Neutral Citation Number: [2020] EWHC 826 (Admin)

Case No: CO/3448/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2020

Before :

MR JUSTICE FORDHAM

- -

Between :

PRZEMYSLAW JANKOWSKI	**Appellant**
- and -	
REGIONAL COURT OF TORUN, POLAND	**Respondent**

- -
- -

SAMANTHA DAVIES (instructed by **AMI INTERNATIONAL SOLICITORS**)
for the **APPELLANT**
DAVID BALL (instructed by **CROWN PROSECUTION SERVICE**)
for the **RESPONDENT**

Hearing date: 25 March 2020

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Approved Judgment

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be Wednesday 8 April 2020 at 10am.

MR JUSTICE FORDHAM :

Introduction

1. This is an extradition appeal in which the issue is whether extraditing the appellant to Poland is compatible with article 8 ECHR (private and family life). Permission to appeal, and permission to rely on fresh evidence not available at the time of the hearing before the district judge – in the form of witness statements from the appellant and his partner – were granted by Holman J on 29 January 2020.

Mode of hearing

2. I conducted an oral hearing of the appeal using special arrangements, by agreement of the parties, necessitated by the coronavirus pandemic. I sat, robed, in court 2 at the Royal Courts of Justice. The hearing and its timing were listed in the published cause list. The court building was open. The cause list recorded that the hearing was to be by telephone conference, giving an email contact for any person who wished to dial-in. BT Conferencing was used. The two Counsel addressed the court, just as they would have done had they been physically present in court. Everything said by them, and by me, could be heard clearly in open court and recorded on the court recording system which I had been told was running throughout. On the application of any person, the recording so made will be able to be accessed in a court building, with the consent of the court. The two Counsel, the appellant's solicitor (Anna Matelska), the appellant himself and a simultaneous interpreter (Anna Westwood) were all able to join the hearing by telephone. Interpretation took place through a separate phone link. These arrangements were agreed between the parties, at my invitation, in the light of the Protocol regarding Remote Hearings published on 20 March 2020. The parties were content, as was I, that telephone - as opposed to Skype - was a suitable and appropriate mode.

3. I do not consider that there has been any derogation from the open justice principle, nor from the need to conduct an oral hearing in open court, nor from the rights of the parties. If and insofar as there has been any derogation, I am satisfied that it was necessary, justified and proportionate in securing the proper administration of justice. I was conscious that the appeal to me was pursuant to section 26 of the Extradition Act 2003 and governed by the Criminal Procedure Rules (CrPR). The hearing satisfied the standards described in CrPR CPD I paragraph 3N.17 (open justice and records of proceedings). The appellant did not attend by "live link" (CrPR50.17(3)), as that term is defined (CrPR2.2). The receiving of representations by telephone (CrPR3.5(2)(d)) is not to be undertaken where inconsistent with the rules (CrPR3.5(1)). I am satisfied, were it necessary, that the appellant waived his right to attend by another means than by telephone (CrPR50.17(3)(a)). I am also satisfied, were this necessary, that I exercised my power (recognised in CrPR50.17(1)(a)(iii)) to order that the hearing be in "private", but in such a way as guaranteed the rights and interests of all concerned, including the press, the public and the public interest. I am confident, even absent the comfort of an equivalent to CPR PD51Y of the Civil Procedure Rules that the hearing, as conducted, was lawful and within my powers, as being necessitated by the interests of justice. I commend the parties and their representatives for the prompt, cooperative and practical way in which the hearing was approached. I am satisfied that the mode of hearing, although unusual, caused no prejudice to any person or their interests, nor detriment to justice or the public interest. Had any submission been made, by any

person, that the mode of hearing was inconsistent with any right, interest, principle or rule, I would have considered it and ruled on it on its merits.

The context

4. Extradition of the appellant is sought in this case by the Polish judicial authority. It is sought based on a conviction EAW (European Arrest Warrant), issued on 5 February 2019 and certified on 22 June 2019, for the appellant to serve the remaining 10 months 13 days of a 12 month prison sentence imposed by the Polish court on 19 February 2016, the reduction being for 6 weeks served on remand in May and June 2015. The offending to which the sentence, and the EAW, relate was the possession of 195g amphetamine and 1.4g marijuana, committed by the appellant when aged 25.

5. What happened in Poland after that sentence was imposed was that the appellant's Polish legal representatives brought an appeal on his behalf. While that appeal was in the pipeline, and while he was at liberty pending its resolution, the appellant left Poland and came to the United Kingdom. The district judge, in the judgment against which this appeal is brought, made various findings of fact. Those findings are not themselves impugned on this appeal. Rightly so, since there is no basis on which this court would interfere with them, on the evidence and in the circumstances of the present case. The district judge found: that the appellant came to the United Kingdom in April 2017, knowing that he had been convicted and sentenced, and knowing about his pipeline appeal; that he did not inform the Polish police of his intention to leave Poland; that he subsequently knew that his appeal had failed; and that he is therefore a fugitive.

Approach in the light of fresh evidence

6. Miss Samantha Davies, for the appellant, submits that the appeal should be allowed pursuant to section 27(4) of the Extradition Act 2003. She says that fresh evidence now available which was not available before the district judge, put alongside the other evidence in the case, would have resulted in the district judge deciding the article 8 issue in the appellant's favour, and ordering his discharge. She cited the case of Morawski v Regional Court, Elblag (Poland) [2020] EWHC 228 (Admin) as a practical working example of a successful appeal of that nature. As Holman J said in that case (paragraph 1): "I wish to stress and make clear at the outset that I do not allow this appeal on the basis of any criticism of the judgment and reasoning of the district judge or of any error in his judgment. Rather, I do so on the basis of fresh evidence both as to the earlier life history of this appellant and his partner, and also as to the circumstances of their relationship since the hearing in front of the district judge". Holman J concluded (paragraph 22): "evidence is available today which was not available at the extradition hearing. I am satisfied that that evidence would have resulted in the district judge deciding the question, namely the article 8 balance, before him at the extradition hearing differently, and I am satisfied that if he had decided the question in that way he would have been required to order the appellant's discharge. I accordingly allow this appeal, or the discharge of the appellant and quash the order for his extradition." That is the conclusion which the appellant invites me to reach on this appeal.

Asking whether the 'outcome' is 'wrong'

7. Ultimately, the question for me – focusing on the "outcome" – is whether the conclusion that extradition would be article 8-compatible is the "wrong" decision, in the

circumstances of and in light of all the evidence in this case, respecting (unless inconsistent with the fresh evidence) the findings of fact made by the district judge. That focus on whether the "outcome" is "wrong" is explained in Polish Judicial Authority v Celinski [2015] EWHC 1274 (Admin) [2016] 1 WLR 55 at paragraph 24. That this should be the court's approach on this appeal was common ground between the parties.

The appellant's case

8. In my judgment, the essence of the case as advanced on behalf of the appellant in the submissions of Miss Davies can be encapsulated as follows. (1) Albeit that it is not for this Court to substitute a UK domestic characterisation of the seriousness of the index offence (see Celinski at paragraph 13), and without impugning the district judge's finding that the index offending was "serious", the 12 month prison sentence nevertheless speaks for itself and does not reflect offending characterised by the Polish justice system as being 'of the greatest gravity'. (2) The relevant background, now known to this court through the fresh evidence is that the appellant had had a difficult childhood, including being taken into care aged 13, into a penitentiary institution aged 15, and being subject to an unsuccessful attempt to relocation to join his father in Sweden age 16. At the age of 17, back in Poland, he had engaged in offending resulting in an aggregate 6 year prison sentence. That was the background to the index offending. (3) Since coming to the United Kingdom in April 2017, aged 26, the appellant has achieved a remarkable turnaround. In the nearly 3 years since coming here, he has lived an unblemished, crime-free life. That life sharply contrasts with the criminal activity in Poland in his earlier years. (4) As part of that turnaround the appellant achieved stable employment from December 2017, leading to what the district judge recorded was a 'very positive', glowing reference from his employer. (5) An important feature of the life which the appellant has built in the UK is that he is in a stable relationship with a partner (Jolanta), forming bonds as a 'father figure' with Jolanta's 2 children (aged 8 and 13). That relationship had begun on 6 July 2019, prior to the appellant's arrest on 29 July 2019 and the hearing before the district judge on 29 August 2019, at which stage the couple were hoping to cohabit. (6) At that stage, the appellant was representing himself, through lack of public funding for legal representation. Cohabitation necessitated a bail variation application, which was pursued by his legal representatives, once instructed for this appeal, and was successful on 18 December 2019. (7) The evidence, which neither the appellant nor Jolanta have overstated, is that the appellant provides financial and practical support to the partner and to the 2 children. He also provides financial support to a son from an earlier relationship, who now lives in Scotland. Moreover, the appellant acts as a care giver for Jolanta's elderly and infirm father. (8) The appellant has clearly made a real effort, evidenced a real ability, and achieved real success, in achieving his aim in coming to the United Kingdom: namely, to turn his life around. The chronology may not be a lengthy one, but in fact it is to the appellant's credit that he has made such progress and formed such bonds within so short a space of time. (9) The impact of extradition on the appellant himself would be serious. He has no family connections in Poland. His employment and private life are here, as is his family life. (10) The impact for Jolanta, for her children and for her father would be serious. There would be serious emotional, economic and practical implications. (11) The position of Jolanta's children is particularly significant, and of particular concern, having in mind their ages and the developing bonds between them and the appellant;

and having regard to the fact that a previous cohabiting partner had left the family household abruptly, some 2 years earlier.

9. Relevant evidence was to be found in the witness statements of the appellant and Jolanta, all of which I read and have carefully considered, as well as the other materials in the case. It is not necessary, for the purposes of this judgment, for me to elaborate further. This is a case, submits Miss Davies, in which there would be a severe impact in particular on the appellant, the partner and the two children. The correct outcome, she submits, is the conclusion that the public interest and public policy considerations in favour of extraditing the appellant, admittedly a fugitive, to face the 10 month 13 day balance of a 12 month prison sentence for drug possession, committed nearly 5 years ago, are outweighed by the private and family life harm, so as to constitute a disproportionate article 8 interference.

Analysis

10. There is no doubt that the appellant has indeed succeeded in an impressive turnaround in his life, since coming to the United Kingdom, as the district judge rightly recognised. Like the district judge, I have regard to all the factors which go into the balancing exercise, as factors against extradition. I accept the relevance of the key points which Miss Davies has brought to my attention.

11. I cannot, however, accept her submission as to the outcome. In my judgment, the features relied on – including the fresh evidence – do not outweigh the factors in support of extradition. As is accepted, the district judge correctly identified those factors weighing in support of extradition. He rightly referred to: (i) the weighty public interest in extradition; (ii) the importance of mutual confidence and respect for the Polish judicial authorities and the Polish sentencing regime; (iii) the seriousness of the index offending as reflected in the 12 month prison sentence; (iv) the 10 month 13 day custodial term remaining to be served; (v) the relevance of seeing that sentence, and the serving of it, in the context of the history of the appellant's offending and earlier sentences; (vi) the position of the appellant as a fugitive who knowingly ran away from his responsibility to face the criminal process in Poland, and who seeks to stay in the United Kingdom and avoid those responsibilities by way of safe haven; and (vii) the public interest in not allowing fugitives resort to safe haven in that way.

12. In the end, the question is whether the positive features of the appellant's turnaround in his life and conduct here in the United Kingdom, and the undoubted harmful negative consequences for him and the others concerned – including children whose best interests are a central feature of any judicial evaluation – supply an outweighing counterbalance in article 8 terms to the factors in favour of extradition. The onus of showing that they do not is on the respondent. I am satisfied that the onus has been discharged in this case.

13. I wish to add this. The law in this area does not operate by tasking me, as a Judge of the court of the extraditing state, to assess whether – in my view – the public interest in Poland and in the UK, is the better served by leaving the appellant to continue his UK lifestyle, or by requiring him to face up to his prison sentence in Poland. The balancing exercise to be performed under article 8 is more nuanced, and more specific, than that. It is concerned with balancing public interests and private rights, having regard to the respect to be afforded to judgments made by public authorities, in the context of

international commitments. The general principles in relation to article 8 in the context of extradition are discussed in Celinski at paragraphs 5 to 14. Strong public interest imperatives support the appropriateness of extradition, driven by a mutuality of confidence and respect which takes as its starting point the interests recognised and advanced by the Polish judicial authority, including the seriousness of the crime as recognised by the sentencing of the Polish court. In that context, the question which arises is whether the impact of extradition for private and family life rights and interests of the appellant and affected others displaces the factors supporting extradition, conducting the necessary balancing exercise (Celinski paragraphs 15-17).

14. In my judgment, in the facts and circumstances of the present case, including the fresh evidence, the balance comes down clearly in favour of extradition. I emphasise the following points. (a) The index offending was rightly to be characterised as "serious", viewed from the appropriate perspective of respect for the Polish criminal and judicial authorities. (b) The appellant has been in the United Kingdom for less than 3 years. (c) He came here, and has lived here, as a fugitive. (d) The family life relationship is recent and is limited. The appellant has no direct dependants; nor is he a primary carer. The appellant and Jolanta met 8 months ago. They met just 23 days prior to his arrest on the extradition warrant. Extradition was ordered by the district judge one month later. (e) Cohabitation began 3 months ago, on 18 December 2019, at which point the appellant and Jolanta knew – or certainly should have known – that extradition was very much on the cards. Jolanta's witness statement indicates that her appreciation was that when "we started living together" she "thought that he would be able to live in the UK". Any such appreciation, or perhaps hope, had no reasonable basis. (f) As Jolanta puts it: "during the time he has been living with us, we have got to know each other very well and strong bonds have been forged" and "I would have significant financial difficulties, especially now that we have decided to live together and share the cost of living". The "during the time" and "especially now" are references to the time since 18 December 2019. (g) Jolanta's evidence tells me: "I cannot imagine my son's feelings if he is deprived of another man who has played such an active role of being a father in his life", that "my daughter… requires a stable and loving home to get her through a teenager's traumas and dramas", and that "my children and I will suffer greatly". But I accept Mr Ball's submission on behalf of the respondent: this is evidence of 'upset and some hardship'; it is not in the scheme of things evidence of 'very significant impact' on a child or the child's welfare; and no expert evidence has been put forward to support any 'very serious' impact. (h) Jolanta tells me this: "I will miss him tremendously. It is not easy to find the right person to share your life with and when it happens it is both special and precious. I strongly believe in second chances and hope that it can be given to both of us." I have reflected on that poignant human message. But the outcome of the balancing exercise is, in my judgment, clear. (i) Every case turns on its own particular facts and evidence. In Celinski it was concluded that (paragraph 39): "The important public interests in upholding extradition arrangements, and in preventing the UK being a safe haven for a fugitive as [the appellant] was found to be, would require very strong counter-balancing factors before extradition could be disproportionate … The counter-balancing factors in relation to his family life now, his age and sad personal circumstances [before] the alleged offending, and the way he had turned around [his] life, are clearly insufficient." In my judgment, very much that same description is true of the facts and circumstances of the present case.

Conclusion

15. For these reasons the appeal is dismissed.