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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2023] EWHC 1447 (Admin)



No. CO/3154/2022

Royal Courts of Justice

Wednesday, 10 May 2023

Before:

MRS JUSTICE STACEY

IN THE MATTER OF AN APPEAL

B E T W E E N :

SUPINSKI

Appellant

- and -

POLISH JUDICIAL AUTHORITY

Respondent

MR G HEPBURNE SCOTT (instructed by Bark & Co Solicitors) appeared on behalf of the Appellant.

MR T COCKROFT (instructed by CPS) appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE STACEY:

- 1 This is an appeal from a decision of the Westminster Magistrates' Court, District Judge Richard Clews, of 29 August 2022, which ordered the extradition of the appellant to Poland. Permission to appeal was granted by Sir Duncan Ouseley on 9 March 2023. The appellant was arrested pursuant to a European Arrest Warrant ("EAW") which was issued in Poland on 22 December 2020. It is a conviction warrant containing five offences from two separate judgments of the District Court in Gdynia. Judgment 1 is of 8 November 2005 (case number 693 of 2005), in which the appellant was sentenced to 1 year and 8 months custody, of which 1 year, 7 months and 28 days remained to be served; Judgment 2 was on 7 October 2015 (case number 696 of 2015), when he was sentenced to 2 years and 5 months, all of which remains to be served. The judgment of the District Judge suggests that 2 years and 5 months is the overall aggregated sentence, but the parties have helpfully confirmed to me today that that is not right and that the correct position is that the warrant was for a total of 49 months, representing the 1 year 8 months on Judgment 1, and 2 years 5 months on Judgment 2 which are in effect consecutive sentences.
- 2 The appeal is brought under s.26 and s.27 of the Extradition Act 2003 on two grounds: Ground 1, that the judge ought to have discharged the appellant from Judgment 2 pursuant to s.20(3) of the Extradition Act 2003 as he had not deliberately absented himself from his trial in relation to that matter; Ground 2 relied on Article 8 of the European Convention on Human Rights ("EHRC") and that the judge did not take express account of highly material factors in the appellant's favour, in particular, his very young age at the time of offending (he was between the ages of 16 and 18) and the impact of delay.
- 3 Prior to the hearing, the District Judge had sought further information from the judicial authority, some of which was only received after the District Judge had promulgated his judgment. There was no dispute between the parties that the further information which is before this court but was not before the district judge is admissible and ought to be taken into consideration.
- 4 In granting permission, Sir Duncan's reasons were as follows:

"I am assuming that the further information which was not before the district judge will be considered by the court. Admissibility may depend on what is made of it and, therefore, what it signifies for the decision. I have considerable doubts about both grounds, but they are arguable. Article 8, in particular, to which success on the s.20 ground could be relevant, is worth arguing, notwithstanding that the requested person is a fugitive. The conditions relate to a period when he was 16 to 18 years old, half his lifetime away, since when he has turned his life around. What has happened while a fugitive is not to be ignored, but nor is the nastiness of the offences. However, it is arguable that the overall balance came down on the wrong side."
- 5 The facts are these: the appellant is Polish and was born on 25 January 1986. He is now aged 37. Four offences formed the basis of Judgment 2 which, confusingly, took place before the offences giving rise to Judgment 1, but I shall deal with events in chronological order. On 26 June 2002, aged 17, the appellant committed two assaults. One was committed jointly with another and caused life threatening injury, causing grave health impairment and threat to life, which included a trauma of facial bones and a fracture of the nasal bone to Slawomir Walkiewicz. The second assault occurred on the same day, committed solely by him, which caused injury to Szymon Gozdzikowski which consisted of

an assault causing a non-displaced fracture of the nasal bone. Two further offences were committed on 23 March 2003 of insulting police officers by addressing them with words that are commonly found offensive and of using violence and threats consisting of tugging, pushing and threatening to cause them harm towards the police officers. These are the Judgment 2 offences.

- 6 Judgment 1 concerns an assault causing injury, a dislocated fracture of a nasal bone on a complainant, Adrian Opara, which occurred on 18 December 2004, by which time the appellant was 18. The appellant was present at his trial and sentenced to a term of immediate imprisonment of 1 year and 8 months. An appeal was unsuccessful, as was an application to defer his sentence.
- 7 He received a summons to go to prison, which arrived on the same day as confirmation of his conscription. He was told that he would have to serve his prison sentence before completing his military conscription. He wished to do neither military service nor go to prison and he left Poland knowing he had been summonsed to prison in respect of Judgment 1 and he came to the UK. He has made a life for himself in the UK, after having had a difficult family background in Poland.
- 8 Since 2006, when he arrived, he has thrived in this country. His sister and two of his three brothers have also moved to the United Kingdom and he has many friends here. He has not re-offended whilst in the UK. He has been in stable employment, with the same employer for 4 years. I say “employer”, although he is employed on a CSCS card as a subcontractor. He has obtained settled status in the UK. He has a 13-year-old daughter who lives in the UK, and although he is separated from her mother, his daughter stays with him every weekend and he supports her financially. He also has two sons who are in Poland aged 8 and 6, having been born in March 2015 and March 2017 respectively. He separated from their mother when the children were 2 and 4 years old, when she returned to Poland with them.
- 9 At a hearing in Poland on 7 October 2015 resulting in Judgment 2, when the appellant was not present and did not know of the fact of the court hearing, the court imposed the sentence of 2 years and 5 months. It would seem from the ACRO record that the suspended sentence given in respect of the 2002 offences was activated in 2007 and it is not entirely clear why matters were resuscitated resulting in Judgment 2, but I give the benefit of any doubt to the appellant.
- 10 The appellant is now very regretful that he fled Poland as a young man for fear of custody when he received the summons in 2006. He describes it as a “huge mistake”, which he puts down to the error of youth. He says he has led a law-abiding, open and honest life with no concealment in the United Kingdom. The extradition proceedings are taking their toll. He has become anxious and depressed and he knows the importance of trying to avoid self-medicating with alcohol because of the harmful effects of alcohol and his father is a recovered alcoholic, he fears he may have that gene. He is being as responsible as he possibly can be.
- 11 The European Arrest Warrant proforma states that the person was “not summonsed in person, however, he was actually served” in relation to the 2015 proceedings and Judgment 2. It says this in full:

“The person was not summonsed in person. However, was actually served the official notification of the place and date set for the trial, which resulted in pronouncement of the judgment. This was done in a

way which allows concluding beyond doubt that the person was aware of this scheduled trial and was cautioned that the court might issue the judgment even if he did not appear at the trial.”

It is understood that the reference to “trial” means “hearing” and does not necessarily mean a “trial” in the English sense of the word.

- 12 Following receipt of the EAW, the District Judge sought further information, since it seemed to the District Judge surprising that the appellant would have been actually served with the notice of proceedings if he had been in the UK. The further information which was before the Magistrates’ Court was rather different to the contents of the EAW itself. It says this:

“Pawel Supinski was obliged to notify the authorities in charge of the proceedings of any change of his address and whereabouts which he had been instructed already when first interviewed in the capacity of a suspect in each of the cases.”

The District Judge’s conclusions were that the appellant was a fugitive, both in relation to Judgment 1 and Judgment 2, he did not leave with the knowledge or permission of probation, but he decided to leave as he did not wish to risk having to serve the Suspended Sentence Order. He found that the appellant knew that the Suspended Sentence Order was liable to be activated sufficient for a finding of fugitivity [39]. The District Judge went on to assume that, in the alternative, there was a right of reconsideration so that the appellant would be able to have a rehearing or a reconsideration of the decision that was made in his absence in 2015 which led to the sentence of 2 years and 5 months. The s.20(3) point therefore went against the appellant. We now know that this was incorrect and the appellant no longer has the right of reconsideration or rehearing, but the District Judge did not know that – he had not had the information from the judicial authority when making his decision.

In a conviction case such as here, s.20 provides that:

“(1) If a judge is required to proceed under this section by virtue of s.11, he must decide whether the person was convicted in his presence.”

- 13 In this case, we know that the appellant was not present when he was sentenced (the provision also applies to a sentence hearing) in 2015. The judge then has to consider whether the person deliberately absented him or herself from their trial. If the person did not deliberately absent themselves from their trial, the judge must decide whether the person would be entitled to a re-trial or, on appeal, to a review amounting to a re-trial. The District Judge found, firstly, that the appellant had deliberately absented himself by not informing the Polish authorities of his whereabouts when he fled to the UK but, in any event, if he returned there would be a right of reconsideration so that on either limb there was no bar to extradition on that basis.
- 14 The District Judge had also sought further information concerning the delay in the matter being progressed by the Polish authorities such that it was nearly 10 years following the reactivation of the suspended sentence in 2007 and 8 years from 2015 and Judgment 1. The conclusion of the District Judge was that *Polish Judicial Authorities v Celinski and Ors* [2015] EWHC 1274 (Admin) balancing act must be applied and that the task for the District Judge was to consider whether the public interest in extradition was outweighed by the Article 8 rights of the family.

- 15 He considered the relevant authorities, including the Supreme Court and opinion of Lady Hale in *HH v Italy* [2012] UKSC 25, which held that it is likely that the public interest in extradition will outweigh the Article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe. There is no test of exceptionality and each case must be looked at individually and an assessment made on its own facts. The District Judge listed the factors in favour of extradition as being the constant and weighty public interest in the UK honouring its Treaty obligations and that requests made by a fellow member state should be afforded a high degree of confidence and respect and that judicial decisions of a fellow member state should be afforded a high degree of mutual confidence and respect. The appellant had been convicted of offences of violence and ordered to serve a significant prison sentence and there is public interest in those accused of crimes being brought to justice and facing due process. The UK should not be seen as a safe haven where foreign nationals will be shielded and protected from allegations of offending elsewhere. The appellant is a fugitive from Polish justice, having fled knowing that he was due to serve a prison service. His ex-partner and two sons live in Poland and he does not have any financial obligations in the UK, such as a mortgage or secured loans.
- 16 He balanced those factors against the factors against extradition. The first of those is that the appellant has been in the UK since 2006, has made a life for himself here with his siblings and many friends. He has not reoffended and has a settled intention to remain here. He is in stable employment, is well thought of and has his 13-year-old daughter, who he sees regularly and supports financially.
- 17 The conclusion by the judge was that the serious and significant offending outweighed the appellant's Article 8 rights and that the balance came down in favour of extradition and, therefore, the extradition order would be made. He did note, however, that the offence of being rude to a police officer was not an extradition offence and that was discharged.
- 18 My conclusions on the appeal are this: in relation to Judgment 2 and s.20(3), it is common ground that the appellant was convicted in his absence. It is now common ground that he has no right to a retrial or reconsideration which was apparent from the further information received from the Polish Judicial Authority after the district judge had made his decision. It is also clear that the European Arrest Warrant was materially incorrect. It was not right to say that the appellant had been actually served with the 2015 hearing and those who instruct Mr Cockcroft must relay the concerns of the court about that materially incorrect wording.
- 19 It is also now accepted that the Suspended Sentence Order was activated in 2007. I agree with Mr Hepburne Scott's submissions there is insufficient evidential basis to find to the criminal standard that the appellant had deliberately absented himself in 2015. Mr Cockcroft conceded that there was a paucity of information and that the judicial authority has not established that it set out its sanctions for non-compliance with the notification obligations and that the appellant was sufficiently aware. All we know is that when he was 17 years old, the appellant was told when interviewed as a suspect to keep the judicial authority informed of his whereabouts. There is a puzzling gap in the information about 2015 and a very troubling misrepresentation about actual service. The appellant's statement before the Magistrates' Court was explicit: that he did not know of the possible activation of the suspended sentence. His concern, he said, was the immediate custodial sentence and the conscription in 2006. Given the 9-year passage of time from 2006 to 2015, it cannot be said that it amounts to a manifest lack of diligence on behalf of the appellant and it has not been proved to the criminal standard by the judicial authority that he had knowingly absented himself.

20 We have no information concerning the post-conviction of Judgment 1 to conclude that he knew the Suspended Sentence Order was likely to be activated but, in any event, it would appear it was activated 7 years prior to 2015.

21 S.27 provides that:

“(1) The court may only allow an appeal if the conditions set out in subsection 3 are satisfied.”

The first condition at subsection 27(3)(a) is that:

“The appropriate judge [the District Judge in this case] ought to have decided a question before him at the extradition hearing differently.”

22 I conclude that the District Judge ought to have decided three questions differently in the Magistrates’ Court. Firstly, he ought to have decided that the appellant was being sought for a total of 49 months’ term of imprisonment, not 2 years and 5 months, in Poland. It was not the district judge’s fault that he decided it wrongly, he did not have the correct information before him, but we now know that the true position is that the appellant is sought for a 49-month sentence. The second question that the judge ought to have decided differently was that there was no right of retrial in Poland in relation to Judgment 2. He also ought to have decided differently that the appellant had knowingly absented himself from the hearing in 2015.

23 Subsection 27(3)(b) sets out the second condition that must be satisfied if an appeal is to be allowed, which is that if the District Judge had decided the question in the way that they ought to have done, they would have been required to order the person’s discharge. It is only if they would have been required to order the person’s discharge that the appeal can succeed. So in this regard, the appeal court must apply the balancing act and decide for itself how the competing factors, both for and against extradition, should be balanced in accordance with the exercise set out in the case of *Celinski* on the basis of the changed landscape.

24 I shall disregard all matters in relation to Judgment 2, because they cannot properly fall to be regarded in the extradition application. I shall only consider Judgment 1, the sentence that was due to serve of 1 year and 8 months of immediate custody set out above.

25 On applying the balancing act as a fresh exercise, I agree that the delay is considerable and has not been well-explained by the judicial authority. Mr Supinski was a young man, 18 at the time of the offence, but he had already been convicted of two similar offences 18 months previously. It is an aggravating factor that it was committed whilst on a Suspended Sentence Order and whilst he was being supported by the Probation Service in Poland. However, although the delay is considerable and the judicial authority explanations are thin, I conclude that the exceptionally severe interference with family life required to be shown to displace the constant and weighty public interest in the UK in honouring its Treaty obligations and respecting requests made by a fellow member state, has not been established sufficient to displace the factors in favour of his extradition. Aged 18, with his knowledge of his immediate term of imprisonment that the authorities had ordered him to serve, and knowing of his record of violence (this was his third serious violence conviction), I do not consider that it is unjust and in breach of the appellant’s Article 8 rights to order his extradition.

- 26 Having conducted the exercise afresh, I do not conclude that the District Judge would have been required to order the appellant's discharge. Had the judge decided the questions before him in the way that I have found he should have done, the outcome would still have been the same. I know this will be hard for Mr Supinski to hear this, but having knowingly fled as a fugitive in 2006 he took his chances that the authorities would eventually catch up with him and they now have. I refuse this appeal.
- 27 One consolation perhaps will be that as he has settled status there will be no bar to his return to the UK, as I understand it, once he has sorted matters out with the Polish authorities. This has not been an easy decision.
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CERTIFICATE

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital*

This transcript has been approved by the Judge