



Neutral Citation Number: [2020] EWHC 1341 (Admin)

Case No: CO/108/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 May 2020

Before :

MR JUSTICE FORDHAM

Between :

WOJCIECH OZOLIN

-and-

Appellant

REGIONAL COURT IN SLUPSK, POLAND

Respondent

MARTIN HENLEY instructed by AMI Solicitors for the **appellant**
The **respondent** did not appear and was not represented

Hearing date: 5 May 2020
Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. This was a telephone conference hearing. The court communicated with the parties, who cooperated and agreed this mode of hearing. Only Counsel for the appellant attended. The hearing testing proceeded just as it would have done in open court, having been listed in the cause list with contact details available to anyone who wished to dial in. Counsel addressed me in exactly the same way as if we were sitting in the court room. I am quite satisfied of the following: that this constituted a hearing in open court, that the open justice principle has been secured, that no party has been prejudiced, and that in so far as there has been any restriction on a right or interest it is justified as necessary and proportionate.
2. This is a renewed application for permission to appeal in an extradition article 8 case, permission to appeal having been refused on the papers by Mr Justice Cavanagh. I have given permission at this hearing for the appellant to rely on perfected grounds of appeal. I have also considered fresh evidence that has been submitted, and I give permission for that fresh evidence on the basis that it is updating the court as to the current position, in the context of Covid-19.
3. The case relates to an accusation European arrest warrant. The district judge ordered that the appellant be extradited, by a judgment dated 9 January 2020. She conducted the ‘balance sheet’ approach required in these cases. She found as a fact that the appellant is a fugitive. She also explained why, having heard him giving oral evidence, she regarded his evidence as unsatisfactory and unreliable, and she explained the extent to which she was able to rely on it. She also explained that there was no evidence for the alleged support of a son who she held was not dependant. She dealt with the position of the appellant’s partner, who she also held was not dependent. She described the seriousness of the alleged offending which I interpose involves some 8 are offences of alleged fraud with a loss said to her be the equivalent of over £33,000, where 3 co-perpetrators in 7 towns had undertaken the criminal conduct over 2 months in 2012. She considered the impact on all relevant persons and of course the public interest considerations that arise.
4. Mr Henley submits that he has a reasonably arguable appeal for which I should grant permission. He has said everything that could have been said on behalf of his client, and I am grateful to him for his submissions. I cannot, though, accept that there is here a reasonably arguable appeal. In my judgment there is no realistic prospect of this appeal succeeding.
5. The starting point is that Mr Henley submits that arguably the district judge was unsound in her approach or conclusion on the question of “fugitive”. As a fallback, he submits that if a fugitive his client could only reasonably have been held to be a fugitive from March 2019. I am quite satisfied that there is nothing in those points. The district judge considered this point with very considerable care. She addressed the documents, including the points that have been emphasised before me at this oral hearing. Mr Henley has submitted today that the European Arrest Warrant was unparticularised and unclear in relevant respects. He submitted that the further information was not fully appreciated by the judge. He emphasised that the appellant was in custody as at June 2012 which he says casts doubt on what is said to have occurred in July 2012. He emphasises the documents and the appellant’s witness evidence in relation to the border guard encountered when the appellant left Poland, and makes the submission that were

there a restriction on leaving the appellant would have been arrested. In essence, these are the very points that the district judge was emphasising at paragraph 17 of the judgment below; those, and the other points that were made on the issue of fugitive status of the appellant. In my judgment, for the reasons that she gave, the district judge was quite entitled to reach the conclusion that she did. The whole purpose of the hearing before the district judge, with live evidence from the appellant, was that she could assess such issues. In my judgment there is not the beginning of a basis for submitting that this court would overturn her conclusion on that issue

6. Next, there is reference made to another point that featured in the hearing below. Mr Henley submits that this case involves 4 years of ‘clearly culpable’ delay. He relies on the period from September 2014, after which the appellant was in the United Kingdom. He submits that there is no justification for there not having been a European Arrest Warrant from October 2014. Again, I am satisfied that the district judge considered the issue of delay: the documents which evidence the steps had been taken and why they had been taken, all of which in the context of her finding in relation to the appellant’s fugitive status. In my judgment, the lapse of time – which she clearly did consider when dealing with the position of the appellant in this country and his private and family life in this country established over that period of time – could not, even if characterised as ‘culpable’, undermine the article 8 conclusion in the context and circumstances of this case. I am quite satisfied that there is no error of approach and no realistic prospect of this court overturning the judge’s approach to the lapse of time and the various events and circumstances in this case.
7. Other points have been advanced and relied on, as to ‘stepping back’ as always and looking at the article 8 balance that has been considered and struck in the present case. Mr Henley emphasises today that the offending in question is non-violent offending. He emphasises that it is an accusation case. He emphasises that 7 months now have been spent in this country on remand which is the position for the foreseeable future given Covid-19 and its implications. He emphasised in his written submissions, and at the end of his oral submissions, the further evidence from the appellant’s partner. I considered that in my pre-reading, with care, and have looked at that evidence updating the court. The partner explains that she is struggling to cope in the current circumstances; that she is unable to drive; that she suffers from depression and is on anti-depressants; and that she describes her need of the appellant especially at the present time. The impact on her, as things stood, was considered by the district judge in the judgment. I have considered the latest evidence. Once again, in my judgment, there is no realistic prospect that this court would allow this appeal by reference to article 8 considerations in the light of the impact, on that updated evidence. The evidence has to be considered in a sensible, realistic and balanced fashion. It also needs to be considered against the backcloth of the public interest considerations in favour of an extradition. I have taken into account that the partner describes her return to work on 7 April 2020, having given her witness statement the previous day. She also describes that she lives with her three sons, one of whom is over 18 and in, she says, full-time employment; and another of whom is 15. The judge’s conclusion that the partner is not a dependant is in my judgment unassailable and it is clear, notwithstanding the inevitable impact on her of extradition, that she does have support from within her household.

8. Finally, Mr Henley advanced in argument this morning as follows. He submitted, by reference to ‘pending habeas corpus cases’, that there is an argument that the appellant is not ‘wanted for the purpose of prosecution’, that there is no extant ‘proper purpose for extradition’, and that that is an issue which this court should consider on this appeal. There are two difficulties with that submission. The first is that not a scrap of paper has been put before this court for today which advances any such argument. Mr Henley says it has only become live recently, in the last couple of weeks. But that is no excuse at all for not putting before the court today any submissions or an outline of them on which reliance was to be placed. Particularly in circumstances where steps were taken at the end of last week to ensure that any and all materials were promptly provided to this court. There is no Amended Perfected Grounds before me for me even to consider granting permission on. The second fatal problem, in any event, is that on the basis of what Mr Henley has submitted to me this morning I cannot see a reasonably arguable point. None has been identified as capable of persuading me that there would be a reasonably arguable appeal on the basis of this new point.
9. In all the circumstances and for all of those reasons, I am satisfied having considered the materials and listened to Mr Henley’s oral submissions that this is a case on which I cannot grant permission to appeal. The reason is that I am not satisfied that there is any reasonably arguable ground; on the contrary, I am quite satisfied that there is none.