Neutral Citation Number: [2024] EWHC 1140 (Admin)

Case No: AC-2024-LON-000249

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

Tuesday, 14th May 2024

Before:
FORDHAM J

- -

Between:

KAMIL SZUBERT	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co) for the **Appellant**
The **Respondent** did not appear and was not represented

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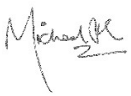
Hearing date: 14.5.24
Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.



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FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

Introduction

1. The Appellant is aged 47 and is wanted for extradition to Poland. He, and subsequently his wife, have both been facing extradition proceedings. At the forefront of their cases has been the position and best interests of their 9 year old daughter. So far as the Appellant is concerned, the conviction Extradition Arrest Warrant issued on 19 July 2023, on which he was arrested on 12 August 2023, seeks his surrender to serve 7 years 4 months 27 days of a prison sentence of 9 years 6 months. It was imposed as an amalgamated sentence on 11 August 2021 taking effect on 14 April 2022 after an appeal. The offences to which that sentence relates include multiple offences of drug trafficking and drug dealing (featuring heroin, amphetamines and cannabis), committed in an overall period between May 2004 and August 2010 when the Appellant was aged between 27 and 33. Also included is an offence committed in December 2016, aged 39, of breaking into and stealing a van. The Appellant's extradition was ordered by District Judge Bristow ("Judge Bristow") on 23 January 2024 after an oral hearing on 19 December 2023 at which the Appellant gave oral evidence and was cross-examined.

Fugitivity

2. Mr Hepburne Scott has adopted his written submissions. In them he submits that the Judge's finding of fugitivity was arguably wrong. But like Sir Peter Lane, who refused permission to appeal on the papers on 29 February 2024, I cannot agree. Judge Bristow found that the Appellant left Poland for the United Kingdom in June or July 2017, well aware of all the proceedings against him; failing to comply with a notified obligation to tell the Polish authorities of any change of address (whose notification to him was recorded in Further Information which I have seen); in close proximity with having received the latest notice of hearing (20 June 2017); and immediately before sending an email from the UK (19 July 2017) cancelling his previous consent to being convicted on a guilty plea without a trial. It was no answer in the circumstances that the Appellant was under no legal obligation to stay in Poland when he left. Judge Bristow unassailably found that the Appellant was fleeing the proceedings of which he was well aware, leaving the country and breaching an obligation to tell the authorities where he was. It was from the United Kingdom that the Appellant then applied for the amalgamated sentence and then appealed it. The finding of fugitivity was fatal to the s.14 ground of resistance, based on the passage of time. In light of the fugitivity, together with features such as the seriousness of the offending, and in light of the other circumstances, the passage of time rightly – and beyond argument – could not weigh heavily in the Article 8 balance sheet.

The Wife's Extradition Proceedings

3. There was undoubtedly a material change in circumstances. On 2 February 2024 the Appellant's wife – and the 9 year old daughter's mother – was herself arrested in extradition proceedings. There was a conviction Extradition Arrest Warrant against her, relating to a sentence of 3 years 2 months custody imposed in January 2022, for supplying Class B drugs in 2011 and distraction thefts of cash and a watch from shops in 2016. The wife's extradition hearing took place, also before Judge Bristow, in Westminster Magistrates' Court (WMC) on 19 April 2024. There was a Children Act 1989 s.7 report (dated March 2024) from a social worker at Waltham Forest LBC. That

report had been ordered by WMC in the mother's extradition proceedings. It was also adduced before me on this appeal and it clearly records the prospect of the 9 year old daughter being taken into local authority care, if both parents were extradited. By a judgment dated 10 May 2024, Judge Bristow discharged the mother on grounds that her extradition – as a second extradited parent – would disproportionately interfere with the Article 8 rights of mother and daughter, in circumstances where the daughter would be being taken into care. So, the mother's case has been considered on the footing that the Appellant is being extradited. It would not be appropriate for me to make any assumptions, in any direction, as to whether there may be an appeal by the requesting judicial authority from that order for discharge. Mr Hepburne Scott has confirmed that there is a 7 day period for any such appeal to be notified and it runs until Friday at the end of this week.

Adjournment

4. The position before the wife's extradition outcome in WMC was known was that Mr Hepburne Scott had filed written submissions asking this Court to adjourn any further consideration of the Appellant's case, with a view to dealing with both parents' cases together in this Court, were there an appeal (by either party) in the wife's case. The idea was to secure a fully informed consideration on full information of the implications of extradition, and all possible outcomes, in the round, in light of the important interests and Article 8 rights of the daughter, alongside the Article 8 rights of each parent. That is what happened in the Supreme Court in the cases considered in HH v Italy [2012] UKSC 25. In light of the current position, I am asked to adjourn. As I have said, it is not known whether there may be an appeal by the requesting judicial authority in the wife's case.

5. I have considered adjournment but I have reached the conclusion that it is not necessary or appropriate to adjourn and defer consideration of the Appellant's position. I have been able to consider the position with Mr Hepburne Scott's assistance on each of the two hypotheses. One that there is no appeal by the requesting judicial authority and the wife stands discharged from extradition. The other is that there is an appeal and the Article 8 position would then come before this court in her case. The following features of the case way with me particularly so far as adjournment or deferral are concerned. (1) The Appellant has not been said to be the daughter's primary carer. The evidence before me indicates joint caring responsibilities, where both parents are fully engaged in a close-knit cohabiting family of three. Both parents are described as working. But no basis has been suggested – by anyone – on which, were one parent only to be extradited, it would appropriately be the mother. That has not been suggested by either of the parents in resisting extradition; nor by the requesting judicial authorities. (2) The Appellant's extradition plainly engages stronger public interest considerations in favour of extradition, than does his wife's. His sentence of 9 years 6 months with nearly 7 years 5 months left to serve is substantially greater than the 3 years 2 months to which his wife has been sentenced, reflecting the far more serious criminality in his case. (3) Extradition is being sought by the same state (Poland), instructing the same UK agency (the CPS). The requesting judicial authorities are not asking me not to defer, and the Respondent is asking me to deal with the present case. (4) Any argument relating to the daughter going into care and that as an impact of extradition would not be a function of any decision of mind today refusing permission to appeal in the present case. (5) The Appellant's case is in my judgment a clear-cut one.

Legal Merits

6. Mr Hepburne Scott submits that it is reasonably arguable that the Appellant's extradition is a disproportionate interference with the Article 8 rights of one or more of the following: the Appellant; the daughter; and the wife. He relies on all the circumstances, including the transformation in the Appellant's conduct – with no convictions in the United Kingdom in the 7 years that he has lived and worked openly here – and in light of the severe impact on all 3 members of the family, but in particular the daughter. He says the extradition of the Appellant could – reasonably arguably – be found by this Court at a substantive hearing to be a disproportionate interference with Article 8 rights.

7. In my judgment, there is no reasonably arguable basis on which it can be said that the extradition of the Appellant would be a disproportionate interference with anybody's Article 8 rights, in light of the very strong public interest considerations in favour of extradition. I was assisted to know the Appellant's best 'working illustration' case, and Morawski v Poland [2020] EWHC 228 (Admin) was cited by Mr Hepburne Scott. That was a case where the relationship with a partner had rescued each partner from appalling circumstances experienced in their youth; where the sentence had been 2 years (originally suspended) for a violent attack aged 22; and where the 5 year suspension period had very nearly been successfully completed when the requested person came to the UK. I accept that the impact of the Appellant's extradition in the present case and circumstances will be serious, for all three members of the family. But the public interest considerations in favour of extradition do decisively outweigh those capable of weighing against it, and the contrary is not reasonably arguable. Nor would the threshold of s.14 oppression arguably be reached, if it arose.

Conclusion

8. In all the circumstances and for those reasons, I will refuse the adjournment and refuse permission to appeal. Since the putative fresh evidence is not capable of being decisive I will formally refuse permission to adduce it.

14.5.24