



U. K.'s Gary McKinnon, Alleged "Cyber-Terrorist," Lost High Court Appeal to Prevent Extradition to United States

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Gary McKinnon in Trafalgar Square, London, England, his home city. In February 2007, he turned 41-years-old. He is a self-taught internet technology consultant. Image courtesy mother, Janis McKinnon.

Earthfiles, news category.

Also see 060706 Earthfiles:

Gary McKinnon: An Electronic "Robin Hood"?

April 4, 2007 London, England - On Tuesday, April 3, 2007, the defense lawyers (Kaim Todner solicitors) lost their appeal to the High Court in London to prevent the extradition of Gary McKinnon to the United States.

The British Broadcasting Corp. (BBC) reported: "A British man, Gary McKinnon, could face a prison sentence of 45 years. He has lost his High Court fight against extradition to the U.S. for allegedly carrying out the 'biggest military computer hack of all time.' Glasgow-born Gary McKinnon, of north London, is accused of gaining access to 97 U.S. military and NASA computers. Home Secretary John Reid granted the U.S. request to extradite him for trial.

"At the High Court in London, his lawyers argued the 41-year-old had been subjected to 'improper threats' and the move would breach his human rights. His lawyers had argued that, if extradited, he would face an unknown length of time in pre-trial detention, with no likelihood of bail. He would also face a long prison sentence - 'in the region of 45 years' - and may not be allowed to serve part of the sentence at home in the UK, his lawyers had said.

"But, on Tuesday, Lord Justice Maurice Kay and Mr. Justice Goldring dismissed his legal challenge, saying they could not find any grounds for appeal."

Background

Gary McKinnon was arrested in November 2002, and admitted at the time he accessed the computer networks of a wide number of U.S. military institutions between February 2001 and March 2002, when he was looking for UFO-related information and found so much lax computer security in the American networks that he could access some websites.

Gary McKinnon's lawyer, Ben Cooper, announced that Gary McKinnon will now seek to make an appeal against his extradition at the House of Lords. Another attorney, Jeffrey Anderson, told reporters that among the issues raised in McKinnon's appeal will be alleged threats by U. S. authorities that Gary McKinnon "would fry." The implication is capital

punishment by the electric chair under the charge of being a "cyber-terrorist."

Attorney Anderson said, "This could lead to him spending the rest of his life in prison in the U.S., with repatriation to serve his sentence in his home country denied as punishment for contesting his extradition."

Press Release by Gary McKinnon Attorneys April 3, 2007

"McKinnon v USA and Secretary of State for Home Dept.

Gary McKinnon will apply for leave to appeal to the House of Lords within 14 days.

The High Court has expressed its disapproval of the deliberately coercive plea bargaining tactics deployed by the US in the strongest possible terms.

"See paragraph 54 of the judgement of the High Court:

We make no secret of the fact that we view with a degree of distaste the way in which the American authorities are alleged to have approached the plea bargain negotiations. Viewed from the perspective of an English court the notion that a prosecutor may seek to induce a plea of guilty on the basis that substantial benefits will be withdrawn if one is not forthcoming is anathema. We refer on particular to the providing and withdrawal of support towards repatriation. [Paragraph 54 of the judgement]

"We regret that the Court has not expressed its clear disapproval of the U.S. Government's arbitrary interference with due process by halting Gary McKinnon's extradition as an abuse of the process of the English courts.

"In order to coerce his voluntary surrender, Mr. McKinnon was subjected to threats by the U.S. authorities during the course of plea bargain negotiations. The U.S. sought to coerce the appellant into consenting to his extradition without a formal request being made to the UK authorities and thereafter pleading guilty in the U.S. The threats made included relaying to Mr McKinnon that New Jersey prosecutors expressed the intention to see Mr. McKinnon 'fry.'

"The evidence of Mr. Dratel is that this is a reference to capital punishment by the electric chair. This was a chilling and intimidating threat. Further the US threatened that Mr. McKinnon would receive a significantly and disproportionately longer sentence if he refused to cooperate with the deal being tabled. Furthermore, it was made clear that the appellant would be forced to serve the entirety of that sentence in the U.S., with no prospect of repatriation. The U.S. authorities stated that the appellant's refusal to cooperate would result in his repatriation to the UK being blocked.

"In the course of these discussions the U.S. made it clear that it would be looking for an extremely lengthy sentence and that it would not allow Mr. McKinnon to be tried in England because the English courts' sentencing powers was not of sufficient severity. It is submitted that this does not constitute a valid reason for extraditing a British citizen from his homeland where he has never visited the US and the conduct alleged took place in the UK. It is submitted that a desire to make an example out of the appellant by ensuring that he receives a much longer sentence than his own courts would consider to be adequate punishment constitutes an improper and vexatious motive for making an extradition request.

"Mr. McKinnon complains that the conduct of the U.S., the threats it made to the appellant and its motive for requesting his extradition was each oppressive and abusive, engaging the appellant's article 594) right. further, the appellant submits that the bid by the U.S. to ensure that their tactical deployment of coercive plea bargaining in this case would remain a secret from the court itself demonstrates that such an extra-judicial process should have no part to play in the legal process. There is express statutory provision for a defendant to consent to extradition if he chooses to do so. No one should be punished for exercising his statutory right to contest extradition. in USA v Cobb.

52. *By placing undue pressure on Canadian citizens to forego due legal process in Canada, the foreign State has disentitled itself from pursuing its recourse before the courts and attempting to show why extradition should legally proceed....*
53. *[The judge] was also correct in concluding as he did that this was one of the clearest cases where to proceed further with the extradition hearing would violate those fundamental principles of justice which underlie the community's sense of fair play and decency'*(Keyowski, *supra*, at pp.658 59)...

"It is submitted that the U.S. placed undue pressure on Mr. McKinnon and made clear its intent to punish him for failing to succumb to that pressure. It is admitted that the conduct of the U.S. in this case can be properly characterized as oppressive and vexatious such that the House of Lords should allow Mr. McKinnon's appeal.

"Furthermore the appellant contends that the US threat to impose an extremely lengthy sentence as punishment for not cooperating with an inherently coercive plea bargain amounts to a flagrant denial of justice such that his article 6 fair trial rights would be violated and that the severity of the consequences in terms of sentence reach the high standard imposed in Soering v. U.K. [1989] 11 EHRR 439. It should be noted that these threats were relayed and terms of the "bargain" were offered by Ed Gibson, the assistant legal attaché of the U.S. Embassy in London.

"Special Agent Ed Gibson has since retired from the FBI and is now the 'chief security adviser for Microsoft Ltd' in the United Kingdom. And therefore the threats derived from the Requesting State itself as well as the prosecution lawyers. The prosecution plays an enhanced role in the US sentencing process by recommending the length of sentence to the court. The role and influence of the prosecution is therefore of great significance in respect of the sentence ultimately passed.

"The threat to refuse the the appellant repatriation clearly engages article 8 ECHR. Article 8 cannot be lawfully interfered with in an arbitrary and punitive fashion as promised by the U.S. Mr. McKinnon has a right under the Convention of the Transfer of Sentenced Persons not to have his eligibility for repatriation determined unfairly or arbitrarily. He has a right to have his application considered fairly. The U.S. has made plain its intention to prevent his repatriation on arbitrary grounds, namely to punish him for exercising his statutory rights to contest extradition. This constitutes an invalid and improper reason for preventing a fair determination of the merits of his application and would therefore violate article 8.

"The U.S. originally attempted to coerce Mr. McKinnon into pleading Guilty by offering him 6 months (12 months at worst) in a US prison and the remainder of a short sentence would be served in the UK, mostly on parole. The U.S. now intends to prosecute Mr. McKinnon as a cyber-terrorist, which could lead to him spending the rest of his life in prison in the U.S. with repatriation to serve his sentence in his home country denied as punishment for contesting his extradition.

"Mr. McKinnon will now be punished for exercising his statutory rights to contest extradition under the Extradition Act. His punishment could not be more severe. It amounts to a life sentence in a foreign country."

Website:

Free Gary McKinnon: <http://freegary.org.uk/>

Credits

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