



Neutral Citation Number: [2020] EWHC 1909 (Admin)

Case No: CO/652/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 July 2020

Before :

MR JUSTICE FORDHAM

Between :

PRZEMYSŁAW GRZEGORZ SOCHA

Appellant

- and -

POLISH JUDICIAL AUTHORITIES

Respondent

Martin Henley (instructed by Montague Solicitors) for the **Appellant**

The **Respondent** did not appear and was not represented

Hearing date: 14 July 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 :

Introduction

1. This is an application for permission to appeal in extradition proceedings. It proceeded by Skype conference hearing, at the request of the appellant's representatives, to avoid unnecessary travel to and physical appearance in the court room. The remote hearing took place in accordance with the current High Court arrangements relating to Covid-19, albeit that we are now during a post-lockdown period. The hearing and its start time were published in the cause list, as was the fact that any person wishing to observe the hearing could contact my clerk (using a published email address) and do so, themselves without having to travel or attend physically in a court room. I heard oral submissions just as I would have done had we all been sitting in the court room. I am satisfied of the following: this constituted a hearing in open court; the open justice principle was secured; no party was prejudiced; and insofar as there was any restriction on any right or interest it was necessary and proportionate.
2. The appellant is wanted for extradition to Poland. The European Arrest Warrant in this case is dated 7 May 2019 and is a conviction warrant. There was an oral hearing before the district judge on 13 February 2020. The district judge ordered extradition in a judgment dated 18 February 2020. The sole issue before the district judge was Article 8. An appeal was launched to this Court which maintained that extradition was incompatible with article 8 (section 21). There was also an additional ground, namely section 20. A respondent's notice was filed by the respondent together with submissions relating to both grounds. Permission to appeal was refused on the papers on or about 5 June 2020 by Mr Justice William Davis. He set out his reasons as to why both grounds were, in his judgment, unarguable. The appellant's grounds of renewal dated 12 June 2020 maintained the article 8 ground. The section 20 ground was not and has not been maintained. I simply say that that course was plainly right. There was nothing in that point. An oral hearing of this renewed application was fixed for today. There were communications between the Court and the parties, including the respondent and counsel who had settled the submissions attached to the respondent's notice. The respondent, as is often the case in extradition renewal applications for permission to appeal, has chosen not to attend this hearing.

The Wozniak point

3. In a Speaking Note, provided half an hour before the hearing today, Counsel Mr Henley for the appellant made two important new points. The first was that he wished on behalf of the appellant to raise an issue familiar in Polish extradition cases and the subject of my judgment in Wozniak [2020] EWHC 1459 (Admin). The appellant, in the Speaking Note, requested a stay of the current proceedings to await the outcome of Wozniak. The second important point made in the Speaking Note was that the Court was invited to adjourn any consideration of permission to appeal in relation to Article 8, pending the outcome of Wozniak, so that all issues could be considered by a single judge at a single point in time. Mr Henley tells me that he provided a copy of his Speaking Note, half an hour before this hearing, to counsel (Ms Herbert) who had made the submissions attached to the respondent's notice. He tells me that he called Ms Herbert yesterday afternoon to alert her of what he was intending to ask today. He tells me that her informal indication was that it was possible that her clients would be neutral as to the Wozniak point. Mr Henley accepts that neither she nor the respondent are bound by any

such indication. He also rightly recognises that the request that he is making needs a proper application to amend the grounds of appeal, and the respondent needs a proper opportunity to respond and make any submissions it wishes to make as to that application. In those circumstances the way forward, in my judgment, it is to ‘hold the ring’ while allowing a timetable for a proper application to be made, and for the respondent to respond to it if it wishes to do so, so that this court can then deal with the implications for the present case of the appellant’s belated wish to adopt that same Wozniak argument, and then make the appropriate order on an informed basis. I am not prepared to do any more today, so far as the Wozniak issue is concerned, than to ensure that there is a timetable for an application, and full protection for the respondent to file any submissions it wishes, together with a short period for a reply. In order not to frustrate that timetable, it is obviously important that the appellant is not removed while those steps are taking place.

Article 8: Adjournment

4. The first question with which I need to deal is therefore the question of whether to defer and adjourn the renewed application for permission to appeal which is before the court in a properly documented form, namely article 8. Mr Henley submitted that adjourning that matter was appropriate on the following basis. He said it is not known what twists and turns the Wozniak case may take before it is finally resolved. He submitted that there may be a proportionality element entering into the Wozniak analysis. He submitted that if a proportionality element entered into the analysis, that would support the appropriateness of considering the Wozniak issue in the round together with the article 8 proportionality and compatibility issues. He submitted that splitting off different issues can cause real and practical difficulties and that it is, in principle, appropriate and preferable that a judge decide all matters in relation to an individual case. He also submitted that there would be no prejudice in deferring article 8 and awaiting the resolution of Wozniak. I have considered all of those submissions. I have also considered whether to defer article 8 consideration at least during the timetable I am allowing for submissions relating to Wozniak and its implications for permission to amend the grounds of appeal, an extension of time and a stay on any removal.
5. I am quite satisfied that that there is no proper or justified basis for adjourning or deferring the consideration of article 8. The issue is a distinct one: the issue in Wozniak relates to section 2 of the Extradition Act 2003 and the meaning of ‘judicial authority’. It does not, not on its face, involve a proportionality element; still less, a proportionality element that would be relevant for the purposes of an article 8 assessment. The point is free-standing and self-standing. Similarly, the article 8 compatibility point is itself distinct, free-standing and self-standing. In my judgment, there would be very considerable difficulties, and material prejudice, if article 8 issues were to be ‘stacked up’ in Polish extradition cases – or, for the purposes of today, focusing simply on this individual case – until Wozniak has been decided. That would have the consequence that a distinct article 8 point would be deferred, for a considerable period, and only then considered as to its arguability, and if found arguable as to its assessment on the legal merits. It is one thing for a case to await Wozniak, on the basis that the court deciding Wozniak will have decided the very same issue that has been raised in the case awaiting disposal. That is something which, whichever way Wozniak is decided, would then be expected to be resolved very speedily, either in an appellant’s favour or adversely to an appellant. There is a very considerable difference between that scenario, and the

scenario in which cases await Wozniak and then have to be resolved by reference to the other issues which are raised on a self-standing and free-standing basis. In the present case, that would necessarily involve holding a further oral hearing of the renewal application. It would necessarily involve a judge, in the position that I am in today, considering the question whether article 8 is reasonably arguable; this, moreover, against a backcloth where a judge on the papers has held that it is not. I am quite satisfied that it is not only appropriate but necessary, in the interests of justice and having regard to the overriding objective, that I grasp the nettle as to whether there is a reasonably arguable article 8 ground in the present case. If there is, then I would give permission to appeal on that self-standing basis and would then deal with any directions relating to disposal of the article 8 argument on a substantive appeal, including any issue relating to timetable. If, however, there is no reasonably arguable article 8 point then it would be appropriate and just that this court say so and refuse permission to appeal, so that the only matter outstanding is the Wozniak 'judicial authority' point. I simply do not accept that there would be no prejudice in leaving all matters open. I am, moreover, quite satisfied that there is no injustice to the appellant from my dealing with article 8 today.

Article 8: Analysis

6. So far as the substance of article 8 is concerned, Mr Henley has done two things at this hearing. First, he has reminded me of the documents before me relevant to the article 8 ground. I have read and considered all of those. Secondly, he has made some oral submissions to supplement the documents and to draw my attention to particular aspects of the case. He points to the fact that the offending goes back in this case several years to 2012. He points to the fact that, on the face of it, the appellant who came to the United Kingdom in April 2015, and has no UK convictions. He submits that there is the prospect that steps could be taken in Poland to aggregate the relevant sentences in this case which could make a difference to the proportionality assessment. He submits that, for those and all the reasons identified in the documents before the court, it is reasonably arguable that extradition in this case is disproportionate in the sense of incompatibility with article 8. I have reached the same conclusion as did Mr Justice William Davies on the papers. In my judgment, the article 8 arguments are unsustainable and the district judge's approach and overall conclusion unimpeachable.
7. This, as I said at the outset, is a conviction warrant case. The convictions relate to offences of dishonesty. These led to sentences in the Polish criminal courts, leading overall to a custodial sentence of 3 years and 2 months, all of which was originally suspended, all of which has been activated, the entirety of which stands unserved. The activation of those suspended sentences came in circumstances where the appellant had been informed in writing in April 2012 of the obligations to which he was subject, so far as reporting was concerned. This is a case in which the district judge made a finding of fact that the appellant came to, and remains in, the United Kingdom as a fugitive. There is no basis for challenging that finding of fact nor, rightly, has Mr Henley suggested that there could be any such basis. The appellant, having come here in April 2015 was subsequently employed in the United Kingdom, and has a relationship with a partner here in the United Kingdom. He has, however, as the district judge also found, no dependents here in the United Kingdom: there are, for example, no children here. The district judge conducted the required 'balance sheet' approach, identifying as factors which may militate against extradition the following: that the offending is 8

years old having been committed in 2012; that the appellant has lived here since April 2015; that he has established a private life here with his partner; that he has maintained employment here since his arrival; and that he has no convictions in the United Kingdom. The district judge identified the factors in favour of extradition: the constant and weighty public interest in extradition that those convicted of crimes should serve their sentence; the nature of the offences in this case and the sentence of 3 years and 2 months; the public interest in the United Kingdom honouring its international obligations and not becoming a safe haven for fugitives; the question whether there were exceptionally severe consequences for any family life; the absence of any children or any dependent; that the appellant has not been living in the UK for a particularly long period of time; and that he has been living in the United Kingdom as a fugitive. For reasons which the judge went on to give he found that extradition was not in this case disproportionate or incompatible with article 8.

8. I can find no reasonably arguable error of approach in the judge's assessment. Looking at the outcome, and 'standing back', I see no realistic prospect at all that this Court would interfere with the judge's conclusion as to article 8 compatibility. Nothing relating to steps that could be taken in Poland is, in my judgment, capable of altering the analysis of the balance sheet assessment, or the overall conclusion, or supporting as reasonably arguable any substantive appeal based on article 8. Mr Justice William Davis said this: 'The district judge conducted a balancing exercise in the correct manner. No matter was ignored which was relevant to the exercise. No irrelevant matter was considered. The appellant has no dependents in the UK. He has been here for 5 years and has been in work. He has a partner, though there is some question over the nature and durability of that relationship. To that extent he has established a private life. It does not begin to outweigh the factors favouring extradition.' I agree.

Conclusion

9. In those circumstances, I am satisfied that the appropriate course is to refuse the renewed application for permission to appeal based on article 8. I will however order that my order shall not take effect for a period of time, to allow the parties to make submissions relating to the Wozniak issue. I will discuss with counsel Mr Henley the timetable for that. I will then include at the end of my written judgment the substance of the order that I subsequently make to allow an opportunity and protect the position of both parties. The approach that I am taking in this case is similar to that which I took in the case of Bibro [2020] EWHC 1592 (Admin).

Order

10. I subsequently made the following Order:
 - (1) Permission to appeal is refused, on the ground on which it was advanced in the grounds of renewal, namely Article 8 (section 21).
 - (2) No order as to costs.
 - (3) This order shall not take effect for 28 days from the date of this order, or further order, to allow the parties to make submissions relating to the issue in Wozniak [2020] EWHC 1459 (Admin), and what course should be taken in this case in relation to that issue, as to which:

- a. The Appellant shall have until 4pm Tuesday 21 July 2020 to file and serve any application for permission to rely on amended grounds of appeal, those amended grounds of appeal, and a draft order.
- b. The Respondent shall have until 4pm Friday 24 July 2020 to respond, if it wishes to.
- c. The Appellant shall have until 4pm Monday 27 July 2020 to reply.
- d. All such communications and documentation to be copied to Fordham J's clerk: Jessica.Turner1@Justice.gov.uk
- e. What, if any, further order to make will be considered on the papers by Fordham J in the week commencing 27 July 2020.

(4) Liberty to apply in writing on notice to vary paragraph (3).

15 July 2020