



Neutral Citation Number: [2020] EWHC 2342 (Admin)

Case No: CO/723/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 August 2020

Before :

MR JUSTICE FORDHAM

Between :

GRZEGORZ OSTROWSKI
- and -
POLISH JUDICIAL AUTHORITY

Appellant

Respondent

George Hepburne Scott (instructed by Bark & Co Solicitors) for the **appellant**
The **respondent** did not appear and was not represented

Hearing date: 25 August 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 District Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The mode of hearing was a BT conference call. Like the appellant's representatives, I was satisfied that a telephone hearing was appropriate. As regards open justice, the choice of telephone hearing rather than Skype for Business was a welcome one: see Urynowicz [2020] EWHC 2267 (Admin) at paragraph 3. The hearing and its start time – together with an email address which could be used by any person wishing to observe the hearing – were published in the cause list. The hearing was recorded. This judgment will be released into the public domain. By having a remote hearing, we eliminated any risk to any person, from having to travel to, or be present in, a court. I am satisfied that no right or interest was compromised and that, if there was any interference with or qualification of any right or interest, it was justified as necessary and proportionate.
2. The appellant is aged 36 and is wanted for extradition to Poland. That is in conjunction with three conviction European Arrest Warrants. Following an oral hearing, District Judge Brennan ordered the appellant's extradition on 24 February 2020. Saini J refused permission to appeal on the papers on 15 June 2020. The basis on which extradition has, throughout, been resisted is article 8 of the ECHR (European Convention on Human Rights). That was the ground for opposing extradition raised before the District Judge. It was the ground advanced in the Perfected Grounds of Appeal, rejected on the papers as unarguable.

The Wozniak point

3. By an application dated 21 June 2020 the appellant asked for permission to add a new ground of appeal and to stay this case. The ground of appeal now sought to be relied on is the same ground on which I granted permission to appeal in of Wozniak [2020] EWHC 1459 (Admin). The course invited by Mr Hepburne Scott for the appellant is that I should give permission, with an extension of time, for the Wozniak ground to be added, followed by a stay pending the resolution later this year of Wozniak itself. This is a familiar scenario. Mr Hepburne Scott and I encountered it last week in Horchel [2020] EWHC 2318 (Admin) and it has been encountered in the earlier cases referred to in the judgment in that case. The central concern is this. The appellant in this case has now, albeit belatedly, raised the same point of principle as applies in Wozniak, and which I held in that case was reasonably arguable. It would, on the face of it in my judgment, be unjust for the appellant to be removed while that point of principle remains unresolved. Once the Divisional Court has addressed the point, the implications for other cases including this one can readily and speedily be dealt with. By an email dated 20 August 2020 the respondent has taken a neutral position. In all the circumstances I will give permission to amend the grounds of appeal and an extension of time. I will direct that the application for permission to appeal on the new ground be stayed pending the Divisional Court's judgment in Wozniak. I will return at the end of this judgment to the question of the precise form of the order, in the light of the way in which I deal with the article 8 ground. There is no reason, in my judgment, why the pre-existing article 8 point should not be addressed today on its substantive merits, to see whether it is reasonably arguable and warrants the grant of permission to

appeal. As in Horchel, Mr Hepburne Scott did not request an adjournment and, in my judgment, he was right not to do so.

The Article 8 point

4. The essence of the article 8 case advanced, in writing and orally today by Mr Hepburne Scott – as I see it – is as follows. The offences which underlie the three EAWs were committed in 2010 and 2011, a long time ago. The appellant has been in the United Kingdom having come with his partner since September 2011, nearly 9 years. They have a family life here. They have two children who at the time of the hearing before the District Judge in February 2020 were aged 5 and 3; and are now 6 and 4. Those children were born in the United Kingdom. They are at a ‘crucially formative stage’ and the appellant has played a ‘very significant role’ in their lives. The partner and the children are blameless. Their rights (and the children’s best interests) matter: see Norris [2010] UKSC 9 at paragraph 64. There is a powerful account in the partner’s witness statement of the relationships and serious implications of extradition. It is true that the appellant has been found to be a fugitive, and true that he has not lived a blameless life in the United Kingdom, and it is not submitted that there is delay in this case which was the respondent’s responsibility. Nevertheless, there is a substantial lapse of time, which has the two consequences described by Lady Hale in HH [2012] UKSC 25 paragraph 8(6): it weakens the public interest factors in favour of extradition and it increases the impact on family and private life. Although the District Judge in this case did a Celinski [2015] EWHC 1274 (Admin) ‘balance sheet’ analysis, the District Judge missed out certain key factors. In particular, the lapse of time (or ‘age of the offending’) did not feature at all among the list of factors against extradition. The seriousness of the offending (HH at paragraph 8(5)) was not listed and addressed either. Nor did the emotional impact on children and partner feature in the balance sheet. This Court should look at the balance again. The appellant Court should stand back, and in doing so, conclude that the overall evaluation was “wrong”: see Love [2018] EWHC 712 (Admin) at paragraph 26. Importantly, for the purposes of today, it suffices that the claim is reasonably arguable.
5. I am not persuaded by the written and oral submissions that have been put forward on behalf of the appellant and on behalf of the partner and the children. In my judgment, there is no realistic prospect that this court at a substantive appeal hearing - even if it were to revisit the article 8 analysis afresh and compile a fresh balance sheet of considerations - would arrive at the overall conclusion that the article 8 outcome in this case is “wrong”.
6. Saini J reached the conclusion on the papers that there is no arguable ground of appeal in this case based on article 8. He said this of the lapse of time point: “the District Judge was amply justified in considering that delay was not a feature which should have featured in the balancing exercise in this case. However, even if delay were given some weight it would have very limited weight. The applicant’s history shows he avoided justice in Poland and in the UK for years. His use of a false name on arrest in the UK and his absence from all the trials in Poland show that this is a man who has actively sought to deceive and avoid the legal process. Overall, in my view the decision to extradite was inevitable given the conduct which resulted in conviction in all three warrants was serious and that outstanding sentences (in sum) of 4 years and 9 months imprisonment remain to be served in Poland. There is no arguable error.” I agree.

7. The District Judge was well aware of the nature of the offending and heard evidence from the appellant and the partner, including oral evidence. The statement was before him. At the heart of this case there was a partner (even putting to one side the fact that the appellant and the partner and children were already living separately); and there were (and are) two young children. There is a decade since the first drug possession offence which led ultimately to the first (2 year) prison sentence and EAW1. There are 9 years since the burglary and credit card offences which led to the second (2 year) prison sentence (originally suspended) and EAW2, and since the serious criminal damage to cars which led to the 15 month custodial sentence and EAW3. The criminality in this case is significant. It is properly reflected in the overall 4 years 9 months 10 days custody. It is not in my judgment even reasonably arguable that any of the features, or all of them in combination, put alongside Lady Hale's observations in HH about lapse of time and seriousness of criminality, and about severe consequences (see paragraph 8(7) of HH), can materially assist the appellant or his family on the facts and in the circumstances of this case.
8. The appellant has been found as a fact to have come to United Kingdom in September 2011 with his partner as a fugitive from Polish justice. He was, as he knew, due to attend prison in Poland on 26 September 2011. He had also been interviewed by the police and had made admissions in relation to the other outstanding matters, in respect of which he was subsequently convicted and for which he was subsequently sentenced. Polish justice might well have caught up with him in 2015, given that EAW1 was issued on 9 May 2015, but for the fact that - having been arrested here in relation to domestic matters on 27 September 2014 and then released - he had failed to appear at St Albans Crown Court on 27 April 2015. It was only after his further arrest in May 2019 that justice caught up with him. He was, moreover, sentenced to 14 months custody in relation to an affray, possession of an offensive weapon and the failure to surrender in 2015, all of which were offences here in the UK. Moreover, on arrest in May 2019, he gave a false name. He is therefore not a person of good character in the UK. Nor has he acted openly with the authorities here.
9. The District Judge did not see the lapse of time, of itself, in the circumstances of this case as being a self-standing listed factor against extradition. The District Judge did, however, take into account that the appellant had "a partner of some 10 years living here", had "played a full role in the care and upbringing of the children prior to going to prison" and "was in regular employment... and paid his taxes". These features of the case are all informed by the period of time which had elapsed. The District Judge was quite entitled not to make any more of the lapse of time than that. Even had the District Judge listed it separately as a factor against extradition, and given it some self-standing weight - or even if this court revisiting the balance on appeal were to do so - it could not, even reasonably arguably, make a difference and tip the proportionality balance against extradition, in the circumstances of this case. Nor could the points made about the nature and seriousness of the offending. Nor can the rights and interests of the children, or the partner, do so. The District Judge referred explicitly to the role of the appellant in the care and upbringing of the children. He had well in mind the "distressing" consequences of extradition, using that phrase in in the paragraph which followed after the listed balance sheet exercise.
10. I ask myself whether there is any realistic prospect that this Court would overturn the outcome as "wrong", even if the Court evaluated the matter afresh and listed all features

now relied on, and considered them separately and then cumulatively. In my judgment, the appeal has no realistic prospect of success on the article 8 grounds and is not reasonably arguable. Permission to appeal on this part of the case is therefore refused.

Order

11. In this final paragraph, I set out the order which I make in the present case having had the opportunity to discuss it with Mr Hepburne Scott. (1) Permission to appeal is refused, on the ground on which it was advanced in the Perfected Grounds of Appeal dated 4 March 2020, namely Article 8 (section 21). (2) The Appellant has permission to amend his grounds of appeal, with an extension of time, to rely on the s.2 (judicial authority) point in Wozniak (CO/2499/2019), namely the Polish courts have ceased to be judicial authorities for the purposes of section 2 of the Extradition Act 2003 (see Wozniak [2020] EWHC 1459 (Admin) at §§4, 6, 9-11, 14-15). The need for any further or amended Respondent's Notice is dispensed with. (3) The Appellant's application for permission to appeal on the ground referred to at paragraph (2) above shall be stayed pending the judgment of the Divisional Court in the appeals of Wozniak (CO/2499/2019) and Chlabicz (CO/4976/2019). The Appellant shall, within 14 days following the date on which the judgment of the Divisional Court in those cases is handed down, (a) inform the Court and the Respondent whether he intends to pursue an application for permission to appeal on the ground referred to at paragraph 2 above; and (b) if such an application for permission to appeal is to be pursued, file and serve written submissions in support of that application. The Respondent shall within 14 days of those written submissions file and serve any written submissions in response. The question of permission to appeal to be considered thereafter by a judge on the papers. (4) Pending consideration of the application for permission to appeal on the ground referred to at paragraph (2) above, which application is stayed pursuant to and in accordance with paragraph (3) above, the Appellant shall not be extradited pursuant to the order made at Westminster Magistrates' Court (in this case, on 6 April 2020). (5) No order as to costs.

25 August 2020