



Neutral Citation Number: [2020] EWHC 1334 (Admin)

Case No: CO/4330/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 April 2020

Between :

ADRIAN JABLONSKI
(aka MARCIN NOWAKOWSKI)

Appellant

- and -

DISTRICT AND PROVINCIAL COURTS IN
LUBLIN (POLAND)

Respondent

REBECCA HILL (instructed by Lawrence & Co) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 29 April 2020
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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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM:

Introduction

1. I am adjourning this renewed application for permission to appeal in an extradition case, in very unusual circumstances. If I were satisfied that I had the power to do so, I would be ordering that the representation order be transferred from the existing solicitors to new solicitors. I am conscious that an application of that nature is envisaged as being made to the Administrative Court Office. I am told by Counsel Miss Hill that it is normally the position that, where legal representatives withdraw, as in due course she and her instructing solicitor will be doing, the representation order is not transferred. It is her understanding that there is however a discretionary power to allow such a transfer. I have not been able to go into the detail as to that power. I am not making the decision, but I do wish to be clear, for the benefit of those who do, as to the views that I have formed about the appropriate way forward. I shall say in more detail in this ruling what the circumstances are that have led to the adjournment and I shall have more to say about the next steps for this case.

Mode of Hearing

2. This has been, by agreement of the appellant's legal representatives, a remote hearing by telephone, in circumstances of the Covid restrictions and rule changes. The hearing and its start time were listed in the cause list published online, with contact details available to anyone who wished to have permission to dial in. Counsel was able to address me in exactly the way that she would have done had we been sitting in the court room. I am satisfied that this constituted a hearing in open court, that the open justice principle has been secured, that no party has been prejudiced by the mode of hearing, and that in so far as there has been any restriction on a right or interest it is justified as necessary and proportionate.

The Appeal

3. I will start by describing the appeal to this court. On 30 October 2019 the district judge ordered the appellant's extradition to Poland. An appeal notice was filed on 5 November 2019 by the appellant's existing solicitors, raising a single ground of appeal namely article 8. Permission to appeal was refused on the papers by Sir Wyn Williams on 24 January 2020. Meanwhile, the appellant had in fact been extradited to Poland on 21 November 2019, notwithstanding the extant application for permission to appeal which ought to have prevented that course from taking place, had things worked as they should.
4. By a notice of renewal together with grounds of renewal dated 3 February 2020, the appellant's solicitors secured his rights by making the application that subsequently came before Mrs Justice Steyn on 26 February 2020 and has come before me today, 29 April 2020. In the notice of renewal, the appellant's representatives asked that the case not be listed until two things had happened. First, they wished to have an explanation of how it was that their client had come to be removed. Secondly, they wished to be able to make contact with him and have the opportunity to take instructions from him.

Before Steyn J

5. At the hearing on 26 February 2020 when the matter did come before Mrs Justice Steyn, she was - I am told by counsel and of course accept - informed that the appellant's representatives were in the following position . They were not in a position to advance any positive submissions on the article 8 grounds. They needed, for professional reasons, to withdraw from the appeal in those circumstances. Were it not for the removal of their client, they would be withdrawing from the appeal. They were, however, very anxious to take steps to identify what had happened to their client and his whereabouts, and to communicate with him. They were particularly concerned that he would not be in a position to take any step himself, in the light of any such withdrawal. In the circumstances, they had decided to continue to act for him for the purpose of protecting his interests and communicating with him.
6. By an order dated 26 February 2020 Mrs Justice Steyn accepted that it was appropriate to adjourn the case. She decided not to deal with the article 8 ground of appeal, or express views (as I understand it) about the ground of appeal. She ordered that the two things requested in the notice of renewal should take place. She directed that the NCA provide a written explanation to the court and the parties for the wrongful removal of the applicant on the 21 November 2019. She also directed that they provide the appellant's address in Poland, in prison or on bail, so that the representatives would be in a position to communicate with him. She adjourned the case, not to be relisted until 28 days had elapsed after compliance with provision of the information ordered from the NCA.

What happened next

7. What happened was that the information was duly provided by the NCA. There has been an exchange of correspondence between the appellant's legal representatives and the appellant. I have not, for obvious good reason, been shown the contents of that exchange of correspondence, between lawyer and client. I have, however, been told of the features that are relevant to my consideration today of what should happen next in this case.
8. The appellant's current representatives wrote the letter to him on 10 March 2020 explaining the circumstances and asking for his response. That was a letter written the same day as the details of the address were provided to them. The letter was evidently promptly received in the Polish prison where the appellant currently is, because he wrote a reply on 18 March 2020. That reply was significantly delayed, for whatever reason - almost certainly connected to the pandemic - and was received 2 days ago on 27 April 2020. This renewal hearing had meanwhile been fixed for today, in accordance with the order and timetable given by Mrs Justice Steyn. The letter was translated, and it confirms that the appellant wishes his appeal to be pursued. Unsurprisingly his preference would be to return to the United Kingdom while the appeal is pursued, and his preference is for the current representatives to continue to act.

The Positions Today

9. In all the circumstances, Miss Hill today invites me to allow a further adjournment, so that follow-up steps can now be taken. There is no appearance by or on behalf of the

respondent. However, contact has been made with the CPS. The respondent's position, through the CPS, is that they are neutral in relation to the application for a further adjournment of this hearing. No submissions have been made as to any consequence of the adjournment, for the Polish authorities or in any other respect, either as to the question of adjournment or as to the question of the length of any adjournment.

The Removal

10. I will describe now the position so far as the removal is concerned. Miss Hill that does not invite me to make any further direction for any further enquiry or the obtaining of any further documents or information relating to that, and I do not propose to do so. Nor am I going to make any finding of fact in relation to what happened, or what default in what area are may have been responsible for it happening. Mrs Justice Steyn in her order referred to it as a "wrongful removal".
11. What I will say about it is as follows. An email dated 30 January 2020 had referred to there having been an "administrative error". In response to Mrs Justice Steyn's order, a witness statement was provided by a G5 case officer. That statement explained that the appellant is Adrian Jablonski (dob 13.12.87), but when arrested on 13 August 2019 he gave a different name: Marcin Nowakowski (dob 31.1.86). Fingerprints matched him to his true identity, and in due course an extradition order was made in his true name with his true date of birth: Adrian Jablonski (dob 13.12.87). I pause to interpose that I note, from the judgment of the district judge at paragraphs 3 and 23, that the appellant had maintained his alias until 17 October 2019 at which time he accepted his true identity and put in a witness statement in that identity: Adrian Jablonski (dob 13.12.87). A previous witness statement in the name of the alias was withdrawn.
12. Continuing with the description from the witness statement, I am told that an email from the court contained information about the appeals which had been lodged on 5 November 2019, and there was no reference to Adrian Jablonski (dob 13.12.87). The documents received from the appellant's solicitors, also on 5 November 2019, are said in the witness statement to have given both names, but no date of birth. I interpose that I have not seen the court email, but I have seen the appellant's notice and I note that it does give both names and both dates of birth at the top of the first page. The witness statement goes on to explain that searches of the NCA systems were undertaken but undertaken in the name of Marcin Nowakowski, that being the name that had been listed in the court email. The conclusion was evidently reached that no appeal had been filed by this appellant Adrian Jablonski. It was evidently not spotted or anticipated or thought about that the appellant's alias name would appear in appeal documents. For whatever reason, it was concluded that there was no extant appeal of the individual who was subsequently then removed on 21 November 2019, namely the appellant. If there were a further enquiry, it may be said by the NCA that the name and date of birth fairly and squarely to be used in the appeal documents ought to have been the correct ones and the ones belatedly accepted from 17 October 2019 by the appellant himself. It could, on the other hand, be said that the CPS and NCA were on clear notice of the use of two names and, as I have said, that the two names and dates of birth were given on the appeal notice. I repeat: I am not making findings of fact; still less apportioning blame.

13. The witness statement finally records that another court email of 28 November 2019 (that is to say a week after the extradition of the appellant) also gave the alias name Marcin Nowakowski. The statement records that it was not appreciated until 28 January 2020 that there had been an extant appeal and the removal of the appellant. I interpose: that is to say it was appreciated only after Mrs Justice Steyn's order. I do not intend to say any more about the removal.

What Should Happen Now?

14. Miss Hill's position (which she explained by reference to House of Lords authority which it was not necessary for me to see or have cited to me) was this. In circumstances where there has been an extradition, in the face of an extant right of appeal being pursued, the court will focus - in accordance with its powers - on the appeal and whether to determine it, and will determine it on its legal merits. I have already explained why, for professional reasons, she is not in a position to advance any positive argument on article 8 before me today.
15. I have considered whether the appropriate course to take, in the circumstances, is to press on and determine the reasonable arguability of the article 8 point, in the absence of any further submissions on it. Like Mrs Justice Steyn, I am not intending to take that course. I express no view about the article 8 issue. I am satisfied that it would not be appropriate, in the interests of justice, to proceed to a determination of the substantive issue as to the viability or otherwise of the appeal.
16. I share the same concern that obviously motivated the order and directions given by Justice Steyn. On any view, the position between the current representatives and the appellant has been severely hampered by the action that was taken in removing the appellant. On any view, the appellant's position in circumstances of the withdrawal of his current legal representatives is materially significantly different from what it would be had he not been removed. It is now extremely difficult to communicate promptly with him, though Miss Hill tells me it is her and her solicitors' intention to seek an to establish a video link with the appellant if that is possible. He is in a very different position so far as concerns the pursuit of his appeal, any ability to speak on his own behalf, or any ability to enlist someone else to speak on his behalf at the oral hearing of his application for permission to appeal. That oral hearing of that renewed application is his legal entitlement as a matter of access to justice under the relevant legal scheme.
17. I also have had at the forefront of my mind the fact that this is not a situation which is said on behalf of the respondent to give rise to any prejudice to the Polish authorities.
18. In all the circumstances, I accede to the request properly made by Ms Hill and her instructing solicitors. I would indeed pay tribute to the fact that they have not taken the step that they would have taken, were their client still in the United Kingdom, of simply seeking to withdraw from the case leaving matters then to take their natural course. In an ordinary case that course would involve no transfer of the legal aid representation order, as I said at the start of this ruling.
19. I have given consideration to the duration of the adjournment and I am quite satisfied that it is appropriate to say that there should be a minimum of an 8-week period. I

repeat that no submissions have been made on behalf of the respondent in opposition of the adjournment, or as to its duration.

Position at the Next Hearing

20. It seems to me that when this matter is finally listed for a dispositive determination on the issue of reasonable arguability of the ground of appeal, there are in practical terms really going to be two alternative scenarios. The first is that it will have been possible to secure a transfer of the legal aid representation order, to a firm of solicitors who are able to write to the appellant and give him a final opportunity to provide them with any relevant information or instructions. The second possibility is that no transfer of legal aid proves to be possible or appropriate. In the absence of any other representation - which does seem on the face of it very unlikely - the renewal oral hearing will be likely to involve one at which there is no representation. If that is the situation, the judge dealing with the case on that occasion will no doubt proceed to do so.
21. What matters is that every reasonable step has been taken to seek to protect the interests of the appellant. That is important in circumstances where he has been removed, notwithstanding that in fact he had an extant application for permission to appeal which should have prevented that removal from taking place. As I have explained, he is in a materially very different position having been removed then he would have been had he still been in the United Kingdom, with his solicitors then withdrawing from his case.

Transfer of Representation Order

22. It is for that reason, and because of the importance of all reasonable steps to protect his interests being taken, in circumstances where he has been removed when he ought not to have been removed, that I am quite satisfied were it a matter for me that I would be granting permission for a transfer of the legal aid representation order, as I said at the start of this ruling.
23. I fully understand why that is not a course that is one typically to be taken where solicitors and counsel withdraw in a renewed application for permission to appeal. But this is an extremely unusual case with an unusual set of circumstances. In my judgment, it would be an appropriate use of discretionary power – as a counterbalancing measure given the circumstances and disadvantage of the appellant – for a second set of representatives with public funding to be able to take up his cause and make any representations that can be made on his behalf. I repeat, I am not making any comment on whether there is or is not anything at all in the article 8 argument. In my judgment, there is a point of principle in the current circumstances about the appropriateness of special protection for the appellants interests. I applaud the appellant's representatives for recognising that themselves and for the steps they have very properly taken.

End-Note

24. I make no bones about it. I have gone into some detail in this ruling as to next steps, in the hope that it may be of some assistance to those who are concerned subsequently with this matter. That may include the Administrative Court Office; it may include

subsequent representatives who deal with this case; and there may also be some assistance to be gained on the part of a subsequent judge. I will also be taking steps to provide, through the use of voice recognition software, this ruling in writing to Miss Hill and those who instruct her. Finally, I will also include within the court order a special preamble to describe what is envisaged as the purpose of the adjournment that I am ordering