

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE HIGH COURT OF JUSTICE

No. CO/2008/2019

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2019] EWHC 2990 (Admin)

Royal Courts of Justice

Wednesday, 23 October 2019

Before:

MR JUSTICE HOLMAN

B E T W E E N:

CONKOVA

Appellant

- and -

DISTRICT COURT OF BANSKA BYSTICA (SLOVAKIA)

Respondent

MS HANNAH HINTON appeared on behalf of the appellant

MS EMMA COLLINS (instructed by the Crown Prosecution Service) appeared on behalf of the respondent.

J U D G M E N T
(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

- 1 This is a substantive appeal pursuant to section 26 of the Extradition Act 2003 from an extradition order which was made by District Judge Tempia in the Westminster Magistrates' Court on 17 May 2019. As I have already indicated, I propose to allow this appeal for reasons which I will briefly explain. However, I wish to stress and make very clear at the outset of this judgment that I do not allow it on the basis of any error in, or criticism whatsoever of, the judgment of District Judge Tempia dated 17 May 2019, or any error in, or criticism of, the manner in which District Judge Tempia conducted the hearing and generally dealt with this case.
- 2 The sole, but determinative, basis upon which I allow this appeal is that, whereas at the time of the hearing before the district judge the appellant had spent approximately four months remanded in custody upon the European Arrest Warrant, she has now spent about nine and a half months. In a sentence, the appellant has now served long enough in relation to this matter to make extradition now completely disproportionate and inappropriate.
- 3 The warrant is an accusation warrant. It alleges that on 21 March 2018 the appellant stole a handbag which was hanging over a chair in a restaurant in a department store in the Slovak Republic. The value of the bag and its contents are said in the warrant to be about 1,000 Euros.
- 4 The appellant is aged 54. She originates from the Czech Republic, but she has clearly spent time both in the Czech Republic and in Slovakia, and in the United Kingdom. She has a long and sad history of mental ill-health with associated self-harm and the expression from time to time of suicidal thoughts. She has a very long criminal record both here and in Slovakia and in the Czech Republic, predominantly, although not exclusively, for thefts of one kind or another. I do not have a precise figure of the total number of offences that she has committed, but they include about 40 offences in the United Kingdom and at least 30

offences in either the Czech Republic or Slovakia. Frankly, she is a recidivist, and none of the many sentences of imprisonment seem to have had any restorative or deterrent effect upon her.

5 In relation to the present EAW, which I stress is an accusation and not a conviction warrant, the appellant was arrested on 7 January 2019 and has remained in custody ever since; namely, for a period now of about 40 weeks or nine and a half months. It is relevant to mention that there is a further EAW outstanding, which is also an accusation warrant for a similar type of offending, from the Czech Republic. That warrant has been served upon her and she has been arrested and has not been granted bail. Accordingly, although, as I have indicated, I will quash the present order for extradition and order the appellant's discharge in relation to the current warrant, she will not in fact be released from prison, since she will continue to be detained in custody in relation to the outstanding EAW from the Czech Republic.

6 Permission to appeal in this case was granted by Sir Duncan Ouseley on 1 August 2019. In his observations he referred to certain other aspects of the case, but concluded:

"Far more important will be the length of time she has spent in custody here."

7 That, as I say, is dated 1 August 2019 and by now, 23 October 2019, the appellant has, of course, spent almost a further three months in custody here. I have stressed that I make no criticism whatsoever of any aspect of the decision and reasons of District Judge Tempia. She stated that she was not satisfied that the appellant is a fugitive. She referred to the fact that the appellant had been in custody for this offence since her arrest on 7 January 2019. She performed the well-known balance under the authority of *Celinski*, and within that balance she referred appropriately both to the factors in favour of extradition and those

against extradition. As a factor against extradition, the district judge said at paragraph 48 of her judgment:

"Ms Conkova has served five months in custody for this offence, which is the equivalent of ten months."

8 Pausing there, the reference to five months may in fact be mistaken, since the period served up to the date of that judgment was closer to four than five months, but that, frankly, is neither here nor there. At paragraph 53 of her decision the district judge said:

"I accept she has served the equivalent of a ten-month sentence, but I cannot gainsay what her sentence would be in Slovakia because she has substantial previous convictions for like offences and it appears she is currently subject to a suspended sentence in Slovakia for an offence of theft imposed on 4 May 2018."

9 I myself am well aware that there is currently a suspended sentence in Slovakia which might of course be triggered in the event that she is extradited and, ultimately, convicted of the underlying offence to which this warrant pertains. The plain fact of the matter is now that, far from having served four or five months and the equivalent of an eight or ten-month sentence here, the appellant has now served nine and a half months, which is the equivalent of a sentence of about 19 months here. Like District Judge Tempia, I, too, cannot speculate what sentence might be imposed in relation to the present matter if the appellant is extradited to Slovakia and convicted of it. But precisely because I cannot speculate as to the sentence which might be imposed in Slovakia, I have to form my own view as to proportionality. Despite this appellant's appalling criminal record, there has to be some ceiling to the sentence imposed for any one offence such as theft of a handbag. In my view, actual time served of nine and a half months must now reach, or be close to, the ceiling of any proportionate sentence for an offence of that kind.

10 Section 27 of the Extradition Act 2003 provides that the court may allow an appeal under section 26 only if the conditions in sub section (3) or the conditions in sub section (4) of section 27 are satisfied. The subsection in point in the present case is sub section (4). That provides as follows:

"The conditions are that—

(a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;

(b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;

(c) if he had decided the question in that way, he would have been required to order the person's discharge."

11 Patently, in the present case there is evidence, which was not available at the time of the hearing before the district judge in May, that this appellant has now served nine and a half months continuously in prison in relation to this matter. In my view, if that had been the state of affairs at the time that District Judge Tempia was hearing and considering this matter, she herself would have taken a different view on the balance. Patently, she would have to have expressed herself differently in paragraph 48 and paragraph 53 of her judgment, which I have quoted above. In my view, given that this appellant has now spent nine and a half months already in custody in relation to this matter, the district judge would have been required to order the appellant's discharge. As the conditions in sub section (4) are satisfied in that way, it is open to me to allow this appeal.

12 For the above reasons, I do allow the appeal. I order the discharge of the appellant and I quash the order for her extradition.

Is there any other matter which now arises, Ms Hinton?

MS HINTON: There is not, My Lord. Thank you very much.

MR JUSTICE HOLMAN: Is there any other matter which now arises, Ms Collins?

MS COLLINS: No, thank you, my Lord.

MR JUSTICE HOLMAN: I am incredibly grateful to you, Ms Collins. Portia herself would not have been able to bring about a different result, nor Marshall Hall nor even Lord Pannick, to use a more contemporary metaphor.

MS COLLINS: I am grateful.

MR JUSTICE HOLMAN: I am incredibly grateful to both of you. Will you between you draft a suitable order to give effect to all of that and lodge it?

MS HINTON: We will do that this morning.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

Transcribed by Opus 2 International Limited.

Official Court Reporters and Audio Transcribers

5 New Street Square, London EC4A 3BF

Tel: 020 7831 5627 Fax: 020 7831 7737

CACD.ACO@opus2.digital

**** This transcript has been approved by the Judge (subject to Judge's approval) ****