Neutral Citation Number: [2020] EWHC 2267 (Admin)

Case No: CO/2498/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 August 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

ANDRZEJ ROMAN URYNOWICZ	**Applicant**
- and -	
THE REGIONAL COURT OF LODZ, REPUBLIC OF POLAND	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co Solicitors) for the **applicant**
Stefan Hyman (instructed by the Crown Prosecution Service) for the **respondent**

Hearing date: 19 August 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.

.....

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. This is an application for bail in extradition proceedings, bail having been refused by a district judge in the magistrates' court on 6 August 2020 (DJ Fanning) and 11 August 2020 (DJ Griffiths). The applicant is aged 42 and is wanted for extradition to Poland.

Mode of hearing

2. The mode of hearing was a Skype for Business remote hearing. Having been given prior opportunity to state any preference, or provide any reasons why remote hearing was considered inappropriate, the respondent's team requested Skype and the appellant's team was content. I was also content in the circumstances of this particular case to proceed in that way. I heard oral submissions in exactly the way I would have done had we all been physically present in a court room. As regards open justice, the hearing and its start time – together with an email address usable by anyone wishing to observe the hearing – were published in the cause list. Had anyone wishing to observe the hearing not had access to Skype, I would have considered a simultaneous BT conference call so such a person could hear everything said at the hearing. It is no criticism of anyone in this case, but I do want to just say something about the choice of mode between Skype on the one hand and BT conference call on the other.

3. In a case where the lawyers are satisfied that a BT conference call, with audio only, would be sufficient for the purposes of the hearing in question, and would involve no detriment or prejudice from their perspective or that of their clients, there is a lot to be said – as it seems to me – for using a BT conference call in those circumstances. It is

possible that a cause list listing which refers to a Skype (or "remote video conference") hearing, rather than a "telephone" hearing, may be off-putting to a member of the public who would wish to observe a hearing. That person may have a telephone, and be able to send an email, but they may not have (or feel that they can access) the "video conference" platform being used by the Court and the parties. It is also possible that such a person would not think to make email contact with the Court and ask whether alternative (telephone) arrangements can be made to accommodate them. Choosing a BT conference call and publishing on the cause list that it is a "telephone" hearing which anyone can ask for permission to observe, as it seems to me, protects to the maximum the position of members of the public, or for that matter the press, who may wish to observe a hearing. I emphasise that in any case where the legal representatives consider that there is good reason for using Skype in order to do justice to the parties, they are quite at liberty to state that preference. I also emphasise that the Administrative Court Office memorandum circulated to parties in relation to hearings tells the parties that it is open to them to state a preference for Skype or BT conference call, or to give reasons why they consider a remote hearing (of either of these kinds) to be inappropriate. It is possible, however, that the position of the public is not always forefront in the minds of those who are preparing for a hearing on behalf of the parties. These observations are intended to assist their thinking in future.

4. I repeat there is no criticism at all of anyone in relation to the present case. The hearing was recorded. This judgment will be released into the public domain. By having a remote hearing, we eliminated any risk to any person, from having to travel to, or be present in, a court. I am satisfied that no right or interest was compromised and that, if there was any interference with, or qualification of any right or interest, it was justified as necessary and proportionate.

Bail

5. Mr Hepburne Scott rightly characterises in his written submissions my statutory function, pursuant to section 22(1A) of the Criminal Justice Act 1967, as involving consideration of bail "afresh": see Tighe [2013] EWHC 3313 (Admin) at paragraph 5. In succinct written submissions, Mr Hepburne Scott submits that this is a case where bail can very properly be granted, emphasising a number of key points, among which are the following. There is the strong and loving relationship of mutual support between the applicant and his partner (with whom he has been in a relationship since January 2019) and her son (now aged 4). There is the reinforcing need of the partner (a Polish national who has been in the UK since 2011) for support from the applicant, given a medical condition which leaves her unable currently to work and finding it extremely hard to cope. There are proposed bail conditions, including: residence at the family address, an electronically monitored curfew, daily reporting, the retention of the applicant's Polish identity card seized on arrest, the usual restrictions in relation to international travel and travel hubs (emphasised orally), and – significantly – a substantial pre-release bail security of £10,000, representing the entirety of the partner's savings (£4,000) and a sum said to have been raised from friends (£6,000). In oral submissions today Mr Hepburne Scott emphasised the essential features, and in particular the security. He submitted that, notwithstanding the applicant's previous convictions, the coercive conditions and the security make the applicant a good candidate for bail in all the circumstances.

6. The respondent, through Mr Hyman, opposes bail on the grounds that there are substantial grounds for believing that – if released on bail, on the proposed conditions – the applicant will fail to surrender to custody; and moreover – if so released – will

commit further offences. I am not prepared to grant bail in this case. In my assessment, there are substantial grounds for believing that – if released on bail, and notwithstanding the proposed conditions – the applicant will fail to surrender to custody. In my assessment, there are also substantial grounds for believing that – if released on bail, and notwithstanding the proposed conditions – the applicant will commit further offences. I will give my reasons for arriving at those assessments.

7. This is an EAW conviction warrant case. The starting point under the statutory scheme is therefore that there is no presumption in favour of the grant of bail, as is common ground. The applicant faces extradition to serve a 3 year custodial sentence for a serious assault committed in March 2015 (according to the EAW). The entirety of that sentence remains unserved, but the applicant will be entitled to a deduction for the period spent on extradition remand from the end November 2019. The period of custody faced is a significant one and there would be a serious and significant incentive to avoid it.

8. After an oral hearing on 8 July 2020 the district judge, in ordering extradition on 14 July 2020, found as a fact that the applicant had come to the United Kingdom as a fugitive, avoiding the known responsibility of serving the 3 year sentence. It follows, as things stand, on the basis of that finding of fact, that the applicant is a person who has already once acted to evade his accountability in relation to the serving of this custodial term.

9. The evidence of the relationship has, as things stand, gone untested and unprobed, in that the partner did not attend the oral extradition hearing. I have read the evidence that is before this court and taken it into account. I am not satisfied – even having regard to the proposed conditions and the substantial proposed security – that there is so strong an anchoring effect for the applicant, and for the family if their wish is to remain

together, so as to allay the concerns relating to the risk of failure to surrender. I am not making findings of fact. I am assessing risk, based on the material before the court.

10. I turn to further points about the position during the applicant's time in the United Kingdom since 2017, and subsequent to his beginning the relationship with his partner and her son. The applicant was arrested on 8 October 2019. He was subsequently convicted of breaches of notification requirements imposed on him under the Sexual Offences Act (which attracted a two-week custodial sentence): that constitutes non-compliance with requirements imposed by legal process, in the period between January 2018 and October 2019. He was also found in possession of some £1,000 cash, which itself gives rise to legitimate concerns (raised by the respondent). He was charged with possession of a butterfly knife. He denied that the knife was his. He went to trial and was evidently disbelieved as to the evidence which he gave to the court: in any event, he was convicted and sentenced to 12 weeks custody.

11. So far as extradition is concerned, the applicant may very well perceive that he is entering the 'end-game'. His extradition has been ordered by the district judge. He has an application for permission to appeal to this court. That application is not before me and I make no observations as to its substance, except to say that it is on the cards that the appellant will at least be entitled to remain in the United Kingdom until after the determination later this year by the Divisional Court of the case of Wozniak [2020] EWHC 1459 (Admin). There is also an article 8 ground. Wozniak may succeed. But the applicant may very well see the true alternatives as being (i) extradition to face the balance of the three-year prison sentence in Poland, or (ii) once again becoming a fugitive in relation to that responsibility.

12. For all these reasons, the respondent's objection based on failure to surrender is, in my assessment, well-founded. But so is the objection based, independently, on further offending. I have referred already to the breaches of Sexual Offences Act notification requirements, and to the possession of a knife. I have referred to the March 2015 assault which is the index offence to which the EAW relates. In addition to all of that is the applicant's antecedent record in Poland, with offending from 2002 onwards, when he was aged 22. The following is based on the computer print out. Its substance has not been disputed. He received a 20 month custodial sentence for blackmail and battery offences committed in 2002 to 2003. He received a 7 year custodial sentence for 3 rapes of a female or females under 16 committed in 2004 when he was aged 25 and 26, together with a 'public order type offence' and a further battery. A decade later, back at liberty in 2014 and now aged 36, the applicant committed offences of blackmail (attracting a custodial sentence of 10 months), possession of a drug (attracting a suspended sentence of 18 months) and further offences of blackmail (attracting a sentence of 22 months). It was then in March 2015 (according to the EAW rather than the print out, and I am persuaded by Mr Hyman that it is appropriate to prefer the former) that the applicant committed the assault (attracting the custodial sentence of 3 years) to which these extradition proceedings relate. He came to the United Kingdom in January 2017. In the light of these matters, put alongside the other evidence in the case, the respondent's objection based on further offending is, in my assessment, also well-founded. I am not satisfied that the proposed conditions would allay the concerns in relation to reoffending.

13. It is for all these reasons, in the light of all this evidence, that I have reached the conclusions which I described earlier, and which I repeat. In my assessment, there are substantial grounds for believing that – if released on bail, and notwithstanding the

proposed conditions – the applicant will fail to surrender to custody. In my assessment, there are also substantial grounds for believing that – if released on bail, and notwithstanding the proposed conditions – the applicant will commit further offences. Bail is therefore refused.

19 August 2020