



Neutral Citation Number: [2020] EWHC 1934 (Admin)

Case No: CO/1082/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 July 2020

Before :

MR JUSTICE FORDHAM

Between :

DAVID DEMETER
- and -
DISTRICT COURT IN USTI NAD LABEM,
CZECH REPUBLIC

Appellant

Respondent

Rebecca Hill (instructed by Tuckers Solicitors LLP) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 16 July 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 is an application for permission to appeal in extradition proceedings. It proceeded by BT conference hearing, that mode of hearing being at the request of the appellant's representatives, and with the knowledge of the respondent (who did not appear), to avoid unnecessary travel to and physical appearance in the court room. The remote hearing took place in accordance with the current High Court arrangements relating to Covid-19. The hearing and its start time were published in the cause list, as was the fact that any person wishing to observe the hearing could contact my clerk (using a published email address) and do so, without themselves having to travel or attend physically in a court room. I heard oral submissions just as I would have done had we all been sitting in the court room. I was and am satisfied of the following: this constituted a hearing in open court; the open justice principle was secured; no party was prejudiced; and insofar as there was any restriction on any right or interest it was necessary and proportionate.
2. The appellant is wanted for extradition to the Czech Republic. That is pursuant to a European Arrest Warrant dated 17 August 2017 which is a conviction warrant. The purpose for which extradition is sought it is for the Czech Republic judicial authorities to decide whether or not it is appropriate in this case to activate a suspended sentence order. The appellant accepts that that is a legitimate extradition purpose, by reference to the case of Murin [2018] EWHC 1532 (Admin). The suspended sentence order whose activation would be under consideration was imposed by the Czech Republic court on 11 September 2014. It was imposed in the appellant's absence, he having been served in person in May 2014 with a summons requiring his attendance at court. He did not attend. The court convicted him and sentenced him to a custodial sentence of 3 years for a robbery which took place on 18 April 2012. The suspension was for an operative period of 5 years, through to 2019. It was on conditions which included probation supervision. It is accepted that the appellant breached those conditions and it is in consideration of that breach of those conditions which include non-compliance with probation supervision requirements, but which are also said to include an alleged theft that took place in February 2015, that the question of activation of that sentence arises.
3. The sole issue before the district judge who ordered extradition on 12 March 2020, and advanced before this court on this renewed application for permission to appeal is article 8 ECHR. I say immediately that I can detect within the district judge's careful and conscientious analysis of the case no misdirection in law or error of approach. She summarised the relevant law. She conducted the appropriate 'balance sheet' exercise. She gave full and careful reasons as to the balancing exercise and conclusions at which she had arrived. She did so after an oral hearing, at which she had heard oral evidence from the appellant, and she considered a written undated statement from his wife the contents of which she recorded that she accepted. She made findings of fact including the finding, recognised by the appellant as correct and indeed conceded before the district judge as correct, that he left the Czech Republic as a fugitive. Although Miss Hill for the appellant makes 2 specific criticisms of the judge, to which I will return, the essential thrust of her case on article 8 incompatibility of extradition, as I see it, squarely confronts and addresses the ultimate "outcome" on the facts and in the circumstances of this case. Both she and the respondent in its respondent's notice have cited the well-known case of Celinski [2016] 1 WLR 551, paragraph 24 of the judgment

in which case emphasises the importance of focusing on “outcome”, in the appellate courts role of considering whether the district judges conclusion constitutes the “wrong” decision. Particularly valuable in that regard is the guidance in Love [2018] EWHC 172 (Admin) at paragraph 26, where Lord Burnett CJ said this: “The appellant court is entitled to stand back and say that question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed”.

4. The essence of the case on article 8 and proportionality as I see it, in this case, can be encapsulated as follows. It is quite right that the appellant breached the conditions of his suspended sentence, and it is quite right and important that he came to the United Kingdom as a fugitive. It is right also that the strong public interest considerations in favour of extradition, honouring of treaty obligations, mutual respect for the decisions and autonomy of the requesting judicial authority, and the specific public interest considerations arise out of fugitivity – the need to avoid and disincentivise the idea of safe havens for fugitives – these are all clearly engaged and significant in this case. Nor can it really be said that it is a case engaging delay which can be characterised as culpable on the part of the Czech authorities. All of that provides a starting point, but it does not of itself provide the answer, in the balancing exercise. This is a case where what has happened since the appellant came to the United Kingdom, viewed against the passage of time or lapse of time, considered in terms of the impact and implications of extradition, and considered against the backcloth of the person that the appellant was and the circumstances in which he found himself at the time of the underlying offending, all serve to support a conclusion that extradition in all the circumstances of this case would be disproportionate. The underlying offence is more than 8 years old. The appellant has been in the United Kingdom for some 5 years. He has a settled family life here with his wife and their children. They have put down roots in the United Kingdom during the period of time. Both of the children were born in the United Kingdom and they are very young: one is aged two and the other aged under one. The appellant has been in settled employment in the United Kingdom throughout the period of time that he has been here. He has lived a crime-free life here. He is an established and mature, law-abiding, family man. His wife and children are blameless. The lapse of time has two consequences in particular: (i) it strengthens the article 8 private life and family life claim, by reference to the implications and the consequences; (ii) it also materially weakens the public interest considerations that arise in favour of extradition. The act of extradition would have a serious, evidenced impact for the appellant, but perhaps far more significantly for his wife and two young children. The robbery in April 2012 was, as it has been put, an undoubtedly unpleasant crime involving threats of force, but it was not the most serious of robberies on the scale of criminality. The appellant was very young at the time when that offence took place. He was aged 18. He was, at that time, living a chaotic lifestyle in circumstances of vulnerability. He had previously been in the care system, having been placed in an orphanage from a young age. He was fending for himself. Perhaps most significantly of all, this is a case in which there is a very sharp contrast between the picture of the appellant as he was in April 2012 at the time of the act of robbery and up to his coming to the United Kingdom in March 2015, compared to the dramatic transformation that can be seen in him, his nature, at his conduct and his circumstances at the current time.

5. All I have to decide for the purposes of today, looking at the matter afresh notwithstanding the refusal of permission by the judge on the papers, is whether an article 8 claim – characterised with what I have set out as its essence – is reasonably arguable. Miss Hill has persuaded me that there is in this case a reasonably arguable article 8 claim. The balancing exercise, viewed in accordance with the guidance from the Love and Celinksi cases does, in my judgment warrant consideration by the court at a substantive appeal hearing, with the benefit of submissions on both sides. Miss Hill, correctly, submits that each case turns on its facts. I am satisfied that there is a realistic prospect that this court would overturn the careful and conscientious decision of the district judge by reference to the “outcome”, in the light of the features of the case that I have described.
6. I said that there were two specific criticisms that Miss Hill has advanced in relation to the approach of the district judge. I will make some observations in relation to each of them. The first concerns the impact of delay as Miss Hill put it in writing, or lapse of time as she put it in her oral submissions. Her criticism was that, whereas the district judge in an earlier passage accurately encapsulated the points relating to delay or the lapse of time, and the impact and implications of delay and the lapse of time, the judge then lost sight of them in her detailed assessment of the balance. I would not have granted permission to appeal on that point. In my judgment, the judge correctly identified the implications of lapse of time. She recorded, correctly, that so far as delay is concerned it was appropriate to keep in mind that the appellant was a fugitive and the delay in justice catching up with him could in the circumstances be seen as causally linked to his own conduct. That, in my judgment, was correct and unimpeachable. I do not read the judge’s judgment, read as a whole, as having ‘lost sight of’ the considerations in the appellant’s favour. Rather, the judge conducted the balancing exercise and came to the conclusion that she did, in her evaluative judgment. She twice recorded that delay ‘weighed in the appellant’s favour’. But, more significantly, she had clear and careful regard to the implications of what had happened in the 5 years in which the appellant and his family been in the United Kingdom, in terms of the facts and in terms of the implications of extradition on all concerned. What really emerged from the oral submissions, in my judgment, was the key point about the ‘dramatic transformation’ in the appellant, and the circumstances as they were in his life back in April 2012 compared to the position since he has been in the United Kingdom. At the substantive hearing of an article 8 appeal, particularly in light of the guidance in the authorities, the court will be able to consider all of the circumstances and the balancing exercise, based on all the facts and considering the ultimate outcome. I do not shut out any criticism that the appellant wishes to seek to advance of the district judge but it is important, in my judgment, that I make clear that I am not granting permission to appeal on the basis that there was some error in her “method”.
7. The other criticism of the district judge relates to something that she said in her judgment, on several occasions, I think three times, when she was considering the implications for loss of employment and future support for the family. The judge ultimately said this: “I ... accept that the [appellant] will lose his employment should he be extradited but he has worked since he came to the UK and I have no reason to doubt that he will not be able to re-establish himself in the UK and find alternative employment once these matters have been resolved”. Miss Hill submits that that was an assumption and an assumption that the district judge could not properly make. She points to the uncertainty as to the position on return to the United Kingdom of a person

in the appellant's position. There is something in this point. In my judgment, the judge does appear – positively – to rely on what is either a finding, or an assumption, that there is “no reason to doubt” that the appellant would simply be able to return to his family in the United Kingdom were the Czech authorities either to decide not to activate the suspended sentence or were they to decide to activate his suspended sentence and were he to serve it. Whether or not any finding on the evidence could appropriately be made is something that can properly be explored, in circumstances where I am giving permission to appeal in this case. However, again, I do want to make clear that I am giving permission to appeal because I consider, overall and by reference to “outcome”, that the features of this case give rise to a properly arguable article 8 ground of appeal. But for that conclusion, I would not have granted permission to appeal in this case, notwithstanding any point arising as to the judge's observation about return to the United Kingdom. I am certainly not saying that uncertainty, in an EU extradition case as to whether someone will be able to return, in and of itself, gives rise to an arguable article 8 ground. On the contrary, I do not consider that it does.

8. I will consider with Counsel at the question of an order and appropriate directions and will embody the substance of that order in this final paragraph of this written judgment. Having done so, my order was: (1) Permission to appeal is granted. (2) No order as to costs. I also made case management directions for a substantive hearing (time estimate 2 hours) with directions for skeleton arguments and filing of a joint bundle.

1 July 2020