Neutral Citation Number: [2022] EWHC 1307 (Admin)

Case No: CO/1463/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/05/2022

Before:

THE HONOURABLE MR JUSTICE DOVE

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Between:

Henryk Stezewski	**Appellant**
- and -	
Circuit Court in Bydgoscz, Poland	**Respondent**

- -
- -

Ms Florence Iveson (instructed by **Birds Solicitors**) for the **Appellant**
Jonathan Swain (instructed by **CPS**) for the **Respondent**

Hearing dates: 17th March 2022

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Approved Judgment

Mr Justice Dove :

1. This is the appeal against the decision of the District Judge dated 16th April 2021 ordering the extradition of the Appellant to Poland. Whilst a number of grounds of opposition to the Appellants extradition were raised before the District Judge, the Appellant has permission to appeal on two grounds only: firstly, in relation to section 20 of the Extradition Act 2003 ("the 2003 Act"), and secondly in relation to Article 8 of the ECHR.

2. The European Arrest Warrant ("the EAW") in this case was issued on 1st August 2019. It was later certified by the National Crime Agency on 4th January 2020. The EAW relates to two offences. They both occurred in October 2011 and involved twice breaking into an uninhabited domestic dwelling. On the first occasion on 12th October 2011 the Appellant entered the premises and stole the door to five tiled stoves, two metal screens, and a rehabilitation bicycle to the value of 650 zloty. On the second occasion between 25th October and 26th October he again entered the same premises, this time with another person, and stole a water pump in a cast iron casing, a gas burner, a coal furnace, and a refrigerator collectively valued at 600 zloty.

3. The proceedings in the case are described in the papers as follows. Firstly, in Further Information dated 25th March 2020, it appears that the Appellant was interrogated on several occasions between the 27th October 2011 and 29th October 2011 in relation to these offences. In addition, in Further Information dated 25th September 2020 the Respondent stated that the notification of the date of the hearing for the sentencing in the Appellant's case was sent to an address at Pakosc, Mogilenska, 16/6 Street. This address, it is pointed out in the Further Information, differed from the address which the Appellant had given when he was interrogated which was Pakosc, Mielenska, 16/6 Street. Indeed, the Mielenska address was given during each of the interrogations of the Appellant when the offences were being investigated. It is, thus, accepted that the notification of the hearing date for the sentencing of the Appellant was sent to the wrong address, and therefore that he was unaware of the court hearing on 14th May 2012 when judgment was given in his case.

4. The court proceeded in the Appellant's absence having concluded that they were entitled to do so. The court sentenced the Appellant to 1 year and 2 months imprisonment suspended for 5 years; conditions of the suspension of the term of imprisonment were that the Appellant be under the supervision of a probation officer for the period of the suspension and that he compensate the aggrieved party by paying her 950 zloty. The Further Information dated 25th September 2020 goes on to state that a copy of the default judgment in relation to this sentence, together with instructions in relation to it, were served on the Appellant at his address in Pakosc, Mielenska, 16/6 Street. As part of the Further Information dated 25th September 2020 the Respondent addressed the question of whether or not the Appellant would be entitled to a retrial on the basis that he did not receive notification of the hearing in the proceedings at the address which he had provided. The answer which was given by the Respondent was in the following terms:

> "Mr Henryk Stezewski, after the presumptive surrender, shall not have unlimited right to the re-examination of the case.

> In accordance with article 540 b 1 of the Code of Criminal Procedure, the legal proceedings ended by a final decision shall be resumed, upon request of the accused person submitted within the final date of a month from the date he finds out about the decision rendered with regard to him, if the case was examined in absentia of the accused who had not been served the notification of the date of the court sitting or hearing, or it had been served otherwise than personally, if the accused proves that he did not know of the date nor of the possibility to render the decision in his absentia.
>
> In the case of potential granting of the request for resuming of the case, it would start again, from the beginning in accordance with general rules, and then Henryk Stezewski would be able to appear before the court personally, could be represented by a defence lawyer, would be able to submit motions for evidence, and would be able to take part in interrogations of witnesses."

5. On 10th January 2017 the Respondent activated the suspended sentence which had been imposed on 14th May 2012 on the basis that the Appellant had not paid the compensation as he had been ordered to do, and had failed to maintain contact with his probation officer after March 2016. These further proceedings then led to the issuing of the EAW and the Appellant's arrest in the UK.

6. The hearing before the District Judge occurred on 28th January 2021. Following the hearing it was agreed between the parties and the District Judge that further questions should be asked of the Respondent. The first question was whether the Appellant had been notified in writing of his right to appeal against the decision of 14th May 2012. The second question was, if he had been notified in writing, when and how this had been done, and to which address it had been sent. On 11th February 2021 the Respondent provided as follows in answer to these questions:

> "In case files reference number II K 18/12, Mr Henryk Stezewski was notified in writing of his entitlement to appeal against the decision of 14.05.2012, by mail sent to the address he had provided (Pakosc, ul. Mogilenska 16/6). The letter was not collected by the due date, it was twice notified, which was considered to be considered effective in service in accordance with the applicable provisions of criminal procedure in force."

7. It will have been noted that in this Further Information following the hearing the earlier Further Information is contradicted, in the sense that it is now suggested that instead of being sent to the correct Mielenska address the judgment providing information about the right to appeal was sent to the incorrect Mogilenska address to which the notification of the hearing had been sent.

8. At the hearing before the District Judge the Appellant did not give evidence as a consequence of his medical condition which was fully documented in the evidence which the District Judge received, and which was recorded in the District Judge's judgment. Indeed, there was a report from Dr Blandford, a psychologist, indicating

that in her opinion the Appellant was not fit to stand trial, and further that any evidence he gave might well be unreliable.

9. At paragraph 24 of his judgment the District Judge set out the numerous convictions recorded against the Appellant prior to the offences with which the EAW is concerned, including offences of theft and domestic violence. The records also disclose that on 29th May 2012 he was sentenced to five months imprisonment and the ordering of compensation in relation to an offence of theft, and on 31st January 2013 he was sentenced to 8 months imprisonment suspended for 3 years for theft. A sentence of 60 hours community service was imposed on 29th July 2013 for failure to comply with previous court orders and a sentence of 15 days imprisonment for failure to comply with earlier court orders imposed on 28th November 2013.

10. The District Judge had to consider a challenge to extradition based upon Section 14 of the 2003 Act, and the contention that the Appellant's extradition was barred by virtue of the passage of time. The consideration of this issue involved the District Judge in assessing whether or not the Appellant was to be regarded as a fugitive. The conclusions that the District Judge formed in relation to this issue were set out in his judgment in the following terms:

> "50. It is clear from the pieces of Further Information served, as well as from the report prepared by the Polish solicitor engaged by the defence Maria Radziejowska, that HS had been interviewed on a number of occasions by the Polish authorities in relation to this matter. Her evidence confirmed that he admitted his guilt to the Polish authorities and he was informed of his rights and obligations during the course of the 1st interview. He also confirmed that he was aware of these obligations in later interviews.
>
> 51. Fleeting reliance is placed by the defence on the suggestion that HS was under the influence of alcohol when arrested in Poland, but there is no evidence that this affected him when he was later interviewed. As HS has not given evidence to this court, I do not have the benefit of what he may have had to say on this issue.
>
> 52. I note that HS had a continuing obligation to attend the police station at intervals in relation to this matter (and which he appears to have complied with as required without incident or difficulty). He appears to have been fully aware of the ongoing investigation in respect of this matter.
>
> 53.Furthermore he continued to comply with obligations to maintain contact with probation – as was required of him- and he did so through to a date in March 2016.
>
> 54. It is said, on his behalf, that he had been placed on probation for 3 years in respect of an earlier, unrelated case. The records show that the earlier probation order in respect thereof ceased in January 2016.

55. As mentioned above, I find it reasonable to infer that the reason why he continued with such probation contact after January 2016 was that he knew that he had an ongoing obligation to do so under the terms of the suspended sentence for this matter.

56. I am also satisfied that he was aware of the sentence imposed for the matters set out in the EAW albeit the summons (but not the later Judgment) was served at an incorrect address. As mentioned heretofore, the IJA have supplied 2 pieces of Further Information which contradict each other:

(i) 20th September 2020 states that notification of the Judgment was sent to the correct address, whereas

(ii) 11th February 2021 states that it was sent to an incorrect address.

They cannot both be correct.

57. As HS continued to report to probation after the expiry of his earlier probation order (which ceased in January 2016) I am satisfied that he had been correctly made aware of the court Judgment and that, the information as stated in the 20th September 2020 Further Information (service of the Judgment on the correct address) is accurate.

58.It is also borne in mind that, as previously mentioned, proceedings which led to the activation of the suspended sentence were initiated at the request of the probation officer. HS had chosen to leave the town where he was living to go to work in another town in Poland, to wit, Zabrze, whereafter he is said to have travelled to the UK.

59. However, as mentioned, he chose to cease all contact with probation, in March 2016 i.e. well prior to the expiry of the term. There is no information that establishes that HS ever sought the necessary permission to travel to the UK nor that he provided any residential UK address to the appropriate Polish authorities.

60. The Further Information date 25th March 2020 also states that HS failed in another obligation (under the terms of the suspended sentence) which was to pay the compensation as was ordered by the Polish court.

61.As of the date of the full hearing, no evidence has been served by the defence to suggest that any of the compensation has ever been paid.

> 62.His rather unenviable list of previous convictions shows that he has had several suspended sentences imposed in the past and that he has failed to abide by the conditions imposed (resulting in activation of the terms to be served), so it is reasonable to infer that he will have been well aware of the likely outcome of his failure to keep to the conditions imposed in respect of this suspended sentence.
>
> 63.Having considered the submissions made I am entirely satisfied that HS is a fugitive from Polish justice, in accordance with the binding ruling in Wizniewski, by having chosen to place himself beyond the reach of the Polish authorities in breach of his ongoing obligations to notify them of any change of address, and therefore he is not able to rely on the protection afforded by s.14. Accordingly this challenge must fail."

11. The District Judge then went on to consider the challenge raised to extradition under section 20 of the 2003 Act. Having set out the legal framework in relation to section 20 the District Judge explained his conclusions on this issue in the following terms.

> "72.s.20 Submissions and Ruling:
>
> This challenge is advanced on the basis that Mr Stezewski was not properly summonsed to the hearing nor did he receive the judgment with details of the sentence. It is further submitted that he was not informed about his rights of appeal as both notifications were sent to an incorrect address. Furthermore his current state of mental health issues, as manifested by his low IQ, are such that he is unfit to stand trial and thus should not be returned to Poland.
>
> 73. I accept the evidence provided demonstrates that the original summons was sent to a wrong address and there appears to be no blame to be attached to HS for that error.
>
> 74. A reasoned analysis of s.20 of the Extradition Act 2003 demonstrates that it lays down a requirement for there to be a "right to a re-trial". However it is silent on the RP being served with the notifications of such rights.
>
> 75. I have had the opportunity to consider the Further Information dated 25th September 2020. This provides details of relevant aspects of Polish Law:… "as laid down by Article 540 b S 1 of the Polish Code of Criminal Procedure, the legal proceedings ended by a final decision shall be resumed, upon request of the accused person submitted within the final date of a month from the date he finds out about the decision rendered with regard to him, if the case was examined in absentia of the accused who had not been served the notification of the date of the court sitting or hearing, or it had been served otherwise than

> personally, if the accused proves that he did not know of the date nor of the possibility to render the decision in his absentia.
>
> 76. Having considered the helpful representations made by the parties, I am satisfied that in accordance with Polish penal provisions, Mr Stezewski's right to seek a retrial is provided for.
>
> 77. As mentioned previously, the Further Information of 25th September 2020 confirms that HS was served with the judgment at the correct address. If that is the case then, in this court's opinion, the Polish authorities cannot be criticised for taking the view that he opted not to exercise that re-trial right.
>
> 78. I take into account the most recent piece of Further Information which contradicts what is set out in the Further Information dated 25th September 2020 (referred to above). In short, this later piece of FI states that the judgment was sent to the wrong address provided by him, but then it makes reference to the wrong address. As set out heretofore, clearly both of these pieces of FI cannot be correct.
>
> 79. As I have previously stated, I bear in mind that the evidence submitted by Poland demonstrates that HS began to comply with the terms of the suspended sentence (as was confirmed by the expert witness engaged by him) by continuing to report to probation for a number of weeks after the order came into effect, until he unilaterally chose to break off contact. I agree with Mr Swains submissions that it is highly unlikely that HS did so without being aware of the court judgment which, given his absence from the trial proceedings by virtue of the incorrectly addressed original summons, could only have come from *post facto* knowledge.
>
> 80. If, however, it were to transpire that HS had not been served with the judgment (because it was in fact sent to the wrong address, as the most recent piece of Further Information states, and upon which he relies), then I remain satisfied that, upon return, he will be able to argue that he remains within the time period allowed to apply to set aside that judgment and, if his evidence is accepted he will be afforded a re-trial.
>
> 81. Accordingly I am entirely satisfied that the Polish authorities made available to HS an appropriate right to seek a re-trial and – unless he has foregone that right by not responding in time to a judgment served on his correct address – then he can do so in a timely fashion upon return. Accordingly this challenge must fail."

12. The District Judge went on to consider and reject the objection to extradition raised under section 25 of the 2003 Act. He then went on finally to consider the case made

under article 8. The District Judge set out the balancing exercise, and his conclusions in relation to the factors to be weighed up, as follows:

> "106. Article 8 Balancing Exercise:
>
> (a) Factors said to be in Favour of Granting Extradition:
>
> (i) There is a strong and continuing important public interest in the UK abiding by its international extradition obligations.
>
> (ii) The seriousness of criminal conduct in respect of which he has been convicted and sentenced. He is not a man of good character in his native Poland. There remains a term of 1 year 2 months imprisonment less any period spent on remand outstanding.
>
> (iii) The assertion by the Judicial Authority and the finding by this court that the Requested Person is a fugitive from Justice.
>
> 107. Factors said to be in Favour of Refusing Extradition (Defence submissions)
>
> (i) It is said that he arrived in the UK in the Spring of 2014 and feels settled here.
>
> (ii) It is also stated on his behalf that he has fixed accommodation and has the assistance of a Polish-speaking carer (who has provided a brief supportive statement confirming the assistance which he provides).
>
> (iii) HS is said to have lived a law-abiding life since coming to the UK. He receives appropriate state benefits.
>
> (v) He asserts that he should not be regarded as a classis fugitive from justice.
>
> (vi) He is said to suffer from a number of ongoing health issues (see para 86 above), is of very low IQ, and he should be considered a vulnerable individual, and that, as a result, in all the circumstances, the public interest in ordering extradition for the criminal conduct – said not to be the most serious that comes before this court – is outweighed by his Article 8 rights.
>
> 108. Article 8 Findings and Rulings:
>
> I find that it will not be a disproportionate interference with the Article 8 Rights of the requested person for extradition to be ordered.
>
> My reasons and findings are as follows:
>
> (i) It is very important for the UK to be seen to be upholding its international extradition obligations. The UK is not to be considered a "safe haven" for those sought by other Convention countries either to stand trial or to serve a prison sentence.

(ii) In my opinion, the criminal conduct set out in the EAW is not trivial and, in the event of a conviction in the UK for like behaviour, a prison sentence may well be imposed, especially in view of his lengthy previous criminal history, notwithstanding his mental and physical health issues.

(iii) This court finds that the requested person is a fugitive from justice. The reasons for this finding are that he had been repeatedly questioned about this matter by the Polish authorities, is said to have admitted his guilt in interviews and was never told that the investigation had been discontinued. Furthermore, albeit I find that the summons to the trial was sent to an incorrect address, I am satisfied that the court judgment was properly served and that HS failed in his continuing obligations to keep in contact with probation – in respect to this matter – to pay compensation and to notify the relevant authorities of any change of address.

(iv) I am further satisfied that it is reasonable to infer that his continued attendances to probation from the expiry of his previous probation order could only have occurred with him (and his probation officer) having knowledge of the terms of this present sentence.

(v) The fact that he continued to maintain contact with probation for several weeks after the expiry of the earlier order, demonstrates that he must have been aware of his continuing obligations in respect of the current matter, but there came a time when he chose to end contact (March 2016), in breach of his ongoing obligations, including that of paying the compensation in a timely fashion. Furthermore, as mentioned above, he also did not inform the relevant Polish authorities of his intention to leave the country nor did he supply them with his resulting change of address(es).

(vi) I reject the suggestion that HS may have thought he had been subject to a concurrent probation order.

(vii) I am satisfied that, even allowing for his low IQ, he would have been very familiar with the way the criminal investigation and sentencing systems operate in Poland, in view of his lengthy list of criminal convictions. I note that in the past he has separately:

(a) served sentences of immediate imprisonment,

(b) had suspended terms imposed (which he later breached, resulting in the terms being served)

(c) been fined,

(d) been placed on probation and

(e) been ordered to carry out Community Service.

> (viii) It is appreciated that there will be hardship caused to HS, but that of itself is insufficient to prevent extradition being ordered.
>
> (ix) He lives in the UK as a single man, supported by a Polish-speaking carer. He has no dependants and lives on UK state benefits.
>
> (x) It is also borne in mind that unfortunately HS is a man of low intellect and, indeed, Dr Blanford opines that he is unfit to stand trial. I also note that this finding has not been challenged by the IJA.
>
> (xi) Furthermore I have taken into account the fact that HS has a number of challenging health issues that are being monitored and treated satisfactorily through the NHS. Thankfully the nodules in his breast area have been diagnosed as being benign and his chest pains appear to have subsided with appropriate medication (blood thinners). He also has been having regular check-ups and blood tests for issues relating to his kidneys and liver. It is believed that some of these health difficulties have arisen from alcohol abuse and heavy tobacco smoking of long duration.
>
> (xii) I also take note of the fact that he was held on remand in the UK, without issue, for over 7 weeks before securing his release on bail.
>
> (xiii) As this court has found as a fact that HS is a fugitive from justice, this finding brings paragraph 39 of the decision in Celinski above into consideration.
>
> (xiv) I do not find that, per the binding ruling, there are such strong counter-balancing factors as would render extradition Article 8 disproportionate in this case.
>
> (xv) I am entirely satisfied that the Polish authorities are aware of their Convention obligations to provide appropriate treatment to HS for his various health issues. Doubtless he will be able to bring his medical records and experts' reports to pass to the relevant authorities upon return."

13. In the light of his analysis of the issues the District Judge concluded that there were no valid bars to the extradition of the Appellant under the 2003 Act and, accordingly, he ordered extradition.

14. The Appellant seeks to rely upon new evidence which has been submitted in the context of the appeal. No objection is taken by the Respondent to the admission of this material. The evidence comprises a report dated 17th February 2022 from a support worker setting out that the Appellant had accessed assistance from Hope Community Services explaining that the Appellant had been assisted by this organisation after having been evicted from the accommodation he was in at the time of the hearing and made homeless. The report explains that the organisation would support moving the Appellant back into the community if his appeal was successful (albeit he would be required to enrol in English classes at the local college) and, further, that the Appellant's health had declined since he came to the attention of this

organisation (a conclusion supported by the provision with the report of medical records which Hope Community Services had available to them). In the light of the absence of objection, and the fact that this material could not have been before the District Judge, I propose to admit this evidence and take it into account in reaching my conclusions in relation to the appeal.

15. The Respondent also seeks to rely upon new evidence. It appears that after the decision was reached by the District Judge, and in the context of the appeal, Further Information was again sought from the Respondent in respect of the question as to whether or not, and if so by what means, the Appellant was made aware of his right of appeal. On 31st May 2021 the Respondent provided the following Further Information in respect of these issues:

> "From the analysis of the case file, it follows that a notice of the hearing date, which took place on 14th May 2012, was sent to the address of Pakosc, ug. Mogilenska 16/6. During the interrogation as a suspect on 27 October 2011, Mr Henryk Stezewski he gave as an address for service the address: Pakosc, ulica Mielenska 16/6 The same address was indicated during the court hearing on 28 October 2011, 24 November 2011 and 29 December 2011.
>
> A copy of the default judgment, which was taken at the court hearing on 14 May 2012, together with an instruction on his right of appeal, was sent to Henryk Stezewski at the address Pakosc, ulica Mielenska 16/6.
>
> In a letter dated 11 February 2021 we mistakenly stated that the address was Pakosc ulica Mogilenska 16/6.
>
> I confirm once again that Mr Henryk Stezewski was informed in writing of his right to appeal against the decision of 12 May 2012 by mail sent to his address in Pakosc ul. Mielenska 16/6 The letter was not collected by him in due time and was served twice, which was deemed to be effective in service in accordance with the applicable provisions of criminal procedure.
>
> He was not deprived of liberty during this period.
>
> The letter was advised twice on 18 May 2012 and 28 May 2012."

16. Ms Iveson objected to the introduction of this material on the basis that the Respondent had had many chances to perfect its case in relation to the section 20 issue. She submitted that to allow the material to be admitted would effectively afford endless chances to the Respondent to improve their evidence or an effective *carte blanche.* Mr Swain supports the admission of this material by reference in particular to paragraph 40 of the judgment of the Divisional Court in the case of *FK v Germany* [2017] EWHC 2160 (Admin). Mr Swain submits that far from being allowed *carte blanche,* if this material were to be introduced it would, in reality, clarify the issue of

fact as to where the judgment was served so as to clear up the ambiguity which was before the District Judge, and confirm the factual finding which he had made in that connection.

17. The case of *FK* makes clear that the court has power to exercise its inherent jurisdiction to permit a Respondent to an extradition appeal to admit further evidence if it is in the interests of justice to do so. This depends critically upon the particular circumstances of the case. In the present case the position which was presented to the District Judge included, as he noted, a clear inconsistency in relation to the question of the address at which the judgement containing the directions in relation to any appeal was served on the Appellant. The District Judge made a finding that the judgment had been sent to the correct address (see paragraph 79 of the judgment). The Further Information dated 31st May 2021 reinforces this finding, as well as clarifying the correct position in relation to where the judgment was sent. In those circumstances, in my view it is clearly in the interests of justice for this material to be admitted and for the court in this appeal to be able to take it into account. It places beyond argument the impression from the papers that the information in relation to the address contained in the Further Information dated 11th February 2021 must have been a mistake.

18. The admission of this material into evidence renders it difficult for the Appellant to make out this ground. There is no dispute in relation to the District Judge's self-directions with respect to the law in relation to section 20 of the 2003 Act. The sole basis of this ground of appeal is the question of whether the District Judge was entitled to be satisfied to the criminal standard that the court's judgment was properly served on the Appellant. I have no doubt that the District Judge's conclusions in that respect were sound.

19. The Further Information provided on the 25th September 2020 taken together with the Further Information of 31st May 2021 sought specifically to clarify the position enforces the finding which the District Judge made to the criminal standard that the judgment containing the information in relation to the rights of appeal in respect of the decision of 14th May 2012 was sent to the correct address, namely the Mielenska address, which had been provided by the Appellant when he was interrogated. Based on the material contained within the Further Information provided on 25th September 2020 in respect of the Appellant's right to a re-examination of his case provides substance to the District Judge's conclusions in paragraphs 76 and 77 of the judgment that the Respondent had afforded the Appellant a right to seek a retrial through the delivery of the judgment to the correct address. I am unable to conclude therefore that the District Judge was wrong in the primary findings that he made, and the section 20 challenge must therefore be rejected.

20. I note, in any event, the availability of a fall back argument addressed at paragraph 80 of the District Judge's judgment, and rehearsed by Mr Swain in the context of the hearing, that even if the Appellant had not be served the judgment then in those circumstances he would be in a position to argue upon return that he was still within the time period allowed to set aside the judgment and, provided the relevant evidence required was accepted in that regard, would be afforded a retrial.

21. The second ground upon which this appeal is advanced is the contention that the District Judge was wrong in the assessment which he made in relation to the article 8

arguments, in particular at paragraphs 106 – 108 of his judgment which have been set out above. Whilst it is accepted that the judge accurately stated the law and provided a reasoning framework which properly reflected the correct principles, the Appellant's contention is that the District Judge failed to take account of a number of key features of the Appellant's case when striking the balancing.

22. Firstly, the Appellant argues that the District Judge failed to take account of the pure passage of time in this case, which related to offences which had been committed back in 2011. An important feature to be taken into account in respect of this delay was that since 2012 the Appellant had not reoffended, and therefore any need for rehabilitation reflected in the prison sentence is no longer required. Further, it is well established in the medical evidence, and in particular the report from Dr Blanford, that the Appellant's cognitive functioning is very poor but nevertheless he had managed to remain in contact with his probation officer for nearly four years out of the five required to comply with his suspended sentence. The Appellant submits that the failure to issue the EAW until 1st August 2019 or take earlier enforcement proceedings after the Appellant ceased contact with the probation officer in March 2016 also bespeaks a lack of urgency on the Respondent's part. A further effect of the delay upon which the Appellant relies is the deterioration in his medical condition and in particular the intellectual impairment from which he suffers which has worsened to the point where he could not now understand any proceedings and has little chance of rebuilding a life in Poland.

23. The second element of the Appellant's case in relation to Article 8 is the contention that the District Judge erred in concluding that the Appellant was a fugitive. It is submitted that the findings which he reached were in error. Firstly, he was wrong to find that the judgment in relation to the offences had been properly served on the Appellant. Secondly, any observations made by the District Judge as to the Appellant's state of knowledge in relation to the investigation of the offences and the Polish court system had to be put in the context of the Appellant's mental state and his extremely low level of cognitive memory functioning at present. Whilst it is not possible to know definitively of the state of these conditions in 2011/2012 or 2016, nevertheless it is submitted that it is likely that there had been a progressive worsening of the Appellant's condition over the years. Thirdly, it is contended that the District Judge placed too much weight on the contact which the Appellant had with his probation officer prior to March 2016. In reality the Appellant was being supervised by the Probation service for at least three suspended sentences around this time and therefore it cannot be definitively concluded that his contact with the probation officer related to the EAW offences and their sentence.

24. Thirdly, the District Judge was wrong to conclude that the offences upon which the EAW is based were "not trivial". In reality and as described in the EAW, these offences related to the entering of an uninhabited dwelling and taking items which were not of high value or of a sentimental nature. Further, it appears that the Appellant was stealing these items to obtain scrap metal in order to sell it and get money for food. Therefore, it is submitted by the Appellant that these offences would not receive a custodial sentence were they to be the subject of proceedings now.

25. Finally it is contended that the District Judge erred in relation to limiting his findings related to the consequences for the Appellant of extradition to simply hardship. It is submitted on behalf of the Appellant that in the light of his recent medical history and

present medical condition the Appellant will be particularly vulnerable in a custodial environment. Both in prison and afterwards upon release he will face enormous challenges, and the consequences for him of extradition will be exceptionally severe. This point is evidenced in the various parts of the documentation bearing upon the medical issues, but in particular in the report of Dr Blanford,

26. Dealing with these issues in turn, it is accepted by the Respondent that there is no reference in the District Judge's judgment to the age of the offences, nor is there any reference to the question of delay *per se*. That said, I accept the submissions of the Respondent that there is, on analysis, nothing wrong in the District Judge's conclusions in respect of the passing of time and the arguments in relation to Article 8. Firstly, the District Judge specifically had regard to the fact that the Appellant had arrived in the UK in Spring 2014 and that he felt settled in this country. Moreover, prior to the Spring of 2016 it appears that the Appellant was complying with his suspended sentence, and certainly that there was no basis for any further step to be taken to enforce the judgment which had been reached on 12th May 2012. However, I am unable to accept that there was any significant delay involved in the procedures that were taken by the Respondent to enforce the judgment and issue an EAW after it became apparent that the Appellant was no longer complying with the terms of his suspended sentence.

27. The state of the Appellant's medical condition at earlier times in relation to these proceedings is essentially a matter of speculation, and there is little evidence to support any definitive finding as to his condition either at the time when the original proceedings were on foot in 2011 and 2012, or when he ceased contact with the probation officer in 2016. The District Judge was entitled to infer from the Appellant's previous convictions that he was familiar with the system of criminal investigation and sentencing in Poland, certainly prior to very recent times.

28. Assessing the matter overall I do not consider that there is any material substance in the points raised by the Appellant alleging that delay was a factor which needed to be taken into account. The reality is that within a reasonable time of the breach of the terms of the suspended sentence coming to light enforcement proceedings were taken up and executed, and thereafter the EAW was sought within a reasonable period of time and executed relatively promptly. Thus, the district judge was correct to take account of the fact that the Appellant had been settled in the UK since 2014 as a factor in support of him not being extradited, but on examination there was little of any moment to take account of beyond that in terms of the timescales which had been taken for the proceedings.

29. I am in no doubt that the District Judge was correct to find that the Appellant was a fugitive. For the reasons given in relation to the challenge raised under section 20 of the 2003 Act it is clear that the District Judge's conclusion that the Appellant was served with the judgment in respect of this sentence was sound. Thus, as the District Judge found, the Appellant knew of the sentence and the terms upon which imprisonment had been suspended. The judge was also in my view, entitled to take account of the contact which the Appellant had had with his probation officer in compliance with the suspended sentence prior to March 2016. This factor emphasises that the Appellant was aware that he was subject to a supervision requirement arising from the sentence, and the fact that he had other suspended sentences does not materially detract from that. As I have already observed, it is a matter of speculation

as to what the Appellant's mental functioning was in March 2016 in detail, but the evidence certainly supports the conclusion that at that time he would have been aware of the need to continue to comply with supervision in order to avoid the suspended sentence being activated. Thus, the conclusion which the judge reached in relation to the status of the Appellant as a fugitive is sound, essentially for the reasons that he gave,.

30. The third point in relation to the District Judge's observations in relation to the nature of the offences underlying the EAW does not amount in my view to an error in his judgment. The seriousness of the matter to which the Appellant pleaded guilty is not solely to be judged by the facts and circumstances of the offence. As the District Judge noted the question of the appropriate sentence in the Appellant's case would be determined both on the nature of the criminal conduct but also in the light of his previous criminal convictions. As set out above and in the judgment, the Appellant is a person who had a number of criminal convictions to his name by the time he came to be sentenced for these offences. The description given by the District Judge that the criminal conduct comprised in the offence was "not trivial" is in my judgment accurate. The Appellant came to be sentenced for two burglaries which occurred close to each other in time and in which items of some value were taken. No doubt there was mitigation available to the Appellant in the form of the circumstances which led him into the offending, and that was taken into account. Given the Appellant's criminal history it was in my view a reasonable judgment for the District Judge to reach that a prison sentence might well be imposed notwithstanding the mental and physical health issues now effecting the Appellant. I do not therefore consider that the description of the offending given by the District Judge amounts to a basis upon which it is proper to conclude that his judgment was wrong.

31. The final basis upon which it is suggested that the District Judge was wrong in his appraisal of the Article 8 balance is his assessment that whilst there would be hardship caused to the Appellant that of itself would be insufficient to justify a refusal to order extradition. There is no doubt on the basis of the evidence before the District Judge, and also in this appeal, that the Appellant suffers from significant physical and mental ill health and, further, that he has considerable difficulties with his cognitive function. It is clear from the most recent evidence lodged in the context of the appeal that these difficulties continue to affect the Appellant in his day-to-day life. No doubt his difficulties have been compounded by him being rendered homeless, although it does appear that he has the benefit of the support of the organisation which has provided a statement for the purpose of these proceedings.

32. It is clear that the District Judge was acutely aware of these medical difficulties and, moreover, that he took them into account in his assessment of the Article 8 issues as a factor in favour of refusing extradition. There is no doubt that that was the correct approach. However, the obvious and established difficulties in respect of the Appellant's very low IQ, and his continuing challenging health issues, needs to be placed into context. Firstly, the medical issues that trouble the Appellant had been stabilised at the time of the hearing and this appears to remain to be the position. As Mr Swain points out for the Respondent, health care services will be available to the Appellant whilst he is in prison on return free of charge. The District Judge was entitled to observe, as he did in paragraph 108(xv), that the Respondent is aware of its convention obligations to provide appropriate treatment for the Appellant, and the

Appellant will be able to take medical records and expert's reports with him to be passed to the relevant authorities upon return.

33. Whilst therefore this was a factor which was to be taken into account as weighing against the extradition of the Appellant, that is precisely what the District Judge did, and I do not consider that the judgment which he reached in that connection was wrong. He had regard to all of the relevant material in striking the balance and formed the view that whilst this feature was opposed to extradition, taken along with the other factors opposed to extradition in relation to the Article 8 arguments it had not been demonstrated that it would be disproportionate in this case for the Appellant to be returned to Poland.

34. It follows that for all of these reasons I am not satisfied that the Appellant has made out the ground of appeal in relation to Article 8. For all of the reasons which I have set out above neither of the grounds of appeal succeed and this appeal must be dismissed.