



Neutral Citation Number: [2022] EWHC 1760 (Admin)

Case No: CO/76/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday 7th July 2022

Before:
MR JUSTICE FORDHAM

Between :

STELIAN ZAHARIA
- and -
ROMANIAN JUDICIAL AUTHORITY

Appellant
Respondent

George Hepburne Scott (instructed by Lansbury Worthington Solicitors) for the **Appellant**
The **respondent** did not appear and was not represented

Hearing date: 7.7.22

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 and approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM:

1. For this oral hearing of a renewed application for permission to appeal, I acceded to an application made by Mr Hepburne Scott for the Appellant, that the 30-minute hearing should proceed today as a remote hearing by Microsoft Teams with a late afternoon time marking. That was in circumstances where such a course would enable Counsel to discharge his responsibilities to his client in the present case, as well as his client in a hearing scheduled for earlier today at the Westminster Magistrates Court. Mr Hepburne Scott was satisfied as was I that the mode of hearing involved no prejudice to the interests of the Appellant. A proper application was made in good time. I was satisfied in the circumstances of the present case that the reason was a good and sufficient one. It meant that neither client needed to have their case ‘returned’ to be taken up by a new barrister. The open justice principle was secured in all the usual ways. The case its mode of hearing and its start time were all published in the court’s cause list together with my clerk’s email address which could be used by any member of the public or press who wished to observe this public hearing.
2. The Appellant is aged 34 and is wanted for extradition to Romania. That is in conjunction with a conviction Extradition Arrest Warrant (ExAW) issued on 12 October 2021 and certified on 15 October 2021, on which he was arrested on 27 October 2021 since which time he has been on bail. The ExAW is a conviction warrant which relates to a two-year custodial sentence imposed following a conviction, in the Appellant’s absence, on 6 May 2021. Extradition was ordered by DJ Branston (the Judge) on 4 January 2022 after an oral hearing the same day at which the Appellant and his partner gave oral evidence. Among the Judge’s reasons, the Judge recorded that he could not be satisfied to the relevant standard that the Appellant had left Romania in December 2018 as a “fugitive”; nor that he had been “deliberately absent” when convicted in absence in May 2021. The application for permission to appeal came before Hill J on the papers on 24 April 2022 and she stayed an Article 3 ECHR prison conditions ground, pending the Divisional Court awaited judgment in Marinescu v Romania CO/4264/2020. That stay remains in place and that judgment is awaited.
3. Hill J refused permission to appeal on Article 8 ECHR which was the sole ground maintained on the renewed application to me. The Article 8 argument runs, in essence as I see it, as follows. The threshold for the purposes of today is reasonable arguability. On an appeal this Court would properly “stand back” and ask whether the question of Article 8 proportionality ought to have been decided differently because the overall evaluation was wrong in the way that factors were and should have been weighed in the balance: Love v United States [2018] EWHC 172 (Admin) at §26. Although the Judge conducted a ‘balance sheet’ exercise and identified relevant factors, the outcome is arguably wrong in the light of the following key features in particular. First, that the index offence to which the ExAW relates is an offence of driving without a licence on 7 December 2018, an offence whose nature places it at the bottom of the scale of relative seriousness of criminal conduct (not imprisonable in this jurisdiction). This is a feature which Mr Hepburne Scott says was not in fact accurately and appropriately recorded within the ‘balance sheet’ list in any event. Secondly, the Appellant is not a fugitive and therefore those weighty public interest considerations which link to adverse findings of fugitivity do not arise in the present case. Thirdly, the Appellant has led a productive working life since coming to the United Kingdom in December 2018 – now a 3½ year period – during which time he has no convictions here. Fourthly, the

Appellant has a well-established relationship with a now long-standing partner who has been in the United Kingdom since 2000. She was recognised by the Judge as a person who would not feel able to return to Romania. They had met in 2018 when she was visiting that country and the Appellant had joined her here in December 2018. As the Judge recorded, they have plans to marry and hope to be joined by the Appellant's two children from a previous relationship (who are in care in Romania). Overall, and in all the circumstances, when the relevant considerations are revisited by this Court, the overall evaluative outcome of this case is – at least reasonably arguably – the wrong one.

4. I cannot accept those submissions. I agree with Hill J. In my judgment there is no realistic prospect that this Article 8 appeal could succeed. The seriousness of the offending of driving without a licence is reflected in a two-year custodial sentence which it is appropriate for the extradition court to respect. The circumstances involved the Appellant crashing a car and being discovered by the police to have driven without a licence. That offence, moreover, had – as the Judge put it – been “committed during the currency of another sentence”. That was because the Appellant was on probation – from 19 October 2017 – following release from the custodial element of a 6 year sentence arising from a February 2013 conviction for rape. Although the Appellant did not come to the United Kingdom as a “fugitive”, as the Judge found and recorded, he did nevertheless come here having been questioned by police after the incident on 7 December 2018, and he was aware of the police investigation. He told the Judge he accepted he had been driving without a licence. He knew about the investigation, and he knew about the period of probation. He came here a short period after being questioned. Although not found to be a fugitive, these were relevant circumstances to be borne in mind. Other features are all properly relied on by Mr Hepburne Scott on behalf of the Appellant. But they were properly and carefully consideration considered by the Judge. The rupture of the family life with the partner also needs to be seen in context. The Judge recorded that they were in fact living separately, although in a relationship, and that the partner was financially independent of the Appellant. As the Judge also recorded, they have no children. So, as the Judge put it, the Appellant does not have “dependents” here. To these features the Respondent's notice properly reminds the Court that, as the Judge also recorded, a “settled status” application in May 2019 by the Appellant has failed to achieve durable status for him here, because of his non-disclosure to the UK authorities of his previous convictions in Romania. Standing back, there is in my judgment no realistic prospect that this Court would – in all the circumstances of the present case – accept that the Appellant's extradition would be a disproportionate interference with the Article 8 rights of himself or of his partner. The public interest considerations in favour of extradition decisively outweigh those capable of weighing against it and the contrary is not reasonably arguable.