Neutral Citation Number: [2023] EWHC 253 (Admin)

Case No: CO/414/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 February 2023

Before:

THE HONOURABLE MR JUSTICE MORRIS

- -

Between:

JENO ZOLTAN VARGA	**Appellant**
- and -	
REGIONAL COURT OF BUDAPEST, HUNGARY	**Respondent**

- -
- -

George Hepburne Scott(instructed by **Lansbury Worthington Solicitors**) for the **Appellant**
Amanda Bostock (instructed by **CPS (Extradition)**) for the **Respondent**

Hearing dates: 19 January 2023

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Approved Judgment

This judgment was handed down remotely at 2pm on Thursday 9th February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Mr Justice Morris:

1. This is an appeal against the decision of District Judge Pilling ("the Judge") dated 31 January 2022 to order the extradition of Jeno Varga ("the Appellant") to Hungary. Permission to appeal was granted by Hill J on 24 June 2022. The Respondent is the Regional Court of Budapest, in Hungary.

2. There are two grounds of appeal: first, in respect of one of the offences, the Judge was wrong to reject the argument that insufficient particulars of the Appellant's conduct were provided and/or the offence was not an extradition offence; and secondly, the Judge was wrong to have found that the public interest in extradition outweighed the Appellant's private and family life in the UK under Article 8 ECHR.

The Factual Background

3. The Respondent sought the extradition of the Appellant pursuant to an Arrest Warrant (AW) issued by the Respondent on 18 August 2021. The AW was certified by the National Crime Agency on 27 August 2021.

The Arrest Warrant

4. The AW seeks the Appellant's return to serve the outstanding 3 years, 8 months and 9 days of three sentences of imprisonment, totalling 3 years and 9 months. The sentences can be summarised as follows:

   (i) A sentence of 1 year 6 months imposed on 5 September 2018 (affirmed on 20 June 2019 at second instance) - relating to the theft of a handbag and its contents from a pharmacist assistant at work on 31 August 2016 (I refer to this as Offence 1);

   (ii) An 8 months suspended sentence imposed on 9 April 2014 (but activated by the sentence imposed on 5 September 2018) - relating to breaking a car window to steal a phone on 19 June 2013. (I refer to this as Offence 2);

   (iii) A 1 year 7 months suspended sentence imposed on 11 November 2014 (also activated by the sentence imposed on 5 September 2018) - relating to the theft of cash and documents from a coat within an office on 2 January 2014. (I refer to this as Offence 3).

5. The Appellant was present in relation to the two earlier sentences which were initially suspended. In relation to the most recent sentence, he was present at first instance and accepted in evidence that he may therefore also have been present when the two earlier sentences were activated. The Judge found that he did not attend his appeal on 20 June 2019, but had been duly summonsed and was aware of it.

Offence 2

6. As regards Offence 2, the Appellant's involvement was described box (e) in the AW as follows:

> "From among the accused persons the 1st accused … broke the front right window of the Toyota Auris type passenger car…

> and from there he appropriated the Nokia 2680 type mobile phone owned by the victim… The 2nd accused VARGA… assisted the action of the 1st accused… by generating an intention-confirming impact in the presence of the 1st accused” (emphasis added)

7. Importantly, Box (e) went on to state that Offence 2 was a conviction for:

> “the misdemeanour offence of theft as an accomplice (which is classified in accordance with Ss. 370(1) and (2)b)bc) of the Criminal Code)” (emphasis added)

Those provisions of the Criminal Code were further explained as containing the definition of the offence of theft and the various maximum sentences for that offence.

8. Box (e) then went on to define the term “accomplice” in the following terms:

> “By virtue of section 14(2) of the Criminal Code, an accomplice is a person who knowingly and voluntarily helps another person to commit a crime”. (emphasis added)

9. The nature of the Appellant’s involvement was largely repeated in the Further Information dated 30 September 2021 (“the Further Information”), where the Respondent stated, in respect of Offence 2:

> “The court acting in the basic case stated that the presence of the 2nd accused VARGA… had an intention-enhancing effect on the 1st accused,…” (emphasis added)

10. It is common ground that, as a matter of language, the references to “intention-confirming” and intention-enhancing” mean that the fact that the 2nd accused (i.e. the Appellant) assisted and/or was present supported the proposition that the 1st accused had the relevant intent to steal.

The Further Information

11. The Further Information stated, inter alia, as follows:

 (1) The Appellant was not forbidden from leaving the territory but was under an obligation to notify any address change within 3 days. He became aware of this obligation from the second instance decision on 20 June 2019. The documents did not conclude that the Appellant did not meet this obligation (paras. 9 and 10).

 (2) The Appellant personally received the summons to the hearing for the second instance court (to take place on 20 June 2019) ‘in his own hand’ on 23 May 2019 (para. 11). However the court received a document from him on the 25 June 2019 claiming that he had been in Scotland with his two minor children and, due to the distance and the fact that the post had not been delivered, he had not been aware of the date of that hearing i.e. 20 June 2019 (para. 12).

(3) After the court decision on 20 June 2019, the Appellant was summonsed to start and serve his sentences of imprisonment by 9 October 2019, but he did not attend. On 28 October 2019 an order was made for him to be brought to prison by 11 November 2019. This was not effective. An arrest warrant was issued on 29 July 2020. On 3 June 2021 the court was informed by the Hungarian police that the Appellant was abroad. On 23 July 2021 an EAW was issued, and a TACA warrant was issued on 18 August 2021, once it was known that the Appellant was in UK (para. 14).

Further facts

12. In addition to these convictions in Hungary, the Appellant has a conviction for two further theft offences for which he received a community order on 21 November 2018 and a conviction for public order offences from 12 July 2019 for which he received a fine.

13. The Appellant stated, and the Judge found, that he came to the UK in October 2019. The Appellant was arrested in the UK on 2 September 2021 from an Ibis hotel, having been provided with accommodation there through St Mungo's homeless charity. He was known to be a class A drugs user, without employment and with a methadone scrip at the time of his arrest. He has a caution for the possession of heroin on 8 March 2020.

14. The Appellant was brought before Westminster Magistrates' Court on the day of his arrest and remanded into custody where he has remained. The extradition hearing took place on 10 January 2022. Judgment was given and extradition ordered on 31 January 2022.

The Appellant's proof of evidence

15. In his proof of evidence for the extradition hearing, the Appellant stated that he had supplied his UK address to the Hungarian authorities. They were aware of his whereabouts because they had sent a letter to him there. He maintained that he had not been notified of the outcome of the appeal in June 2019. He said that at that time he was still in Hungary because he moved to the UK in October; "I had no awareness that a decision had been made and that I had a remaining sentence to serve in Hungary. My understanding was that my case was still at the appeal stage, and I would be informed of any changes". He said that he left in October not knowing that the appeal process had been completed. This was not accepted by the Judge.

The Judgment

16. As regards findings of fact, the Judge found that the Appellant came to the UK in October 2019 and had been living openly. She accepted that he was not under any obligation to remain in Hungary nor that he had failed in any obligation to notify his address to the Hungarian authorities (§§12 and 13).

17. As regards fugitive status, the Judge found that the Appellant was present at the hearing in September 2018 and knew that the suspended sentences had been activated on that date (§14). At §15 she further found that the Appellant knew of the appeal hearing on 20 June 2019, in reliance upon the facts stated in the Further Information,

per paragraph 11(2) above. The Judge further found that the Appellant chose not to attend the appeal hearing and wrote the letter hoping further to delay his summons to prison.

18. On these findings, she concluded (at §17):

> "I am satisfied to the criminal standard that the RP was present when his suspended sentences were activated and that he left Hungary for the UK in 2019 in order to avoid serving that sentence of 3 years and 8 months and 9 days. As [a] result I find him a fugitive from justice"

19. Before the Judge, the Appellant contended that, in relation to Offence 2, the AW does not adequately provide the particulars of the conviction so as to comply with section 2 Extradition Act 2003 ("EA 2003") and/or Offence 2 does not amount to an extradition offence because it does not satisfy the dual criminality requirement. In relation to that contention, the Judge concluded (at §§27 to 29) as follows:

> "27. For the purposes of dual criminality, the requesting authority does not have to identify or specify in terms the relevant *mens rea* of the English offence. It is sufficient if it can be inferred by the court from the conduct spelled out in the warrant (and exceptionally, further information) (*Zak v Regional Court of Bydgoszcz, Poland* [2008] EWHC 470 (Admin); *Assange v Swedish Prosecution Authority* [2011] EWHC 2849 (Admin). Reference can be made to the entire EAW and not just Box E in order to establish dual criminality: *Kopycki v Provincial Court in Lodz, Poland* [2012] EWHC 744 (Admin).
>
> 28. I am satisfied that an offence under English law is identified, namely criminal damage and theft, that the RP's role is said to have been to encourage his co-defendant who physically performed the act. The issue of whether the RP is guilty or not was one for a trial court to assess his intent.
>
> 29. I reject the submissions made on behalf of the RP and find that, in respect of all the offences, the particulars required by section 2 EA have been provided and that the offence is an extradition offence."

20. The Judge addressed Article 8 at §§32 to 45 of the Judgment. She concluded that the issue of fugitivity was an important factor when it comes to the Article 8 balancing exercise. She had found that the Appellant was a fugitive and that that was a factor weighing in favour of extradition. She then followed the approach in *Celinski*, balancing the factors for, and against, extradition. At §§36 to 39 she set out the factors in favour of extradition:

> "36. I remind myself of the important public interest in upholding extradition arrangements.
>
> 37. I have found that the RP is a fugitive and there is weighty public interest in preventing the UK being a safe haven for those fleeing injustice elsewhere. This public interest is not easily displaced.
>
> 38. The RP has been convicted of offences of persistent dishonesty, some committed during suspended sentence.
>
> 39. He has a lengthy sentence of 3 years and 8 months and 9 days still to serve."

21. At §§40 to 45 she set out the factors against extradition, and her conclusion, as follows:

> "40. The RP is said to have a settled private life in the UK. He is married and his wife was pregnant at the initial stages of these proceedings, although not any longer. He has pre-settlement status in the UK and had renewed his identity documents a matter of days before his arrest.
>
> 41. He has no convictions in this country.
>
> 42. The RP has two children from a previous relationship who currently reside in Scotland with their mother. She is the financial provider for the children and the RP does not contribute. His evidence was that he speaks to the children by telephone or via Skype, and although he may have hoped to be able to make arrangements to see them before his arrest, he last saw them in person in March 2019. I am satisfied that the evidence shows that the children will not be affected materially or emotionally by RP's extradition. Their relationship is likely to continue in the same way as it has over the past few years and the children will not be exposed to any appreciable difference in their limited contact with him.
>
> 43. Although RP is married, there is no evidence of what impact, if any, his extradition would have on his wife. There was no statement from her, and she did not attend court. What the RP said in his evidence was that his wife has acquired a job and accommodation since he has been in custody. I consider that this amounts to evidence that she is able to provide for herself and is in no way reliant on the RP.
>
> 44. The RP argues that there is significant overall delay such as should count as a factor against extradition. This was not developed further before me and I am satisfied that

> the delay, from the activation of the suspended sentences in 2019 until now is not a factor to be given much weight.
>
> 45. These are limited and not particularly strong factors against extradition. Having conducted the balancing exercise, these do not, in my assessment, outweigh the persistent and weighty public interest factors in favour of extradition."

Relevant legal principles

22. I have been referred to a number of the leading authorities including *Norris v The Government of the United States of America (No 2)* [2010] UKSC 9; *H(H) v Deputy Prosecutor of the Italian Republic* [2012] UKSC 25; *Re B (A child)* [2013] UKSC 33; *Dunham v USA* [2014] EWHC 334 (Admin); *Belbin v Regional Court of Lille, France* [2015] EWHC 149; *Celinski v Poland* [2015] EWHC 1274 (Admin); and *Love v USA* [2018] EWHC 172 (Admin).

Article 8 generally

23. As regards Article 8 ECHR, the test is one of proportionality. The question is always whether the interference with private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. That latter interest will always carry great weight. 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. The gravity of the offence or culpability, the appropriate level of sentence and the arrangements for prisoner release are matters for the requesting state. The court must conduct a balancing exercise in order to determine whether the requested person's rights under Article 8 are outweighed by the public interest in extradition.

Delay

24. *H(H)* supra, at §8(6) addresses delay in the context of Article 8. I have also been referred to *Stryecki v Poland* [2016] EWHC 3309 (Admin) and *Vajdik v Slovakia* [2022] EWHC 55 (Admin) at §§14 to 20. From these authorities the following propositions can be derived:

    (1) The delay since the crimes were committed (i.e. overall delay) *may* both diminish the weight to be attached to the public interest and increase the impact upon private and family life. The effect of delay in the balance for and against extradition is fact specific.

    (2) Delay must be analysed in the context of its impact upon the Appellant and his/her family.

    (3) Whilst overall delay since the commission of the offences should be considered, it is appropriate to look at different periods of time within the delay, such as the time it takes for the matter to come to trial, subsequent delays in finding the appellant and in issuing the warrant.

(4) Consideration should be given to whether the period or periods of delay can be laid at the appellant's door, or rather are due to the inaction on the part of the authorities.

(5) Long *unexplained* delay can weigh heavily in the balance against extradition.

Fugitivity

25. In relation to fugitive status, I have been referred to *Versluis v The Netherlands* [2019] EWHC 764 (Admin) per Knowles J at §54 to 59 (citing well known leading authorities); *De Zorzi v Attorney General Appeal Court of Paris* [2019] EWHC 2062 (Admin) at §48 and *Makowska v Regional Court, Torun, Poland* [2020] EWHC 2371 (Admin). From these authorities the following propositions can be derived:

(1) Fugitive status must be proved by the judicial authority to the criminal standard.

(2) The question is whether "the requested person has deliberately and knowingly placed himself *beyond the reach of the legal process*" of the requesting state. Fleeing the country, concealing whereabouts or evading arrest are all examples of so doing.

(3) The test is a subjective one.

(4) The question is a question of fact for the district judge whose finding is to be accorded great respect on appeal.

(5) The taking of positive steps by the requested person is evidence of fugitive status. It is one thing to flee the country at a time when the sentence in enforceable; it is another thing not to return to the country from a place of lawful residence only after becoming aware that a sentence is enforceable.

The approach on appeal

26. Ultimately the question for this Court on appeal is whether the decision of the district judge was wrong; i.e. whether the district judge's overall evaluation was wrong, because crucial factors should have been weighed so significantly differently as to make the decision wrong. In an Article 8 case, where there is no question of fresh evidence, it is necessary to demonstrate that the district judge either (i) misapplied well-established legal principles or (ii) made a relevant finding of fact that no reasonable judge could have reached on the evidence, which had a material effect on the value-judgement or (iii) failed to take into account a relevant fact or factor or took into account an irrelevant fact or factor or (iv) reached a conclusion that was irrational or perverse.

Particulars and Dual criminality and mens rea

27. Section 2 EA 2003 addresses the content of the arrest warrant. By section 2(6)(b) and 2(4)(c), the arrest warrant must contain the particulars of the conviction and the particulars of the circumstances in which the person alleged to have committed the offence, including, inter alia, the conduct alleged to constitute the offence, and any

provision of the law of the foreign territory under which the conduct is alleged to constitute an offence.

28. As to the issue of "dual criminality", by section 10(2) EA 2003, the judge must decide whether the offence specified in the warrant is an "extradition offence". Section 65(3)(b) EA 2003 provides that the conduct alleged in the requesting state will constitute "an extradition offence" where that conduct "would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the Untied Kingdom".

29. In *Assange*, supra at §57 Sir John Thomas P stated the inevitable inference test as follows:

> "It is not necessary to identify in the description of the conduct the mental element or mens rea required under the law of England and Wales for the offence; it is sufficient if it could be inferred from the description of the conduct set out in the AW. However, the facts set out in the AW must not merely enable the inference to be drawn that the Defendant did the acts alleged with the necessary mens rea. They must be such as to impel the inference that he did so; it must be the only reasonable inference to be drawn from the facts alleged. Otherwise, a Defendant could be convicted on a basis which did not constitute an offence under the law of England and Wales, and thus did not satisfy the dual criminality requirement. For example, an allegation that force or coercion was used carries with it not only the implicit allegation that there was no consent, but that the Defendant had no reasonable belief in it. If the acts of force or coercion are proved, the inference that the Defendant had no reasonable belief in consent is plain".

30. In *Cleveland v USA* [2019] EWHC 619 (Admin) at §§61 to 64 and 83, the Divisional Court drew a distinction between the issue of dual criminality (i.e. whether the foreign offence includes *all* the elements of an English law offence) and the issue whether, if there is dual criminality, nonetheless the particulars in the arrest warrant are sufficient to enable an offence under English law to be identified. The test in *Assange* is directed to the former issue and is solely aimed at preventing a person being extradited, and then convicted in the requesting state, on a basis which would not constitute an offence under English law. Where an essential ingredient under English criminal law is missing *from the offence* for which extradition is sought, the dual criminal requirement is satisfied if the court concludes that that ingredient would be "the inevitable corollary of proving the matters alleged to constitute the foreign offence". However the *Assange* test has no application where the issue is whether the particulars stated in the arrest warrant are sufficient to enable an offence under English law to be identified. In the latter case, the court may conclude that a gap in the particulars can be filled because an inference as to the missing element can be drawn from information contained in the warrant; in such a case the foreign offence itself does not lack an ingredient essential to criminal liability under English law.

Ground 1: insufficient particulars/dual criminality

The Appellant's case

31. The Appellant puts his case in the alternative: insufficient particulars under s.2 EA or dual criminality under s.65. He appears to submit that either "intent" is not an element of the Hungarian criminal offence or, if it is, the relevant intent has not been specified in the particulars in the AW. Mr Hepburne Scott's argument did not clearly distinguish between the two approaches. In his skeleton argument, Mr Hepburne Scott submits that an intention to encourage on the part of the Appellant was not "an inevitable corollary" of his mere presence at the scene. (This is the test from *Cleveland* §83 and suggests a case based on absence of dual criminality). He submits that the Judge did not address this contention. In English law mere presence is not enough to found a conviction upon a joint enterprise basis. The information provided in the AW and subsequently does no more than establish that the Appellant was present and that his presence enhanced the intention of the co-defendant. That information entails that, in Hungarian law, there is no necessity of an intention to encourage by presence as there would be under English law. The Judge erred when she concluded that mere presence at the scene of a crime is capable of constituting an offence in England and Wales.

32. In oral argument, Mr Hepburne Scott again appeared to put his case on the basis that the element of intent is missing from the offence under Hungarian law (rather than missing from the particulars). However he then went on to submit that the requisite intention is not set out in, nor can be inferred from, the AW or the Further Information. However he accepted that if the main statement of offence in the AW had stated "the Appellant had knowingly assisted the 1st accused to break into the car", that would have been sufficient.

The Respondent's case

33. The Respondent submits that the reality is, as the Judge found at §28, that the Appellant and his co-accused decided to break into the car together, but only one individual actually had to break the window. It is inconceivable that the Hungarian Court would charge and convict any individual who had no criminal intent and/or happened just to be nearby when a crime was committed, not knowing what was going to happen. The AW states that the Appellant had an "intention-confirming impact" and "assisted" his co-defendant to commit the crime. The only reasonable inference was that the Appellant had the relevant mens rea to be acting jointly with his co-defendant. Standing back, it is clear from the AW and the Further Information that the Appellant was alleged to have "encouraged the crime to take place".

Discussion

34. The Appellant's case is put on the basis that the conduct, the subject of Offence 2, would not constitute an offence under the law of the relevant part of the UK if it occurred in that part of the UK: section 65(3)(b) EA 2003 i.e. "intent" is not an ingredient of the offence in Hungarian law or does not need to be proved in Hungarian law. In the alternative, it is put on the basis that, even if intent is an ingredient of Hungarian offence, since the particulars in the AW and the Further Information do not refer to intent, then those particulars are defective.

35. In my judgment, neither contention is established in this case. It is clear from the AW itself, both that intent on the part of the Appellant was an ingredient of the offence of which he was convicted, and that the particulars provide that the Appellant had the relevant intent. First, in the AW and the Further Information, it is not mere presence at the scene which is alleged against the Appellant. Box (e) in the AW describes that the Appellant "assisted the action of the 1st accused". Secondly, and most significantly, box (e) states that the Appellant was convicted of committing the offence of theft "as an accomplice". Box (e) then, after defining the offence of theft, goes on to provide the definition of "an accomplice" under the Hungarian Criminal Code, namely a person who "knowingly" helps (or assists) another person to commit a crime. Here the relevant conduct on the part of the Appellant was "knowingly assisting" the 1st accused to break into the car. It is clear that under Hungarian law there is a requirement of mens rea on the part of the secondary party and further that, on the facts of this case, this formed part of the Appellant's conduct. The AW makes clear (1) that knowing assistance is required to constitute the offence in Hungary and (2) that the Appellant's conduct involved such knowing assistance - explaining that his conduct amounted to the offence of knowing assistance.

36. For these reasons, I conclude that the Judge's conclusion at §29 was correct and Ground 1 fails.

Ground 2: Article 8

The Appellant's case

37. The Appellant submits that the Judge's overall evaluation of the factors relating to Article 8 was wrong. Crucial factors should have been weighed significantly differently, in particular the issues of fugitive status and the overall delay. The Appellant was not a fugitive, and so delay should have been given greater weight, in particular delay since 2019. Further, even if the Judge was correct in finding he was a fugitive, delay since the date of the offences should still have been given some weight, which it was not.

38. First, the Appellant submits that he was not a fugitive, contrary to the Judge's finding. He decided to move to the UK in order to be closer to his children and to build a life with his wife. He effectively complied with court orders. He supplied his address in the UK to the Hungarian authorities and they were aware of that address, by subsequently sending correspondence there. In relation to Offence 2 he paid a fine. In relation to Offence 3 he spent 1 month in prison, following which he fully complied with house arrest and curfew. There was no restriction on him leaving Hungary. Under the sentence imposed, there was no immediate obligation to go to prison, but rather a procedure for notification of a date. There was no concealment of the Appellant's whereabouts; he volunteered his location and he was not trying to hide. The Court cannot be certain that at the point that he came to the UK, he was subject to an outstanding active prison sentence. The sentence was not active at the time of his leaving.

39. Secondly, in any event the Appellant relies upon the overall delay in the case as counting against extradition. The relevant "overall delay" means the delay between commission of the offences and the extradition hearing; and here there was very significant overall delay of 6 to 9 years. The Judge did not properly factor the overall

delay into the Article 8 equation. The Judge incorrectly concluded that delay could not be counted in the Appellant's favour as he was a fugitive. Because he was not a fugitive, delay should have been given substantial weight. But even if he was a fugitive, it still carried some weight. The Judge was also wrong to conclude at §44 that the point was not developed**.**

40. Thirdly, the Appellant relies upon his personal circumstances and his settled private and family life in the UK since arriving in 2019.

The Respondent's case

41. As regards fugitive status, the Appellant was present at the most recent conviction where his earlier suspended sentences were activated and personally received notification of his appeal hearing but chose not to attend. Whether he received correspondence, paid fines or gave his UK address to Hungarian authorities is irrelevant, where he was fully aware of the sentences imposed but chose not to serve them. The Appellant was fully aware that he had been sentenced to immediate imprisonment for Offence 1 and that that had activated his two previous suspended sentences. Rather than remaining to serve his sentences, the Appellant chose to leave the country. He is a fugitive and the Judge's decision was correct. The court order of June 2019 required the Appellant to go to prison.

42. The Respondent does not accept that the Appellant came to the UK in October 2019. The letter received on 25 June 2019 suggests he was already in Scotland at that time and that he fled Hungary earlier when he knew his sentence had been imposed, and that he had an outstanding appeal the outcome of which he did not know.

43. As regards the suggestion of failure to take account of overall delay it is not correct that the Judge disregarded such delay altogether. Rather she found the delay to carry little weight of its own accord. Other Article 8 decisions do not assist. Secondly, the only possibly relevant delay would be from the final activation of the sentences on 20 June 2019. Any delay between the first conviction and sentence in 2014 and the activation of the sentences in September 2018 is to be laid at the Appellant's door. Further, the delay between September 2018 and June 2019 was due to the Appellant exercising his right of appeal. The activating offending dates back only to 2016 and the activation itself of the sentences took place only in 2019. Since June 2019 there has been no significant delay and any such delay has been caused by the Appellant's decision to leave Hungary and avoid his sentence. Finally the passage of time in relation to an Article 8 argument necessarily concerns the impact on his private and family life. However on the facts here the impact on his private and family life was limited.

44. In any event, even if he was not a fugitive, the delay, if any, was only 2 ½ years since activation and this has had no impact upon his private and family life.

45. Balanced against these factors are three convictions for repeated and persistent offending resulting in a lengthy outstanding sentence of almost 3 years and 9 months. The public interest in that sentence being served is high, particularly given the Appellant's attempt to avoid it. Extradition is not disproportionate in the circumstances and the appeal should be dismissed

Discussion

46. The Appellant's specific arguments on fugitive status and delay fall to be considered in the context of the Appellant's claim based on his private and family life, and in particular, of the fact that that claim in relatively weak. At §42, the Judge found that his two children reside with their mother. The Appellant does not contribute to them financially and had not seen them for some time. The children would not be affected materially or emotionally by the extradition. Further, as found at §43, there is no evidence at all of any impact of his extradition on his wife. She is able to provide for herself and is no way reliant on the Appellant. In reality the Appellant came to the UK as a fugitive and has now been here for just over three years. He was unemployed and homeless at the time of his arrest. This is highly significant when considering the Article 8 balance, and in particular the issues of fugitive status and delay. Those two issues are intertwined. I address the former first.

47. Whether the Appellant was a fugitive was a question of fact for the Judge; her finding is to be accorded great respect on appeal. In my judgment, the Judge did not make any relevant error in her assessment and was entitled to find that the Appellant was a fugitive. The Judge accepted the Appellant's own evidence that he came to UK in October 2019. By that time, as the Judge found, he had been present when the prison sentences were activated and further had been aware of the appeal hearing on 20 June 2019, but chose not to attend. As regards notifying the Hungarian authorities of his UK address there is no express finding. In any event, the giving of the UK address does not mean that he is not "beyond the reach of legal process" of Hungary.

48. It may have been no coincidence that he had been ordered to attend at prison on 5 October 2019. In any event, I do not accept the proposition that liability to imprisonment has to be immediate in order for a finding of fugitive status, in circumstances when the requested person knows that a final prison sentence has been imposed and will lead inevitably to an obligation to surrender to custody at some point. Applying the legal test of "knowingly placing [oneself] beyond the legal process", the Judge was entitled to reach the conclusion that she did.

49. As to delay, whilst overall delay since the commission of the underlying offences "may" affect the balance under Article 8, in my judgment in this case the only relevant period is the period between the final activation of the sentences in June 2019 and the extradition hearing. The Judge was correct so to conclude at §44. The Respondent cannot be held responsible for the period of time between the commission of Offences 2 and 3 and the activation of the sentences: this "delay" was due to the Appellant's own conduct in committing Offence 1 in breach of the terms of the suspended sentences. Further, any "delay" since June 2019 was not particularly excessive and has been explained in the Further Information - at most there was some delay between November 2019 and the issue of a domestic warrant in July 2020 and between then and the issue of an EAW in July 2021. This delay does not tip the balance against extradition for two reasons: first, it has relatively little weight given the finding of fugitive status, and secondly, and most significantly, there is no evidence that the Appellant's private and family life personal circumstances (described in paragraph 46 above) changed in any way over the period.

50. As regards §44 Judgment, first, contrary to the Appellant's submission, the Judge did take delay since June 2019 into account, albeit that it was not to be given "much

weight"; that was a conclusion that she was entitled to reach. Secondly, the Judge was correct to state that the Appellant's argument based on "overall delay" was not "developed further". In Mr Hepburne Scott's written skeleton argument before the Judge, it had been contended, simply, that one of seven enumerated "important factors" in the Appellant's favour was the overall delay, regardless of whether he was found to be a fugitive. He referred merely to the delay since the offences were committed, whilst at the same time reserving the right to expand upon the factors in oral argument. However it is accepted that, as pointed out at §44, in oral argument this was not developed further.

51. Finally, I add that, even if the judge had been wrong to be satisfied, to the criminal standard, that the Appellant was a fugitive, and even if the delay since June 2019 were, as a result, to be given somewhat greater weight in the balance, I would have concluded that that delay, when combined with other factors, would not have outweighed the public interest factors in favour of extradition. In particular, I would have remained of the view that any such delay had no practical impact upon the Appellant's personal and family circumstances.

52. For these reasons, I conclude that the Judge's conclusion at §45 was correct and Ground 2 fails.

Conclusion

53. In the light of my conclusions at paragraphs 36 and 52 above, the appeal is dismissed.