprisonment. In due course the Canadian government requested the South African government to extradite Mr Robinson to Canada to serve the sentence. He was eventually brought before a Wynberg magistrate in terms of section 10 of the Extradition Act of 1962 for the magistrate to decide if he was liable to be surrendered to Canada. The magistrate found that he was. However, Mr Robinson successfully appealed to the Cape of Good Hope High Court. The High Court held that Mr Robinson was not liable to be surrendered because if extradited to Canada he would have to serve a sentence of imprisonment that had been imposed in his absence. The High Court therefore held that Mr Robinson's right to a fair trial would have been violated, and that the magistrate ought to have discharged him. The High Court accordingly discharged Mr Robinson.

The Cape of Good Hope Director of Public Prosecutions appealed to the Constitutional Court. In a unanimous judgment prepared by Yacoob J the Court concluded that in the case at hand, a section 10 enquiry, all the extradition magistrate had to decide was whether Mr Robinson had been convicted of an extraditable offence. It was the Minister of Justice who would then have to decide whether to extradite Mr Robinson. This the Minister would do in terms of section 11 of the Extradition Act. The magistrate had no power to take into account the fact that Mr Robinson will serve a sentence imposed in his absence. The Minister will need to take this into account when deciding whether Mr Robinson should be extradited.

The Court also held that the documents had been properly authenticated according to the extradition treaty in force between South Africa and Canada, and re-instated the order of the extradition magistrate that Mr Robinson was liable to be surrendered.