



Neutral Citation Number: [2020] EWHC 2351 (Admin)

Case No: CO/476/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 August 2020

Before :

MR JUSTICE FORDHAM

Between :

PAWAL KRZYZANOWSKI
- and -
REGIONAL COURT OF KRAKOW (POLAND)

Applicant

Respondent

The **appellant** in person
The **respondent** did not appear and was not represented

Hearing date: 20 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.

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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 a renewed application for permission to appeal in an extradition case. I heard it in open court. The appellant appeared by video link, in person, with an interpreter. He told me that he wishes to be released from custody, so he can start work. But, as I explained to him, this is not a bail hearing. The appellant told me that he had nothing further to add this morning. Permission to appeal had been refused by Eady J on 29 June 2020. The appellant's then representatives (Gillen De Alwis) filed a notice of renewal out of time on 8 July 2020. They subsequently applied to come off the record (under Crim PR 46.2(1)(c)), which application was granted by order dated 12 August 2020.
2. By an email at 10:39 on 19 August 2020 the CPS informed the court that no respondent's notice had been served in this case which was "solely due to an oversight"; that the respondent did not intend to appear or be represented today, and that it relied on the reasons given by Eady J. The respondent is not required to file a respondent's notice. It has a choice. But the rules do specifically give me power to direct a respondent's notice. I have decided to exercise that power in this case. I am going to adjourn this renewed application for permission to appeal and to direct (under Crim PR 50.21(1)(b)) that the respondent file with the Court, serve on the appellant, and send for information to his former representatives, a respondent's notice to assist the court with certain questions of law and one question of fact. The appellant has confirmed to me that he wishes me to take this course and he understands that he will remain in detention.
3. As I have said, there are questions on which, in my judgment, it is necessary, appropriate and proportionate in the interests of justice, to secure the respondent's assistance. I am not prepared to have the appellant put on a plane to Poland in circumstances where he is invoking a right of access to the Court, in person, without having that assistance. The purpose of the rest of this short judgment, an approved written version of which will be produced and made available to the parties, and to the appellant's former representatives for their information, is to explain the nature of the case and the questions on which I consider that the Court needs assistance. This judgment was simultaneously translated during its delivery in Court for the appellant by the interpreter to whom I am very grateful.
4. The appellant is wanted for extradition to Poland. On 25 November 1999 he committed a criminal offence of fraud, in respect of which the Polish court imposed a custodial sentence of 10 months. That was one of four convictions described in the EAW dated 29 August 2014, seeking extradition. After an oral hearing, DJ Bouch on 25 February 2019 ordered that the appellant be extradited, but only in relation to the November 1999 fraud. The other three offences were discharged. The appellant had been arrested on 18 January 2019. He failed to appear for the hearing. His representatives withdrew, and the judge decided to proceed in his absence, about which he can have no complaint. A year later, on 3 February 2020, the appellant came before a district judge again. That seems to have been an appearance before the magistrates' court in the light of his arrest, and in conjunction with his failure to surrender for the hearing on 25 February 2019, a year earlier. As Eady J observed in her order dated 30 June 2020, there is no clarity in the papers before this court as to what happened on 3 February 2020 or what order, if any, was made on that date. That is the question of fact on which I would like assistance. If it stood alone, I would not be adjourning this case. But in circumstances where there are relevant questions of law, and where I am adjourning, it is appropriate that the court

be provided with assistance to illuminate what happened. One thing that seems clear is that the district judge on 25 February 2019 did not defer the ordering of extradition, but proceeded to make an order on that date.

5. At some stage after the hearing on 3 February 2020, the appellant's former representatives reappeared on his behalf and filed an application for permission to appeal with grounds of appeal. The grounds raise a point of law. It is as follows. Box F(b) of the EAW stated that the Polish judgment in relation to the November 1999 fraud offence (the relevant one) had a time limit for its enforcement of 20 March 2019. The argument put forward was that it could not be proportionate or human rights-compatible to extradite the appellant, in conjunction with a conviction and sentence, whose underlying domestic time limit for "judgment enforcement" had now expired. The grounds of appeal purported to be an application for permission to appeal a year out of time from the order made on 25 February 2019. Section 26(4)-(5) of the Extradition Act 2003 tightly circumscribes the timing for appeal and the basis on which the court can extend it. The district judge's analysis and order of 25 February 2019 could in any event hardly be impugned by reference to an event taking place a month later on 20 March 2019.
6. I have concluded that I need to know what the respondent says the correct legal position is, so far as extradition is concerned and so far as concerns the proper disposal of the application before me for permission to appeal (substantially out of time), of this point of law: concerning the expiry on 20 March 2019 of the time limit for judgment enforcement of the underlying Polish judgment, on which the EAW expressly rests. Can the appellant now lawfully be extradited (and for that matter detained)? If so, on what basis? If not, what is the appropriate remedy? The appellant's former representatives may well have concluded that there was nothing in this point. There is, as I have said, no respondent's notice answering it. Eady J did not feel that she had an answer either. She said she had concluded that, without further explanation, the appellant had not demonstrated reasonably arguable grounds of appealing either the order of 25 February 2019 or any decision or order made on 3 February 2020. I am not prepared to let the point go, without identifying the answer, on the basis that the appellant – now in person – has to show me how there is a reasonably arguable ground engaging my appeal jurisdiction. I want help from the respondent. My decision is based on the circumstances as they are before me today, bearing in mind that this renewed application is a safety-net, and the appellant is in person. I am conscious that the remedy of judicial review is sometimes properly available in gaps which arise out of the structure of extradition appeals, where a point of law arises. I consider it necessary and appropriate to seek assistance from the respondent as to what it says the correct legal position is. Can this appellant now lawfully be extradited, pursuant to the court order made in 2019?
7. There is also a further legal point. In Wozniak [2020] EWHC 1459 (Admin) I granted permission to appeal on a point of principle which goes to whether the Polish authorities still meet the legal requirement of "judicial authority" under section 2 of the Extradition Act 2003. The implications for other appeals have been seen in a line of cases including Bibro [2020] EWHC 1592 (Admin) (18 June 2020), Socha [2020] EWHC 1909 (Admin) (14 July 2020) Wawrzyniak [2020] EWHC 1955 (Admin) (20 July 2020) and Horchel CO/1439/2020 (18 August 2020). The central concern is this. There is known to be a point of principle which has been recognised as reasonably arguable and which

has been a basis for staying other cases, in which the point is raised albeit belatedly, including cases where applications have been made to reopen appeals (such cases generally being dealt with on the papers). The appellant is now a litigant in person. As it seems to me, any Counsel appearing on this renewed application for permission to appeal for the respondent would be likely to feel duty bound to raise with the Court the Wozniak issue, well known to the Polish authorities and those representing those authorities in extradition cases. Even if not raised with the Court, I would have raised the question myself. I am doing so in a case in which the respondent has decided – as it is entitled to do – not to appear today. What, if anything, should be done in a case where the appellant is in person and where he is on the face of it seeking permission to appeal a year out of time in relation to an order made in early 2019, but which was not and has not been implemented? What impact, if any, does that have for this court's appellate jurisdiction? What remedy, if any, would be appropriate in the present case?

8. I have had well in mind in relation to these questions of law, that it was the appellant's own deliberate absence which took him outside the legal process from February 2019 until his arrest and appearance in February 2020. It is difficult to have any sympathy with him or to see merit in his position. If any legal protections arose or could have arisen but have evaporated, in circumstances of his own deliberate default, it may be that the proper response of the law is that there is no appropriate jurisdiction or remedy, and that he has brought that situation on himself. It is certainly unattractive, to say the least, that his own act of failing to surrender thwarted what may have been a speedy removal following 25 February 2019, and prior to the expiry of the Polish judgment on 20 March 2019. But are their legal protections and have they evaporated? The appellant is, properly, before the Court. There are legal questions arising on which I consider it necessary and appropriate to have assistance, and reassurance, before determining the extant renewed application for permission to appeal. I am currently denied clarity by what I am told was an "oversight", that a Respondent's Notice – which no doubt would have analysed the legal position – has not been filed. As presently advised, I can see absolutely nothing else in the case. But, in the circumstances and for these reasons, I am adjourning the renewed application for permission to appeal. I will, for reasons of efficient case management and allocation of judge time, indicate that the adjourned hearing should, if possible, be listed before me.

20 August 2020