Neutral Citation Number: [2020] EWHC 2897 (Admin)

Case No: CO/102/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29th October 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

RICHARD HORVATH	**Appellant**
- and -	
HUNGARIAN JUDICIAL AUTHORITY	**Respondent**

- -
- -

The **Appellant** did not appear
Stuart Allen (instructed by the Crown Prosecution Service) for the **Respondent**

Hearing date: 29th 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. This is a substantive appeal in an extradition case.

Mode of Hearing

2. The mode of hearing was a BT conference call hearing. I am satisfied that that was an appropriate mode of hearing in the circumstances of the Covid-19 pandemic. Indeed, it is a mode of hearing that promotes access in the sense that all that is needed is for a person participating or observing to make a telephone call. Had the Appellant attended this hearing I would have wanted to confirm, through exchanges with him, that there was no impediment from this mode of hearing, particularly having in mind that it would also have involved an interpreter. Had there been a problem I would have addressed it. Had an adjournment been necessary to secure fairness I would have granted one.

Appellant's Non-Attendance

3. The Appellant has not participated in his hearing today. It is important that I address carefully the circumstances in relation to that before deciding what to do. What happened today was that earlier this morning the court staff tried to phone the Appellant on both of the mobile phone numbers which had been provided by his former solicitors. Those mobile phone numbers do not now receive calls. That has been the position since 13 February 2020 when the Appellant's former solicitors emailed the Court to describe "an obvious and apparent non-cooperation on behalf of the Appellant. We have attempted to contact the Appellant on a number of occasions since 27 January 2020, however, unsuccessfully. There is no contact with him and his mobile phones have been switched off".

4. On 1 September 2020 notification of the hearing today was provided to the Appellant's then solicitors who have confirmed to the Court that they posted this to the address held by them (and by the Court) for him. On 23 September 2020 the former solicitors applied to come off the record. That application was subsequently granted. In making the application they told the Court that they had come to the conclusion "that the appeal cannot be properly argued". So far as contacting the Appellant was concerned, and I have in mind their duty, when applying to come off the record, to provide any details as to his contactability (Criminal Procedure Rules 46.2(3)(b))(ii)), they told the Court: "The Appellant has absconded and there is no contact with him". An internal email within the Court system on 5 October 2020, which I have seen, recorded the need to send the notice of hearing to the Appellant at his registered address, the solicitors having come off the record. I have made enquiries and am satisfied that a letter was generated – indeed I have seen a regenerated version of the letter – and was posted to the registered address held. My enquiries have also elicited that the Court system shows that that letter was returned marked 'not known at this address'.

5. As I have explained, the Appellant's own former solicitors have described him as having "absconded". It is not the first time he has evaded responsibility in relation to the matters to which these extradition proceedings relate, as I shall come to explain.

Mr Allen in fact tells me there are two further EAWs arising out of separate Hungarian matters in relation to which the Respondent for its part regards the Appellant as being a fugitive.

6. Mr Allen has helpfully assisted me with the approach I should take. His submission, which I accept, is that it is appropriate for me to ask myself this question: am I satisfied that the Appellant's absence today is "deliberate". In all the circumstances, I am quite satisfied of that; and I so find as a fact. I accept, on that basis, that it is appropriate to proceed today. I add this. Today's hearing was published in the cause list with a start time and an email address for any person to make contact and obtain dial-in details. I have confirmed with my clerk that Mr Horvath did not do so. That, of course, is no surprise.

7. I also add this point, which is relevant in any case involving an extradition appeal where there is a possibility that the Court does not have full visibility (I think I do). There is a safety net in case there is a story to be told as to the circumstances in which the Appellant has become invisible in the appeal in which he obtained permission to appeal. Criminal Procedure Rules 50.27 allows for applications to reopen appeals if an appellant can show that to do so is necessary in exceptional circumstances to avoid real injustice.

8. In all the circumstances I am quite satisfied that it was appropriate to proceed.

Substance

9. I will deal, as Mr Allen invited, with the point of substance which troubled the Judge on the papers to the extent that he gave permission to appeal on it. That permission to appeal related solely to Article 8 ECHR. An Article 3 ECHR point had previously been raised but was answered in this case by assurances dated 7 October 2019. Permission to appeal was refused in relation to Article 3 and the suggestion of a stay.

10. The District Judge had ordered extradition to Hungary on 8 January 2020 after an oral hearing on 9 December 2019. That was in conjunction with a conviction EAW which had two elements. (1) The first was a 9 months custodial sentence arising out of an offence on 7th February 2016 of driving under the influence of cannabis. (2) The second element was a 5 months 8 days custodial sentence arising out of offending in 2006 while the Appellant was detained on remand, including assault occasioning grievous bodily harm.

11. In granting permission to appeal, Jay J was persuaded by the Perfected Grounds of Appeal (PGOA) (24 January 2016) that the District Judge's Article 8 'Celinski balance' was arguably deficient on one point. That one point was the "staleness" of the convictions (meaning the 2006 offending) and so the passage of time subsequent to that offending, a feature unmentioned in the balancing exercise by the District Judge, and said by the Appellant's Counsel in the PGOA to be potentially relevant in the two ways described by Lady Hale in HH [2012] UKSC 25 at paragraph 8(6). That was the concern.

12. In my judgment, the Respondent has identified a complete answer to that concern. The circumstances of this case are clear from the documentary evidence. The 2006 offences attracted a sentence which was served in part, after which the Appellant was

conditionally released. In his own proof of evidence (8 October 2019) the Appellant described how he had served 2 years 5 months of a 2 years 10 month custodial sentence imposed in relation to the 2006 offending. He also described how the "conditional release" in relation to the 5 months had subsequently been revoked in connection with another offence.

13. The 7 February 2016 offence attracted a sentence imposed by the Court in Tapolca in 2016. That sentence had two constituent elements. (1) The first was the imposition of 9 months custody for the offence committed on 7 February 2016 itself. (2) The second constituent element was the termination of the conditional release in relation to the 2006 offending. All of this is clearly explained in the EAW (15 October 2018) and Further Information (30 September 2019). That means that the 5 months 8 days, relating back to the 2006 offending, was being imposed through revocation (or activation) of the conditional release, in the light of the Appellant's breach of the conditions of that release.

14. What happened next was this. The Appellant himself did two things. (1) He unsuccessfully appealed against the sentence (with its two composite elements) imposed by the Tapolca Court. (2) He successfully applied to postpone the commencement of custody. Although the composite sentence of the Tapolca Court was upheld on the appeal, its start date was postponed by 3 months to commence on 14 December 2017. The District Judge found as a fact, and the formal documents from the Respondent expressly record, that the Appellant was present at Court in Hungary (13 September 2017) in relation to the matters he was pursuing following the imposition of the 2016 sentence. Having failed on his appeal, but having succeeded on his postponement application, the Appellant then left Hungary in November 2017 and came to the United Kingdom. Unsurprisingly, and unimpeachably, the District Judge found as a fact that the Appellant came here as a fugitive. (As I explained by reference to his non-appearance today, he is a fugitive once again.)

15. Mr Allen tells me that the point about lapse of time and 'staleness' of the 2006 offending was taken by Counsel for the Appellant before the District Judge. He accepts that it is not specifically addressed by the District Judge; and that the sequence which I have described, although it appears clearly from the documents, was not set out explicitly by the District Judge in the judgment.

16. In my judgment, once the circumstances are understood, it becomes clear that there is absolutely nothing in the points relating to delay since the 2006 offending. Indeed, to be fair to Mr Allen, he explained the key points in his submissions accompanying the Respondent's notice on 31 January 2020. The Appellant was extremely fortunate to elicit permission to appeal on 6 May 2020 (the more so perhaps given the circumstances described in his solicitors' email communication to the Court on 13 February 2020 by which point he had gone to ground). It is, in my judgment, impossible to treat the lapse of time since 2006 as having any material effect on the Article 8 analysis in this case. Mr Allen submits, and I accept, that the District Judge's Article 8 analysis in this case is, otherwise, plainly unimpeachable. That was also evidently the view of Jay J since it was only the 'lapse of time since 2006' point that troubled him and led to the grant of permission to appeal.

17. There are two reasons in my judgment why the lapse of time since 2006 cannot have any material effect on the Article 8 analysis in this case. Th`1e first is that the 2006

offending and its penal consequences became directly relevant in 2016 when they were 'rolled into' the composite sentence of the Tapolca Court. The trigger for that, and the reimposition of the 5 months 8 days, was the breach of the conditions on which the Appellant had been released. There was thus an appropriate, and current, Hungarian judicial response, to which this Court would inevitably in extradition proceedings give due respect. It was followed by the prompt pursuit of extradition. After the Appellant became a fugitive and come to the United Kingdom in November 2017, missing the postponed commencement date for his custody on 14 December 2017, the EAW was promptly pursued through its issue less than a year later on 15 October 2018. The Appellant was arrested on 25 August 2019 and everything that has happened since in these proceedings has been the consequence of his resisting extradition. Secondly, and in any event, a key part of the EAW, and indeed the longer of the two sentences (9 months), relates to the offence on 7 February 2016. That was pursued, as was the extradition in relation to it, properly and promptly. There is no basis at all, in my judgment, on which the passage of time since 2006 and the assault occasioning grievous bodily harm in the Hungarian detention facility could materially affect the article 8 analysis in either of the ways described in HH at paragraph 8(6): (i) it cannot serve materially to weaken the public interest in extradition; (ii) it cannot serve to increase the impact upon private and family life.

18. I have also asked myself the question whether, even if it could have either or both of those HH paragraph 8(6) consequences, there would be a basis for this Court overturning as 'wrong' the outcome in the present case. I am quite satisfied that, even on that basis, there is none. I do not propose in the circumstances to prolong this judgment by describing the relevant facts and considerations in the case. I repeat, the District Judge conducted an unimpeachable balancing exercise, including within it the requisite Celinski balance sheet, and there is no basis at all for overturning the judgment.

19. The appeal is dismissed.

29.10.20