Neutral Citation Number: [2019] EWHC 3485 (Admin)

Case No: CO/1850/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20.12.2019

**Before** :

**The Honourable Mrs Justice McGowan DBE**

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**Between :**

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|---|---|
| **Byczak** | **Claimant** |
| **- and -** | |
| **Polish Judicial Authority** | **Defendant** |

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**Mr George Hepburne Scott** (instructed by **Bark & Co Solicitors**) for the **Claimant**
**Ms Catherine Brown** (instructed by the **CPS Extradition Unit**) for the **Defendant**

Hearing dates: 19.11.2019

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# Judgment Approved

**Mrs Justice McGowan DBE :**

## Introduction

1. This is an appeal by permission granted by Sir Wyn Williams on 10 September 2019. There is also an application to call fresh evidence of the same date.

2. The Appellant appeals against the decision of District Judge Ikram, sitting at Westminster Magistrates' Court, made on 7 May 2019 to order his extradition to Poland pursuant to a conviction European Arrest Warrant, ("EAW"). The EAW was issued on 26 November 2018 by a Judge of the Regional Court in Szczecin, Poland. It was certified by the National Crime Agency, ("NCA") on 30 January 2019.

3. Extradition is sought following his conviction for an offence of battery. The assault took place on 23 October 2009. He is said to have acted with another and delivered blows using his hands to the head of the victim. A sentence of one year and three months was imposed and the total term remains to be served.

## History of Proceedings

4. The agreed chronology is as follows:

i) 23 October 2009, date of offence,

ii) 24 October 2009, Appellant interviewed about offence,

iii) 24 January 2010, Appellant interviewed about offence,

iv) 13 April 2010, Appellant present at trial,

v) 19 July 2010, Appellant present, trial continued, enforceable judgment, sentence imposed but suspended for five years,

vi) 21 July 2014, Probation officer applies for activation of suspended sentence as appellant has been convicted in Germany and in Poland,

vii) 20 October 2014, Hearing of application to activate suspended sentence adjourned at Appellant's request,

viii) 12 January 2015, Appellant present at adjourned hearing of application to activate sentence. The Court refused the application. The Probation Officer subsequently appealed,

ix) 18 August 2015, Appellant was not present. The suspended sentence was activated by the Regional Court of Szczecin,

x) 26 November 2016, EAW issued,

xi) 30 January 2019, EAW certified,

xii) 14 February 2019, Appellant arrested under the EAW,

xiii) 15 February 2019, Appellant remanded into custody,

xiv) 7 May 2019, District Judge ordered extradition,

xv) 9 September, permission to appeal granted,

xvi) 19 November 2019, Appeal heard.

**Present Proceedings**

5. The ground of appeal is that extradition would involve a disproportionate inference with the Appellant's family rights pursuant to Article 8 ECHR. Permission was given, in part, based on the length of time already spent in custody in this jurisdiction.

6. At the hearing in the Magistrates' Court the Appellant gave evidence. The District Judge found that the Appellant was a fugitive [tab A/47].

7. The Appellant seeks to adduce "fresh evidence" in the form of an additional witness statement from the Appellant, dated 14 May 2019 [tab A/37].

**Fresh Evidence**

8. The application to call fresh evidence was not actively pursued but must still be resolved. This court can admit fresh evidence under s. 27(4)(a) of the Extradition Act 2003, "(the Act"). To be admitted it must have not been raised or available at the hearing before the District Judge. It is obvious that the Appellant was available and, in fact, did give evidence at the hearing in the Magistrates' Court.

9. The evidence is not fresh, the Appellant gave evidence and could have dealt with all matters. The matters raised do not take the issues to be determined any further. The application is ill-conceived; it is not fresh evidence; it was available and could have been raised at the hearing. It is not admissible but, in any event, there is no detriment to the appellant's case. He dealt with all relevant matters in evidence and submissions on his case are perfectly arguable on the evidence as it stands.

**Material Legislation**

10. The appeal is brought under s.26 of the Act and the court's powers are defined in s.27-29. The application of those provisions and the court's approach to the determination of the issues is established in *Celinski & others v Poland [2015] EWHC 1274 (Admin).*

11. This court can only interfere with the decision of the Magistrates' Court if it is wrong. Lord Thomas CJ set out the correct approach at paragraph 24, the single question is whether or not the District Judge made the wrong decision. Findings of fact reached having heard evidence must ordinarily be respected. The focus of this court must be on the decision itself, not on an analysis of each step in the process leading to that decision.

12. The finding of the District Judge that the Appellant is a fugitive brings *s.21 Extradition Act 2003* into consideration.

13. The Appellant relies on the argument that the undoubted interference with his, and his family's right to respect for their family rights, under Article 8 of the ECHR, is disproportionate given the delay since the original offending, the relative seriousness of the offending and the time spent in custody awaiting the outcome of this process.

**Appeal**

14. The Appellant submits that the District Judge was wrong to find that he was a fugitive. That incorrect finding has had a profound effect on the Article 8 submissions. He submits that he attended all hearings and cannot be said to have deliberately absented himself from the hearing at which the suspended sentence was activated. He argues that he attended the hearing on 12 January 2015 and the court declined to activate the sentence but that there is no evidence or information to show that he was told that a letter would be sent informing him of any further stage in the proceedings. He further submits that he left Poland in 2015 with the consent of his Probation Officer.

15. On his behalf Mr Hepburn Scott submits that the District Judge was wrong and failed properly to apply the burden of proof. There is no proof he argues that the Appellant was on notice of the hearing of 18 August 2015 and deliberately failed to attend. He

submits that this incorrect decision undermines the findings of the District Judge on delay.

16. He argues that, even if the finding of the District Judge on fugitive status is not arguably wrong, the delay between the activation of the suspended sentence on 18 August 2015 and the issue of the domestic warrant on 15 June 2018 is too great to avoid a disproportionate interference with family rights established since arrival in the UK in 2015. He relies on the fact that the appellant has a settled family life and that his daughter was born in the middle of the period of delay on 30 September 2016.

17. The Respondent submits that the District Judge reached an unimpeachable decision on a careful and reasoned judgment on the facts and relevant law. He was entitled to reach the conclusion on fugitive status. Miss Brown submits that this court should be reluctant to interfere with conclusions reached by a tribunal of fact having heard evidence. She argues that the District Judge could have reached his finding properly applying the correct burden of proof.

18. He was entitled to conclude, given the Appellant was present at court on 12 January 2015 and that he remained in contact with his Probation Officer until he left Poland on 2 September 2015, that he knew of the hearing on 18 August 2015. The appeal that was heard on that date had been instigated by the Probation Officer.

19. The Respondent argues that even if the finding of fugitive status was not sound, the delay in this case is not sufficient to dislodge the presumption of return under a valid extradition request on a conviction warrant. The greater part of the delay in this case is because the Appellant had the advantage of the original sentence being suspended. She submits its activation was brought about by his subsequent offending in Germany.

20. The Respondent submits that the original offence is sufficiently serious to have deserved a sentence of 15 months imprisonment, that it was a joint assault on an individual and that the Appellant has re-offended and thereby brought about the activation of the sentence.

21. The Respondent further submits that the Appellant's family have managed for the period that he has been detained in custody here.

**Discussion**

22. The District Judge heard evidence from the Appellant about his life and movements throughout the relevant period. He also had the information provided by the Polish authorities. He was entitled to reach conclusions and draw proper inferences from that material. In particular he was entitled to infer from the Appellant's engagement in the proceedings and the ongoing contact between the Appellant and his Probation Officer until he left Poland in September 2015 that he had been made aware of the appeal hearing in August 2015.

23. It is not for this court to interfere with that reasoning unless the conclusions reached are wrong. It is not sufficient to say that this court might have found differently if sitting to decide the primary facts. Applying the test are defined in Celinski, the court cannot conclude that the District Judge was wrong.

24. The District Judge carried out the balancing exercise required by Celinski. He weighed the public interest in allowing proper requests for extradition against the individual rights of the Appellant and his family. His partner and child have had to live without him since his remand into custody in February 2019.

25. There is no evidence or information about any remission system that may operate in Poland, *Article 26 of the Framework Decision 2002* applies,

> *"The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed".*

26. The Appellant will have deducted from any outstanding time to be served the sentence he has served on remand in the UK. The period to be served is measured in months rather than years but this is a comparatively serious offence and he has been convicted by a competent court.

27. The Appellant has been convicted of an offence of assault; the court in Poland thought the original offence was serious enough to merit a sentence of imprisonment; the Probation Officer dealing with his case thought his subsequent offending was serious enough to merit an application to activate that suspended sentence and the Court on appeal agreed.

28. It is not for this Court to act to countermand or frustrate those findings. They are entitled to due respect and it is the obligation of this Court to comply with a request to extradite unless to do so would be to cause a disproportionately detrimental impact on the appellant's family or to breach any part of our domestic law. Neither is the case here. The District Judge's findings to that effect are not arguably wrong.

## Conclusion

29. For the reasons given, I refuse this appeal against the order for extradition.