



Neutral Citation Number: [2024] EWHC 2771 (Admin)

Case No: AC-2023-LON-002424

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

Thursday, 31st October 2024

Before:
FORDHAM J

Between:
MACIEJ DE LEHENSTEIN WERNDL **Appellant**
- and -
DISTRICT COURT IN KRAKOW, POLAND **Respondent**

Martin Henley (instructed by AMI solicitors) for the **Appellant**
Beheshteh Engineer (instructed by CPS) for the **Respondent**

Hearing date: 31.10.24

Judgment as delivered in open court at the hearing

Approved Judgment

FORDHAM J

Note: This judgment was produced and approved by the Judge.

FORDHAM J:

Introduction

1. When DJ Cieciora ordered the Appellant's extradition to Poland on 17 August 2023, that was in relation to a 10 November 2022 conviction Extradition Arrest Warrant on which he had been arrested and bailed on 24 April 2023. There were two matters. One was a consolidated December 2007 sentence with 6 months and 27 days to serve for acquiring criminal property and class A drug possession in 2005. The other matter was a March 2008 sentence for wounding with intent, with 2 years and 8 months to serve.

The First Matter

2. Further Information from the Respondent dated 25 March 2024 stated that the first matter had, by virtue of new Polish regulations, been converted to a 30 day misdemeanour making it non-extraditable. Julian Knowles J adjourned the oral application for permission to appeal to take place, with this unfiled document provided to the Court, and with attendance by the Respondent. Ms Engineer's skeleton argument rightly recognises that extradition on the first matter cannot be maintained, and that the appropriate course is to deal with it on a rolled-up basis and order the Appellant's discharge on that matter today. That course is supported (or not opposed) by Mr Henley and I will adopt it. I will look to Counsel, when I finish delivering this ruling, to assist me with the wording.

The Second Matter

3. That leaves the wounding with intent. As to that Mr Henley asks me today to give permission to appeal. The points raised by him relate to the stated limitation period. Three dates have been given. The Extradition Arrest Warrant gave a limitation period expiring on 7 October 2023. The source was identified: the statute of limitations and a provision of the Criminal Code. Further Information from the Respondent dated 5 June 2023, which was placed before the Judge, gave an extended limitation period expiring on 13 April 2037. Extended dates were also given for the acquisition and possession offences. Two sources of extension were identified. One was extensions pursuant to a decision handed down on 18 November 2020. The other (the information says "and also") was legislation dated 2 March 2020 called the Covid Act.
4. Perfected Grounds of Appeal were filed on 5 September 2023, raising a ground under section 2 of the Extradition Act 2003 and alleging that the Polish judge in the Extradition Arrest Warrant had "misled" the English extradition court. On 19 February 2024 the Appellant's solicitors wrote to the CPS, referring to a Constitutional Tribunal decision dated 12 December 2023, which they understood from other Polish cases to have overturned the effect, for extended limitation periods, of the 2020 Covid Act.
5. The third expiry date was then given in the March 2024 Further Information. It was a ten year extension to 7 October 2033, by virtue of the relevant decision which had been handed down on 18 November 2020, because the Appellant was in hiding.
6. Mr Henley says that this set of circumstances provides an arguable basis for permission to appeal and an enquiry. He relies on oscillation and vagueness, on good faith duties, on a clear mistake, on a lack of explanation of what went wrong, on action misleading the

court, and on failure to produce the November 2020 decision. He invokes section 2 and principles of abuse of process.

7. In my judgment, there is no arguable ground of appeal; nor is there a basis for a further enquiry. The Extradition Arrest Warrant gave the original unextended dates, as a description of the statute of limitations. The June 2023 information gave the date of the longer of the extensions by reference to the statutory source (the Covid Act), but also identified the handed down November 2020 decisions. Specific dates were given for the Act and those decisions. The Appellant's solicitors were vindicated in understanding that the lengthy extensions under the Covid Act could no longer be relied on because of a subsequent judicial development in Poland. But that left the November 2020 handed down decisions, which had identified in June 2023, whose remaining effect was then explained in the March 2024 information. The expiry date is a ten year extension from the date as it stood, based on the statute of limitations before any such extension.
8. Mr Henley contended that the November 2020 decision may have been an invention in March 2024, in light of what happened in relation to the Covid Act. But that is demonstrably groundless. The November 2020 decision was already identified in June 2023, at the time when the Covid Act was also being relied on.
9. I am able to rely on the March 2024 document for the information it conveys (adverse to the Appellant) as to the effect for the wounding with intent matter of the November 2020 order, in light of developments relating to the Covid Act; just as I am able to rely on the same document for the information it conveys (favourable to the Appellant) as to the effect for the acquisition and possession matters of the new Polish regulations. Each has been explained. Further details are not needed.
10. I add this. If there is a controversy it is for ventilation in the Polish courts and not for this Court to embark on a procedure for establishing an answer. This case would not be an arguable exception to that position, as seen in the Filipek line of cases conveniently gathered in Grazulis v Lithuania [2015] EWHC 707 (Admin) at §5. I therefore refuse permission to appeal in relation to the wounding with intent matter.

Order

11. I will make the following Order. (1) In relation to consolidated judgment II K 442/07/K: (a) permission to appeal is granted; (b) the appeal is allowed; (c) the order for extradition is quashed in relation to that matter only; and (d) the Appellant is discharged on that matter only. (2) In relation to the remaining matter, being the sentence of 2 years 8 months imprisonment in case II K 1533/07/K, the Appellant's application for permission to appeal is refused. (3) No order as to costs save that there be a detailed assessment of the Appellant's publicly funded costs.

31.10.24