



Neutral Citation Number: [2020] EWHC 1339 (Admin)

Case No: CO/937/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 5 May 2020

Before :

MR JUSTICE FORDHAM

Between :

KRZYSZTOF NIEWINSKI
-and-
POLISH JUDICIAL AUTHORITY

Appellant

Respondent

GEORGE HEPBURN SCOTT instructed by Bark & Co Solicitors for the **appellant**
The **respondent** did not appear and was not represented

Hearing date: 5 May 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 :

1. This was a telephone conference hearing, with the knowledge and consent of all parties. The hearing proceeded just as it would have done in open court, having been listed in the cause list with contact details available to anyone who wished to dial in. Counsel addressed me in exactly the way as if we were sitting in the court room. I am quite satisfied of the following: that this constituted a hearing in open court, that the open justice principle has been secured, that no party has been prejudiced, and that in so far as there has been any restriction on a right or interest it is justified as necessary and proportionate.
2. This is a renewed application for permission to appeal having been refused on the papers by Mr Justice Johnson. Reliance is placed on the article 8 issue which was the central issue before the district judge. Reliance is also sought to be placed on article 3 ECHR. The case concerns a conviction warrant which is a European arrest warrant dated 9 April 2019.
3. I will start with article 8. The district judge content conducted the recommended 'balance sheet' approach and held extradition to be proportionate and compatible with article 8. He drew his attention, in particular, to the various weighty public interests in favour of extradition. He found as a fact that the appellant is a fugitive. The context of the case included the seriousness of the offending and the nature of the sentence. The offending, which goes back to the period between 2005 and 2010, involved some 13 offences. The sentence for which extradition is sought to serve is 4 years 9 months and 21 days. The offences include the equivalent of ABH assault, GBH assault, robbery, threats to kill and so on. The district judge recognised that, since coming to the United Kingdom in 2010, and in the 10 years since, there has been a real change so far as the appellant is concerned. He is settled and rehabilitated, with only one offence committed in the United Kingdom. He has a settled employment status; indeed, he has a business. He has a relationship with a long-term partner. The impact on them both was considered by the district judge.
4. Mr Hepburn Scott submits that its reasonably arguable that the judge was wrong in his article 8 conclusion. He reminds me that ultimately the appeal court is able to 'step back' from the article 8 issue and consider whether the overall proportionality evaluation is 'wrong'. He emphasises the consideration of delay and lapse of time and in particular the way that delay and lapse of time is described by Lady Hale in the H (H) case at paragraph 8 as having two potential article 8 consequences: one, that it may diminish the weight attached the public interest in extradition; the other, that it may increase the impact on private and family life. Mr Hepburn Scott submits that this is a case where delay and lapse of time were relevant in both respects, in support of the appellant and against extradition. He emphasises, in particular, the 6 years since a failed 2013 extradition attempt had taken place, an attempt to which the judge referred in his judgment at paragraph 25. He submits that the judge shall not to have treated delay and the lapse of time as effectively being discounted by the finding of fact which he had made, that the appellant was 'responsible for the delay in this case', that is to say because he had come to the United Kingdom as 'a fugitive'. Other points are made about the balance and the article 8 considerations. For example, there is the fact that at the time of the offending the appellant was aged 17 to 21. He is now aged 31.

5. In my judgment, there is no reasonably arguable article 8 ground of appeal in this case. The judge did have regard to the settled and rehabilitated position of the appellant, and his employment, business and relationship situation in the United Kingdom. Those were the matters that had materially arisen during the relevant period of time. To that extent the lapse of time is inherently relevant in the consideration of the article 8 balance. The judge did not articulate a 'reduced public interest in extradition' as a result of delay, still less what might be characterised, and has been in some of the cases, as 'culpable' delay. Insofar as he may also be criticised for not expressly articulating, in the balance, the age of the appellant at the time of the offending, that is a matter properly brought to my attention. The basic difficulty, as I see it, is that even adopting the most generous approach to delay taken from the various strands of authority to which I have been referred, I see no realistic prospect at all of this court overturning the judge's careful and reasoned conclusion as to article 8 proportionality.
6. The circumstances of the case include: the seriousness of the offending and the nature of the sentence in respect of which the extradition is sought by the judicial authority; the finding that the appellant came to the United Kingdom as a fugitive; the importance of the various public interest considerations in favour of extradition, in favour of mutual respect and international obligations and in favour of avoiding the United Kingdom being a safe haven for fugitives. These lead me to the clear conclusion that, even on the most generous basis and having regard to all the factors which can be said to count against extradition, there is no realistic prospect of this court holding extradition in this case to be incompatible with article 8. In the circumstances, I do not need to go to detail about the other facts of the case. I simply mention that, so far as concerns the business and the mortgage and the partner's position, the judge found as a fact that the partner, on the evidence, was able to sustain the position. I have considered the partner's witness evidence on that point. The judge also recognised that in his witness evidence the appellant had recognised the need to face up to his responsibilities but what he was really seeking was to serve his sentence here in the United Kingdom. As the judge explained, that is not a right of election which is open to the appellant, nor does article 8 serve to produce such a right.
7. I turn then to the article 3 matter. By way of fresh evidence, the appellant seeks to introduce article 3 ECHR incompatibility as a basis for resisting extradition. The fresh witness evidence that is before me, and which I have considered *de bene esse*, is supported by a skeleton argument advancing article 3. The evidence describes various events said to have occurred back in Poland before the appellant came to the United Kingdom. It then describes events that took place a year ago in the United Kingdom. The submission that is made is that there is a reasonably arguable article 3-based appeal, on the basis that Poland can be concluded to be a state which fails to provide a reasonable protection against non-state agents; in this case those who, linked to his criminal past, are said by the appellant to serve to be a threat to his life and person.
8. Again, I am clear that there is no reasonably arguable basis of appeal in relation to this material, even on the basis of admitting it. The appellant tells me in his witness statement that the reason why he did not raise any of these matters previously, or seek to rely on them, was because of the applicable 'threshold' in relation to article 3. This evidence, in my judgment, in the context of its nature and the reasons that are given

for adducing it, and viewed against the article 3 threshold, constitutes no basis for a reasonably arguable appeal. It goes without saying that, had there been an article 3 basis for resisting extradition, it could and should have been raised before the district judge. This is not material that was unavailable to the appellant, but was material on which he chose not to rely. Once again, taking the most generous line possible from his perspective, and looking at the material anxiously as relied on in the context of a fundamental human rights argument, it cannot in my judgment reasonably arguably support the conclusion that would need to be arrived at. That conclusion would need to be that the state of Poland and the Polish authorities fail to provide reasonable protection against the threat posed by private individuals in the context of extradition to Poland. That, in my judgment, on the basis of this material is unsustainable.

9. For those reasons the application for permission to appeal is refused.