Neutral Citation Number: [2020] EWHC 2343 (Admin)

Case No: CO/2750/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 August 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

KRZYSZTOF TOMASZ TRYBEK	**Applicant**
- and -	
REGIONAL COURT IN KIELCE, POLAND	**Respondent**

- -
- -

Wojciech Zalewski (instructed by AM International Solicitors) for the **Applicant**
Alexander dos Santos (instructed by the Crown Prosecution Service) for the **Respondent**

Hearing date: 25 August 2020

Judgment as delivered in open court at the hearing

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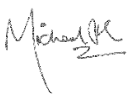
Approved Judgment

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 bail in extradition proceedings.

2. The mode of hearing was a Skype for Business remote hearing. 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 for Business, I would have considered a simultaneous BT conference call so such a person could hear everything said at the hearing. 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. Having been given prior opportunity to state any preference, or provide any reasons why remote hearing was considered inappropriate, the applicant's team requested Skype for Business. The respondent's team did not object. I was content in the circumstances of this particular case to proceed in that way.

3. The applicant is aged 37. He has been in the United Kingdom since 2007. He is wanted for extradition to Poland. That is in conjunction with two European Arrest Warrants (EAWs), both of which are conviction warrants. They relate to offences which he committed between 2003 and 2006, aged 19 to 23. Extradition was ordered on 31 July 2020 by the District Judge in the Magistrates' Court, following an oral hearing on 30 June 2020.

4. The essence of the case for granting bail put forward in writing and orally by Mr Zalewski – as I see it – comes to this. The starting point is that this Court should put to one side the fact that bail was revoked by the District Judge who had dealt with the oral hearing and ordered extradition on 31 July 2020 having heard oral evidence from the applicant: this Court's function involves considering bail "afresh". It is highly relevant that the bail position in this case is tried and tested. Following his arrest on 14 April 2020 and an initial refusal of bail, conditional bail was granted 10 days later on 24 April 2020. Between that time and the order of extradition on 31 July 2020 – a period of more than 3 months – bail conditions were complied with. The applicant attended the Magistrates' Court on more than one occasion, including attending for his hearing on 30 June 2020. Mr Zalewski has strongly relied on what he described as this 'track record'. He relies on the fact that there was full compliance; that bail was enlarged on at least two occasions; that there were multiple compliant attendances (including in the context of difficulties in relation to a date for hand down of the judgment); and that bail was not opposed during that earlier period. Mr Zalewski submits that bail has never been opposed in this case until today. He points out that the nature and seriousness of the matters in Poland and the relevant sentences faced there was a constant throughout, and yet bail could properly be granted and it was complied with. He emphasises that the applicant has no previous convictions or cautions or any other adverse matter against him in the 13 years that he has been in the United Kingdom. In a skeleton argument which I read at the start of the hearing (it not having made it to me until then), he emphasises the applicant's long time in the United Kingdom, his community ties here and his good character here. Mr Zalewski also draws my attention to the applicant's health difficulties which he says put into context what the district judge found about him having been a fugitive from Polish justice, as does the fact that it is

accepted that there was no conditional restriction on him leaving Poland. Emphasis is placed on the applicant as being potentially in a Covid vulnerable category. Mr Zalewski says in his oral submissions that the risk in this case is 'very low, or indeed non-existent'. Stringent conditions are put forward, as they were previously. They include a £12,000 pre-release security provided by the applicant's sister who lives in Oldham. The applicant's residence is in the South-East and it would be to an address in the South-East that he would be conditionally released if bail were granted. The proposed conditions include residence at his rented accommodation; a curfew with electronic monitoring; reporting conditions; and the usual conditions relating to prohibitions as to international travel; together with a 24 hour switched-on mobile phone. The applicant, who had everything to fight for the time up until the Magistrates' Court ruling, now has everything to fight for all over again in that he has an extant application before this Court for permission to appeal.

5. Bail is resisted by the respondent on the basis that there are substantial grounds to believe that the applicant would fail to surrender, if released on conditional bail. I turn to my assessment. I accept the starting point of Mr Zalewski's submissions: namely that this court considers the bail position "afresh". See Tighe [2013] EWHC 3313 (Admin) at paragraph 5. I am not prepared to grant bail in this case. In my assessment, there are substantial grounds for believing that the applicant will – if released, notwithstanding the proposed bail conditions – fail to surrender. The reasons which underpin that assessment are as follows.

6. The applicant faces extradition to serve 3 years 8 months and 20 days in custody in Poland. I have no doubt that he is extremely anxious to avoid having to do so. I note that his written evidence states: "if I was extradited to Poland, my life would be completely destroyed". The District Judge, who heard him give oral evidence, described him as someone who "presented as a man who would very much like to avoid serving his sentence". If released on bail, he would have a choice. One option would be to adhere to the conditions and remain compliant while awaiting the outcome of his application for permission to appeal. But there is another alternative which is a matter of substantial concern, namely that he would fail to surrender.

7. Next, the applicant is now a person – on the findings of fact of the District Judge – who has been demonstrated, to a criminal standard in a court of law, to have fled these custodial sentences as a fugitive, deliberately putting himself beyond Polish justice. Although there was not a restriction on him staying in the Polish territory, the District Judge having heard the evidence found as a fact that the applicant came to the UK in 2007 as a fugitive from Polish justice. Although I am considering bail "afresh" an important part of the evidence before me, in my assessment, is the District Judge's factual findings, made having heard the evidence including oral evidence from the applicant. All of this means that the applicant crossed a border in 2007, as a fugitive from these very matters, leaving behind his mother and their close relationship, rather than face his responsibilities. The District Judge has found as a fact that the applicant "came to the UK to avoid serving his sentence". Nothing in the initial grounds of appeal that I have seen suggests a basis for impugning that finding of fact. Nor does the point made about the absence of a restriction on him leaving Poland, by way of a condition imposed by the Polish authorities, do so. There does not have to be in place a specific restriction for the applicant to leave as a fugitive. There is certainly no basis for me going behind this finding of fact for the purposes of this application for bail. I have a

great concern that the applicant would, given the opportunity, flee the custodial sentences all over again, if necessary again seeking to cross a border, and leaving behind the close relationship he describes, this time with his sister in Oldham.

8. Although it weighs significantly in his favour that bail was previously granted and he was compliant, things have now significantly moved on. Extradition has been ordered. The findings of fact which I have described have been made. The applicant's remaining prospect is his application for permission to appeal to this Court, including on a point of principle to be resolved by a Divisional Court in Wozniak in the coming few months. There is a prospect that that case will succeed. Whether his other grounds are reasonably arguable is not an issue that is before me. But I cannot, provisionally and for the purposes of bail, assess his prospects on appeal – and how he may perceive them – as having a strong anchoring effect. The applicant has been in the United Kingdom for 13 years but he does not have any 'close relationships of dependency' here. It is relevant that the District Judge not only rejected his article 8 ground but described it as "particularly weak", and one which "comes nowhere close".

9. In his skeleton argument filed yesterday Mr dos Santos clearly informed this court that the District Judge had indicated that he was revoking bail "on the basis that in Poland [the applicant] engaged consistently throughout proceedings until matters were found against him, at which point he fled". Mr Zalewski has told me that he has no note or instructions on this aspect. When I look at the District Judge's judgment in this case he specifically recorded that the applicant had attended both of his criminal trials. But it was subsequent to that, and in the context of appeals, that the applicant then chose to come to the United Kingdom. There is therefore a strong resonance, so far as the pattern is concerned, of there being compliance until the time where the decision at the substantive hearing is made adversely to the applicant. I regard that as a very material factor, when I consider the point so strongly relied on, namely the previous pattern of compliance with the previous grant and enlargement of bail. It makes perfect sense of what the District Judge did in revoking bail, having made the findings that he did.

10. None of the evidence in this case, nor do the circumstances of the case, convince me that the relevant concerns either do not arise, or that they would be allayed through re-imposing the previous encountered conditions, and adding any new ones. In my assessment, there are in this case no features which sufficiently strongly anchor the applicant to the United Kingdom, to allay the substantial concerns that arise. Nor, as I have said, do the proposed conditions, in my assessment, do so.

11. One of the features that had been put forward in writing both in the written application for bail and again in Mr Zalewski's skeleton argument was a reference to a condition which could reassure the Court, relating to the retention of identity card (or identity cards) which 'have been seized from the applicant on arrest'. Mr Zalewski tells me that the relevant paragraph in both the application (referring to two identify cards seized) and again in the skeleton argument (referring to one identify card seized) was in each case a mistake. I do not know how mistake came to be made and I do not need to enquire. I do not hold against the applicant the fact that a drafting mistake, or a mistake in considering the documents, was made by lawyers filing materials with this Court. But it is nevertheless a matter of concern that the factual position so far as identity cards are concerned is this. A police witness statement made a few days after the arrest in April 2020 records clearly that the applicant told the police that any passport or identity cards had been "destroyed" by him. Mr Zalewski tells me, on instructions, that the

applicant's position is that they had "expired", but that explanation was not something that was said or recorded in that witness evidence. There are various possibilities. One is that there has been something of a misunderstanding and something entirely benign has happened, namely that documents had "expired" and in the light of their expiry have been thrown away. There is another possibility namely that a passport or identity documents had been deliberately "destroyed", even though they had not expired. There is a third possibility, which is that they exist, but the applicant described them as having been "destroyed", and therefore has not surrendered them but retains them. I am not making any finding of fact, and I am in no position to do so, in relation to these three alternatives. But I do not have the comfort that would come from identity documents or passports been seized and retained. I do not have any supporting evidence for the contention that there had been an "expiry". What I do have in all this is a point which reinforces the concerns that arise in this case in any event.

12. Looking at the matter "afresh", there are in my assessment substantial grounds for believing that the applicant would fail to surrender if released on bail, and notwithstanding the conditions put forward. For those reasons bail is refused.

25th August 2020