Neutral Citation Number: [2020] EWHC 2692 (Admin)

Case No: CO/472/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8th October 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

LADISLAV BARTOS	**Appellant**
- and -	
DISTRICT COURT OF LEVICE (SLOVAKIA)	**Respondent**

- -
- -

Graeme Hall (instructed by McMillan Williams Solicitors Ltd) for the **Appellant**
The **Respondent** did not appear and was not represented

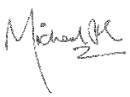
Hearing date: 8th October 2020

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 :

Introduction

1. The appellant is aged 55 and is wanted for extradition to Slovakia in conjunction with a conviction EAW relating to child neglect between 2002 and 2007. A custodial sentence of 2 years and 2 months stands unserved. At the heart of this renewed application for permission to appeal is the relevant trial at which the appellant was convicted on 17 May 2012, and the question of 'deliberate absence' from that trial. I have seen from the respondent's submissions that it is common ground that that is the correct focus. Mr Hall for the appellant relies on Stryjecki [2016] EWHC 3309 (Admin) at paragraph 50(ii) in relation to the importance of focusing on 'the specific trial event with its scheduled time and venue specific trial event with its scheduled time and venue'. District Judge Goldspring ordered extradition on 3 February 2020. He rejected a section 20 Extradition Act 2003 ground of resistance and found as a fact that the appellant had been 'deliberately absent' from his trial. Mr Hall says that conclusion was wrong in law being treated as flowing automatically from a finding of fugitivity. He says on the correct legal analysis the appellant could not be found to have been 'deliberately absent'. If, but only if, Mr Hall is right about that a question arises as to 're-trial rights'. He reminds me that for the purposes of today all he needs is a reasonably arguable ground of appeal. Saini J thought there was none and refused permission on the papers.

Mode of hearing

2. The mode of this hearing was a BT conference call. The appellant's representatives were satisfied, as am I, that this mode did not prejudice the appellant's interests. So far as open justice is concerned I am satisfied that it has been secured. This is a public hearing. The case and its start time were published in the cause list where an email address was given for any member of the press or public to seek to observe this hearing. All they needed was to send an email and subsequently make a telephone call. By having a remote hearing we eliminated any risk to any person of having to travel to a court room or be present in a court room. I am satisfied that the mode of hearing was appropriate and proportionate.

Analysis

3. I turn to the central issue which is said to constitute a reasonably arguable ground of appeal. In doing so it is worth setting out central facts of this case which are not now in dispute. The appellant had appeared at a preliminary hearing on 13 December 2007 in Slovakia having been summonsed directly. He then appeared at a main hearing on 24 January 2008 having again been summonsed, this time orally. He was told at that hearing about the next hearing on 4 March 2008. He was absent from the hearing on 4 March 2008. Mr Hall concedes that that constituted 'deliberate absence'. He was absent again at the next hearing on 10 April 2008. He came to the United Kingdom. The Slovakian authorities reported that, following investigations, it had been confirmed that the appellant was no longer at the address that he had previously given. Everybody agrees that that is correct. He had left the country. Those investigation reports were dated: 14 January 2009; 19 January 2009; 14 August 2009; 22 December 2009 and 7 May 2010.

4. The further information before the District Judge and before me confirms that, in those circumstances, no summons in relation to the trial on 17 May 2012 was sent to the appellant's previously given address. Mr Hall accepts that, had it been sent, then it would follow in law that the appellant was 'deliberately absent' from his trial. He accepts that because he accepts the proposition articulated by Kerr J in Bialkowski [2019] EWHC 1253 (Admin) at paragraph 27 where he said this:

> "However evasive the accused's conduct, the requesting state must still prove that it took the steps that would acquaint a non-evasive accused with the time and place of trial".

Mr Hall submits that sending the summons to the previous address would constitute such a step.

5. Continuing with the factual narrative, what happened was that the information was instead 'posted on the board'. I had the opportunity of eliciting Mr Hall's assistance in relation to that. He accepts, but in any event I find that clear beyond any doubt, that the description (in the Respondent's 'further information') in this case of 'posting the measure on the official board of the local court' is directly linked to a relevant provision set out on the very next page which makes clear that what happens under domestic law in Slovakia, as an alternative to serving a summons, is: "the summons to the main trial and the public hearing is published in an appropriate manner". It is clear that the 'posting on the official board' is domestically regarded as the 'publication in an appropriate manner'. It is also of note that the relevant provision of the domestic Slovakian law speaks expressly of publishing 'the summons'.

6. Mr Hall submits that the correct starting point is that an individual, in order to be 'deliberately absent' should have 'actual knowledge' of the summons relating to the specific trial. He accepts, however, that in a case where Kerr J's test (steps that would acquaint a non-evasive accused with the time and place of trial) is satisfied that will in law suffice. As I have said, he accepts in this case that sending a letter to the previous address would in law have been sufficient. He emphasises in his submissions article 4a(1)(a)(i) of the Framework Decision (set out in Stryjecki at paragraph 48) which makes reference to the individual being "summoned in person and thereby informed of the scheduled date and place of the trial". But, as I have explained, Mr Hall accepts – as he must on the authorities – that there are alternatives which can in particular circumstances and as a matter of law provide the basis of a finding of 'deliberate absence'.

7. In my judgment, there is no reasonably arguable ground of appeal in this case when one examines the test articulated by Kerr J (steps that would acquaint a non-evasive accused with the time and place of trial) and places it alongside the 'further information' and the facts and circumstances. In my judgment, it is impossible realistically to anticipate that this Court would reject the step of 'posting on the local court board' as being a step which 'would acquaint a non-evasive accused with the time and place of trial'.

8. It is, in my judgment, highly material that this is a case in which the authorities had established, through due diligence and beyond doubt, that it would have been utterly futile – as an objective fact – to send the summons to the appellant's previous address. It is a striking feature of the suggested analysis put forward on behalf of the appellant

that the Slovakian authorities were obliged to do precisely that in order to be able to show that the appellant was 'deliberately absent'.

9. It cannot be right, in my judgment, that a judicial authority who establishes, as an objective fact, that postal service is utterly futile is required to take that step to be able to establish 'deliberate absence', rather than to take the step which on the basis of that objective fact is a far better one: publication of the information in accordance with the relevant and appropriate domestic provision. The authorities of the requesting state cannot in my judgment be required to take a step, established is utterly futile, rather than a step which is available to them under the domestic arrangements and has a better prospect of coming to the attention of a non-evasive accused. Put another way, in considering Kerr J's test (steps that would acquaint a non-evasive accused with the time and place of trial), it is not necessary or appropriate, in my judgment, to delete from the picture the objective fact which the authorities have investigated as to the futility of postal service.

10. In my judgment, there is no realistic prospect of this ground of appeal succeeding.

11. I add some further observations relating to the other authorities:

    i) Mr Hall submitted, on the basis of Hickinbottom's decision (December 2016) in Stryjecki at paragraph 50(vi) and (vii) that 'deliberate absence' could only, in law, be found against an individual exhibiting an evasive 'manifest lack of diligence' if that evasive lack of diligence was specifically linked to the particular trial which led to the conviction. The practical consequence of that in the present case is that Mr Hall submits that any act of evasion in leaving Slovakia mid-proceedings, as the appellant did, was not sufficiently proximately linked to the ultimate trial date of 17 May 2012. He submits, in essence, that there needs to be a direct and proximate link between (i) the evasion and manifest lack of diligence and (ii) the specific trial. I do not read Hickinbottom J as having said that in paragraph 50 of that judgment.

    ii) Moreover, I was able to elicit Mr Hall's assistance in relation to the subsequent judgment (November 2018) of Julian Knowles J in Kotsev [2018] EWHC 3087 (Admin) [2019] 1 WLR 235 where, at paragraph 34, the judge described as one of the basis in law for a finding of 'deliberate absence' this scenario, where: "it was his own deliberate conduct (e.g. by moving abroad without leaving an address with the authorities so as to evade justice, as in Zagrean's case) which led to his lack of knowledge about his trial".

    iii) Looking then at Zagrean [2016] EWHC 2786 (Admin), a decision of the Divisional Court (November 2016) it is clear from the facts described at paragraph 73 and the analysis at paragraphs 81 and 82 that that was a case very similar to the present case. There the individual had already left Romania prior to 17 April 2012 when the criminal law suit is said to have commenced. The actual ultimate trial date was over two years later on 27 May 2014. The District Judge had held that the individual was 'deliberately absent' and the Divisional Court upheld that conclusion as correct on the basis of a 'manifest lack of diligence' at paragraphs 81 and 82.

iv) Given that that was the scenario in Zagrean, in my judgment it is clear that Julian Knowles J was specifically spelling out at paragraph 34 of Kotsev that deliberate conduct in moving abroad without leaving an address so as to evade justice did not have to be proximately linked to the specific trial in question.

12. On that basis, even if the Slovakian authorities had not in this case posted the summons or information as they did on the board outside the local court there still would have been the basis in law for a finding of 'deliberate absence' in this case. But in the end none of that matters and nothing turns on it, because Mr Hall accepts that it would on any view suffice if Kerr J's test (taking steps that would acquaint a non-evasive accused with the time and place of trial) were taken in this case as I am quite sure, beyond any reasonable argument, they were. It may therefore be that there is a tension in the authorities as to whether that in fact is a test which is necessary. But it is clearly and certainly a test which is sufficient. In my judgment, notwithstanding the attractive and sustained submissions made on behalf of the appellant by Mr Hall, I cannot accept that there is any reasonably arguable ground of appeal in this case.

13. I add one point by way of footnote. The logic of Mr Hall's position can be tested by supposing that, instead of the individual simply having been known to have left the previous address, the previous address had been condemned by the authorities and bulldozed so that there was no prospect of service at that address. Mr Hall accepted that his logic would lead to the consequence that, unless there was an ability to serve at a prior address the summons in relation to the specific trial hearing, the individual could only be extradited if that they were shown to have a full right of retrial.

14. Given that the District Judge's conclusion on deliberate absence is, in my judgment, clearly right as a matter of law on the basis of the facts and his other findings in this case – even if he was wrong to treat that conclusion as flowing from a finding of fugitivity – questions as to the 'right of retrial' do not arise. I note that was also the position in Zagrean: see paragraph 84.

15. For all those reasons, this renewed application for permission to appeal is refused.

8th October 2020