



Neutral Citation Number: [2021] EWHC 996 (Admin)

Case No: CO/3187/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21st April 2020

Before :

MR JUSTICE FORDHAM

Between :

KAMIL SIATKOWSKI	<u>Appellant</u>
- and -	
REGIONAL COURT IN KIELCE (POLAND)	<u>Respondent</u>

David Williams (instructed by National Legal Service) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 21.4.21

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.

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 a renewed application for permission to appeal in an extradition case. The Appellant is aged 37 and is wanted for extradition to Poland. That is in conjunction with a conviction European Arrest Warrant (EAW) issued on 1 February 2017 and certified on 28 February 2017. The EAW relates to a 10 month custodial sentence imposed in respect of a fraud committed on 26 November 2012 of which the Appellant was convicted and sentenced on 12 June 2013, of which sentence 9 months and 28 days remain to be served. Extradition was ordered by DJ Radway after an oral hearing on 3 August 2020 at which the Appellant gave evidence. On 11 February 2021 Murray J did two things. First, he stayed the Appellant's application for permission to appeal on the well-known Wozniak/Chlabicz grounds, pending judgment of the Divisional Court in those linked cases, now listed to be heard next month in May 2021. Secondly, he refused permission to appeal on the ground of Article 8 ECHR, which ground is renewed before me by Mr Williams today.

Mode of hearing

2. The mode of hearing was by Microsoft Teams. The Respondent notified the Court that it did not intend to appear at this hearing. The Court invited the Appellant's legal representatives to indicate what mode of hearing they were inviting, with "full reasons". They asked for an in-person hearing, initially giving no reasons. I gave them a further opportunity to give the reasons. They said: "our views are that with the country coming out of lockdown, an in-person hearing for this matter should be preferred as it will ensure greater involvement of the [Appellant] and will avoid any unnecessary delays owing to technical issues". As a fallback position, they asked that the hearing be by Microsoft Teams, as the Appellant intended to attend the hearing and this mode would "assist in his understanding of the proceedings". I decided in all the circumstances that the appropriate course was to direct a Microsoft Teams hearing. I am satisfied that no involvement of the Appellant at this renewal hearing, at which his Counsel would be making submissions, necessitated an in-person hearing. I was satisfied that, if the Appellant and his team wished to communicate during the hearing with each other (as they could if present together in the court room), that would be achievable perfectly well by arrangements which they would be able to make. There is no reason in the context of a remote hearing why there should not – if necessary – be a brief interruption and a telephone call made if some point arises which necessitates an exchange, whether between barrister and solicitor or with client. I was not persuaded that "delays owing to technical issues" posed such a risk as to justify an in-person hearing. It is true that the country is "coming out of lockdown", but at this stage there is still room for appropriate caution and it is appropriate to consider the needs of justice in each individual case. I was and remain satisfied that the mode of hearing involved no prejudice to the interests of the Appellant or any other person. As it happened, the remote hearing may have promoted the prospects of the Appellant retaining his counsel of choice, because Mr Williams appears today in what – I can see on the screen – is the room in the crown court where I know his jury is currently out. The open justice principle was secured. The case and its start time, together with an email address usable by any member of the press or public who wished to observe, were published in the cause list. The hearing was recorded and this ruling will be issued in the public domain.

Features of the case

3. The features of the case include the following. The District Judge unassailably found as facts that: the Appellant was arrested and questioned by the Polish police in conjunction with the index offence of fraud on 12 March 2013 and 23 March 2013; he was placed under an obligation to notify any change of address; but he had very soon failed to comply with those obligations, leaving Poland and arriving in the United Kingdom by the end of March 2013. He came to the United Kingdom and has been present here as a fugitive. His partner, with whom he has a long-term relationship, came to the United Kingdom in late 2014. At the end of 2015 the Appellant had a child with another woman: that child (now aged 5) lives with his mother, and not the Appellant, but the Appellant provides them with financial and practical support. The Appellant has lived a very productive life in the United Kingdom, rising to a responsible position in his employment as a fleet manager at a logistics depot. He and his long-term partner have no children but he provides her with financial as well as emotional support. She has suffered from poor mental health including a suicide attempt about 9 years ago. She has therapy for assistance with depression and has a stable condition. She does not want to return to Poland. The Appellant's mother lives in Poland and visits him and his long-term partner in the United Kingdom from time to time. He provides his mother with financial support. The index offence of fraud has been described by the requesting state authorities as follows. It involved obtaining an iPhone and iPad worth an equivalent of £925 from a woman with whom the Appellant concluded a fictitious employment contract for a trial period, misleading her as to the so-called employment at a supposed publishing house, so that she transferred the equipment to him, and that he failed to fulfil promises made and failed to return the property to her. As the District Judge recorded, on 6 August 2019 the Appellant paid compensation in relation to the value of the equipment to the victim of the crime.

Submissions

4. In his written and oral submissions Mr Williams criticises the single judge on the papers for affording undue ('Wednesbury') latitude to the District Judge's decision. He criticises the District Judge for, at least reasonably arguably: applying an erroneous 'exceptionality' test; failing to approach delay and the lapse of time in the appropriate way; inaptly describing the fraud as carried out in an "employment" context; failing sufficiently to weigh relevant considerations and impacts including the knock-on effect on third-party employees. Mr Williams also says it is arguable that the 'outcome' arrived at by the DJ was wrong, in what he characterises as a 'marginal' and 'finely balanced' case.
5. Mr Williams emphasises the following points in particular. (1) The 4 year delay between March 2013 when the Appellant left Poland and February 2017 when the EAW was issued. (2) The lack of any explanation for that lapse of time. (3) The significance of the passage of time, both as tending to reduce the weight of the public interest in favour of extradition and as tending to increase the private and family life considerations which weigh against it. (4) The promptness of certification of the EAW, which Mr Williams submits supports the inference that the Polish authorities could have acted much earlier. (5) The relative lack of seriousness of the index offence ("not great gravity", although not "trivial") and the value (less than £1,000), as illustrated by considering the likely sentence were such an offence committed in this jurisdiction. (6) The serious impact for the Appellant, his long-term partner (with

her mental health issues), the employees and business who depend on him, the child and mother whom he provides emotional and financial support, as well as his financial responsibilities for own mother for whom he provides support. (7) The absence of any convictions in the UK in the 8 years since he has been here.

Discussion

6. In my judgment the starting point is that there was no error of approach or error of law by the District Judge. There was no ‘exceptionality’ test applied. The District Judge said: “The public interest in extradition will usually outweigh any Article 8 rights unless the consequences of the interference with family life will be exceptionally severe”. The phrase “exceptionally severe”, in the practical application of Article 8, appears in the HH case [2012] UKSC 25 at paragraphs 44 and 79. The District Judge in his observation deliberately used the word “usually”. When the Article 8 balance came to be struck there is no indication that an exceptionality “test” was being applied or that the District Judge had fallen into a trap warned against by a passage (HH paragraph 8(2)) in a case which he had well in mind.
7. The reference to the index crime as being in an ‘employment context’ was not, in my judgment, an arguable error of approach. The District Judge was not saying this was an employee ‘breach of trust’ case. A ‘false representation’ made to a person who thinks they are being employed – or, to take another example, someone who thinks they are being interviewed for a job – is properly a feature of all the circumstances in considering seriousness. Mr Williams has fairly accepted that. He rightly accepts that seriousness is a nuanced assessment. The Judge did not misunderstand the offending, or mis-ascribe to the Appellant an ‘employee theft in breach of trust’ case characteristic.
8. There was no error of law in relation to delay, weight and weighing. The District Judge referred to the offence and conviction as being “quite old”, to the 4 year delay as “not ... explained”. He was entitled to “give little weight to the delay in this case given the ... fugitive status”, and the word “little” is important. He had in mind and expressly stated (derived from HH paragraph 8(6)) that: “delay may diminish the weight to be attached to the public interest and increase the impact on private and family life”. Mr Williams says the District Judge should have “somewhat reduced” the public interest in favour of extradition, and in particular needed “more fully to consider” the impact on family and private life in the context of the delay. But the District Judge got the law right, and did not misapply it. The balance was properly approached, including features which were a function of passage of time and delay. Good examples of this can be seen in the balance struck by reference to factors pointing against extradition. The District Judge referred expressly to: “The requested person has a settled life in the UK since 2013 and has had work and improved himself considerably. Due to living in the UK for the last 7 years his Article 8 rights are engaged. He is led law-abiding, blameless life since coming here”. When one pauses to consider the weighing and evaluation of settled private life “since 2013”, including the employment situation and improvement, of living in the United Kingdom “for the last 7 years”, and of living a law-abiding blameless life “since coming here”, these are all good practical examples of the fact that the evaluative exercise as being informed by what has happened during the passage of time. They are all examples of the way in which the passage of time can ‘tend to increase’ the weight to be given to the private and family life factors counting against extradition. Put another way, those matters

would be weighed differently if there were a much shorter period; they would be approached differently had there not been developments taking place during the passage of time. This, in my judgment beyond argument, illustrates in clear practical terms that the passage of time did inform the Article 8 evaluative exercise. I cannot accept, even arguably, that the Court on a substantive hearing would conclude that the District Judge in applying the balancing had overlooked the ‘tendency to undermine the public interest in extradition’ which he had recorded.

9. I have examined the various ways in which it is argued that there was an error of law or error of approach. In my judgment none of them are a sustainable basis on which an appeal could succeed. The real question, in my judgment, is whether it is reasonably arguable, with a realistic prospect of success, that a Court ‘stepping back’ and looking at the ‘outcome’ of this case would conclude that it is ‘wrong’ to regard extradition in all the circumstances as compatible with the Article 8 rights of all those affected. Mr Williams submits that it is reasonably arguable with a realistic prospect of success, viewed in that way, and even if there is no discernible or identifiable material error of approach or misdirection or error of law.
10. The passage of time is significant and during it, since the Appellant arrived in the United Kingdom in March 2013, private and family life have been built up here. Roots have been put down and the child was born at the end of 2015. There are the partner’s mental health implications. There is the absence of further criminal convictions. There are the Appellant’s strong employment ties in which third parties are intertwined. The index offence is not the most serious, the sentence is 10 months, and compensation has belatedly been paid. The impacts of extradition are real and adverse.
11. Having said all that, the Court needs to recognise the strong public interest considerations in favour of extradition, the need for respect for the Polish authorities in their pursuit of extradition. There is an offence of fraud attracting a custodial sentence. Responsibility in relation to that matter was evaded by the Appellant deliberately leaving Poland, knowing that the matter was being investigated through the criminal process, and knowing that he was required to give an address which he deliberately failed to do. What has been built in the years since has been built from that starting point. Responsibility has finally caught up with the Appellant. The Appellant does not live with the child and the child’s mother. The long-term partner’s mental health condition has been assessed as stable and the District Judge unassailably declined to accept the Appellant’s assertion that his presence in the United Kingdom was necessary for her to be able to attend therapy. The District Judge also declined to find, based on an August 2019 letter, that extradition of the Appellant would necessarily lead to the loss of several drivers’ employment, in circumstances where that letter was a year old (even older now) and the business has had plenty of time to prepare (even longer now).
12. In my judgment – if I posit this Court ‘standing back’ and looking at all the features, facts and circumstances of the case, and considering whether the ‘outcome’ is ‘wrong’ – there is no realistic prospect that this Court on a substantive appeal would conclude that extradition is incompatible with the Article 8 rights of the Appellant or of any other person. In my judgment, and beyond reasonable argument, the factors which weigh against extradition are decisively outweighed by those which weigh in its

favour. Having reached that conclusion, and since I am not persuaded that there is any reasonably arguable Article 8 ground, permission to appeal on that ground is refused.

21.4.21