Neutral Citation Number: [2022] EWHC 196 (Admin)

Case No: CO/2982/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

1st February 2022

Before :

MR JUSTICE FORDHAM

- -

Between :

ELIZA ELZBIETA SAFIN	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Appleby Shaw) for the Appellant
The **Respondent** did not appear and was not represented

Hearing date: 1/2/22

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.

MR JUSTICE FORDHAM :

Fee Default

1. This is a renewed application for permission to appeal in an extradition case. It arises in circumstances where the application for permission to appeal was "refused" on the papers, on the basis that the application was "treated as invalid", as one which "cannot be the subject of substantive consideration". That was the determination of Lane J on 8 December 2021. It reflects the language of Crim PR 50.31(3)(c)(i) and (ii). Those provisions describe the situation where High Court fees have not been paid, and where a notice is served by the High Court officer requiring their payment within a specified period (Crim PR 50.31(3)(a)). During that specified period "the High Court must not exercise its power" to "reject the notice or application" to which the unpaid fee relates (Crim PR 50.31(3)(c)(i)) nor its "power … to dismiss an application for permission to appeal, in consequence of rejecting an appeal notice" (Crim PR 50.31(3)(c)(ii)). It must, logically, follow from those provisions that where – as in this case – the specified period has elapsed and still no fee payment has been received the exercise of these "powers" is the appropriate course. It was the course taken by Lane J. The appeal notice and application for permission to appeal in this case had been filed on 31 August 2021. There were subsequently perfected grounds of appeal, filed out of time. Both the application for permission to appeal and the application for an extension of time for the perfected grounds of appeal required the payment of court fees. It was those fees which had gone unpaid, notwithstanding a request from the court in September 2021 for confirmation of payment, and notwithstanding the 7-day notice that was issued. On the evidence, although the Appellant's solicitor did take action to prompt the firm's accountants to pay the fees on two dates the end of September 2021 and the beginning of October 2021, the fees nevertheless went unpaid. It is accepted by the Appellant's solicitor that more should have been done to make sure that the fees were paid.

Background

2. The Appellant is aged 44 and is wanted for extradition to Poland. That is in conjunction with a conviction Extradition Arrest Warrant issued on 13 November 2020 and certified on 2 June 2021. It relates to a 12 month prison sentence, all of which is unserved. That was an activated, previously-suspended sentence. The suspended sentence had been imposed by the Polish court in February 2014 for criminal offending involving child cruelty and assault taking place over a period of time between December 2012 and June 2013. Extradition was ordered by District Judge Snow ("the Judge") on 26 August 2021 after an oral hearing on the same day. The ground of appeal put forward by way of a renewal form in December 2021, promptly, in response to the order of Lane J, relies exclusively on an Article 8 ECHR ground of appeal. The hearing before me was in person.

How to proceed

3. Mr Hepburne Scott for the Appellant invites me to consider the Article 8 argument and evaluate whether it is a reasonably arguable ground of appeal. He submits that there is no provision in the Crim PR suggesting a prohibition on the renewal of permission to appeal. He emphasises that Crim PR 50.22(1)(b) does contain an exclusion, from the right of renewal which is afforded to those refused permission to appeal on the papers. That exclusion relates to cases where an extension of time has been sought and refused.

Mr Hepburne Scott submits that that is not this case. He relies on the fact that the rules do not, on their face, exclude a case where an application is treated as invalid and permission to appeal is refused as a consequence (Crim PR 50.31(3)(c)), as a category of case in which the application may not be renewed. Mr Hepburne Scott emphasises that all three of the fees in this case have been paid: the fee relating to the original application for permission to appeal; the fee relating to the application for an extension of time; and now the fee relating to the application for renewal of permission to appeal. He submits it would be in the interests of justice for the Court to consider the substance of a human rights argument, at least in the special circumstances of the present case where the Court has received an explanation and apology; and where it is plainly no fault of the Appellant's that the fee default – inexcusable though it was – took place and continued to be unremedied. I am satisfied, for the purposes of the present case, that the just course is to begin by considering the Article 8 arguments so that I am in an informed position as to the implications, for the Appellant, were she to be 'shut out' on grounds relating to the previous fee payment default.

Article 8

4. Mr Hepburne Scott has put his Article 8 submissions, in writing and orally, with his characteristic crispness. He submits that this is a classic Love v United States [2018] EWHC 712 (Admin) paragraph 26 case: the basis for overturning the Judge's adverse conclusion on Article 8 proportionality would be that "standing back" this Court would be able to say that the question ought to have been decided differently because the Judge's overall evaluation was wrong; that "crucial factors should have been weight so significantly differently in the balance to make the decision wrong, and that the appeal in consequence should be allowed.

5. Mr Hepburne Scott emphasises the following points in particular. The criminal sentence to which this case relates is a sentence of 12 months. It is right to recognise that the sentence was originally a suspended sentence, imposed in February 2014. A principal element of that suspended sentence was a requirement that the Appellant complete alcohol treatment, and she did precisely that. Her default, which led to the activation of the sentence, was a default in relation to overall probation supervision and the requirement to notify an address. Given that the activation was first effected in December 2015 (effective in January 2016), it can be taken that she was compliant for the best part of two years of what, on the evidence, was a three-year probation requirement to February 2017. She has been in the United Kingdom since 2016 and has been in a long-term relationship with a partner here for the last four years. His children are aged 12 and 10 and she plays an active role in their lives. She has been employed in the United Kingdom, working productively as a supervisor in a factory. She has 'turned her life around' including leaving behind her the alcoholism that lay behind her index offending. She has no convictions in the United Kingdom in the five (nearly 6) years that she has been here. The index offending is now very old, some nine years ago. There has been a substantial passage of time which, albeit that she was found to be a fugitive, has the recognised relevance of tending to reduce the public interest weight in support of extradition and tending to strengthen the private life and family life ties which weigh in the balance against extradition. In considering the passage of time, particular focus can be put on the between the activation of the sentence in December 2015 (coming into effect in January 2016) and the issuing of the Extradition Arrest Warrant in November 2020, a step which followed a domestic Polish warrant having

been issued in September 2016. Emphasis is placed by Mr Hepburne Scott on the impact for the Appellant, for her partner and for the two children, of her extradition.

6. The Judge analysed the Article 8 argument in the light of all the evidence in this case and conducted the requisite "balance-sheet" exercise, reasoning out the overall evaluation as to the proportionality of extradition. The Judge came to the conclusion that the public interest factors in favour of extradition decisively outweigh the combined force of the factors listed against extradition. In my judgment, there is no realistic prospect that this Court would overturn that outcome in this case. Although it is true that the Appellant complied with the alcohol treatment condition of her suspended sentence, it is also true that she was the subject of ongoing probation to February 2017, in connection with which he owed obligations to notify her address. On the evidence, she had specifically been warned and made aware of her obligations in April 2014. She went abroad, leaving Poland to come to the United Kingdom, in breach of that requirement. Further information which was before the Judge dated 16 July 2021 described the Appellant as having been "hiding abroad". The Judge, unassailably, found that the Appellant was a fugitive. The custodial sentence is a significant one. There are strong public interest considerations in support of respecting the Polish authorities' wish, now that the Appellant has been found and arrested in March 2021, to call her to account to face her responsibilities to serve the sentence which she knew had been suspended on conditions that she broke. The life that she has built in this country – creditable and positive though it undoubtedly is – needs to be seen against that backcloth. The passage of time and the age of the index offending needs also to be seen against a backcloth where the reasons for the lapse of time were: first, that the sentence had been suspended and was the subject of ongoing and applicable conditions; and then second the Appellant's actions of coming to the United Kingdom in breach of the requirements imposed on her, with the subsequent obvious implications as to whether she could readily be found.

7. All of the features of the case were assessed by the Judge including the important considerations regarding the impact on the blameless partner and the two children. But the Judge was not only entitled to find that the factors against extradition were decisively outweighed by those in its favour; he was, in my judgment – beyond argument – right to do so. Having therefore focused, as Mr Hepburne Scott invited me to do, on the legal merits of the human rights argument being advanced in this case, I have concluded that there is no reasonably arguable ground and no realistic prospect that this appeal would succeed at a substantive hearing.

Outcome

8. In those circumstances, I am satisfied that it is sufficient that I simply refuse the renewed application for permission to appeal. There is no need, and it would not in my judgment be appropriate, to grapple with the considerations that might arise from the the fee-default invalidity which had underpinned Lane J's paper refusal. Had the case turned on whether those circumstances should operate as a bar on the Court considering renewal, I would have wanted to make directions to ensure that the Respondent (at least in writing) assisted the Court with submissions of its own as to what, in principle, the appropriate approach ought to be. In the circumstances, it is unnecessary and would be inappropriate for me to make any directions or take any further step. The Appellant asked that her case be considered by this Court on its legal merits. That is what I have done. For the reasons I have given, the application for permission to appeal is refused.

THE HON. MR JUSTICE FORDHAM
Approved Judgment

1.2.22