Neutral Citation Number: [2021] EWHC 1363 (Admin)

Case No: CO/4499/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20th May 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

PAWEL OWCZARSKI	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co) for the **Appellant**
The **Respondent** did not appear and was not represented

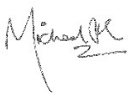
Hearing date: 20.5.21

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

MR JUSTICE FORDHAM :

1. The Appellant is aged 37 and is wanted for extradition to Poland. That is in conjunction with a conviction European Arrest Warrant (EAW) issued on 5 November 2019 and certified on 22 November 2019. The Appellant is required to serve 3 years 6 months custody in relation to criminal offences committed between September 2008 and January 2011 when he was aged 25 to 27. Extradition was ordered by DJ Jabbitt (the Judge) for the reasons set out in a judgment dated 4 December 2020, after an oral hearing on 10 November 2020. The application for permission to appeal on the familiar Wozniak/Chlabicz ground was stayed by Eady J on 22 March 2021 pending resolution of those test cases. For the same reasons I gave in Antoniewicz [2021] EWHC 1022 (Admin) at paragraph 5, I will similarly stay the application for permission to amend the appeal notice to add the Article 3 prison conditions ground in the Litwinczuk test cases, making the same order as set out at paragraph 15(1) to (3) of that judgment. The section 25 (injustice or oppression by reason of physical condition) ground of appeal refused by Eady J has not been renewed before me. What is left is the Article 8 ECHR ground, also refused permission by Eady J, which has.

2. Mr Hepburne Scott submits that it is reasonably arguable that this Court, 'stepping back' and considering the outcome (Love [2018] EWHC 172 (Admin) at paragraph 26), would conclude that it is 'wrong' for the Judge to have decided that extradition would be compatible with the Article 8 rights of the Appellant, his partner and/or her two daughters. The argument, as I see it, essentially runs as follows. The offences are old and relatively minor. The Appellant has been in the United Kingdom since 2011 and has a settled private life and now family life here. Although relatively recent (commencing around April 2019) he has a strong, deep and meaningful relationship with his partner here, and has established a strong bond with her two daughters now aged 4 and 12, during that 2-year period. He is in a particularly vulnerable position by reason of a need for ongoing surgery relating to a serious accident which took place in July 2018, in which he nearly lost fingers and as a result of which his hand is still not functioning properly and he needs further specialist treatment. He is also in a particularly vulnerable position so far as concerns any return to the United Kingdom given the Brexit uncertainty (see Antochi [2020] EWHC 3092 (Admin)), which the Judge rightly recognised meant that the "future prospect of his return is diminished". There has been a very long period of delay in this case which is a strong factor in the two familiar Article 8 respects: first, as tending to reduce the public interest in favour of extradition; secondly, as tending to strengthen the private and family life ties featuring as factors against extradition. Notwithstanding that the Judge found that the Appellant made a deliberate decision to leave Poland primarily because he knew he faced a substantial prison sentence, so that the delay is "principally his fault", there was no explicit adverse finding on fugitivity, and in any event the delay has not been explained and it stands as a strong feature against extradition. Having regard to the impact of extradition for all those affected, and in the light of all the circumstances of the case, extradition would be a disproportionate interference with the private or family life of one or more of those affected. For the purposes of today the threshold is merely one of reasonable arguability. That is the essence of the argument. As always, it was made by Mr Hepburne Scott with clarity and precision.

3. In my judgment, there is no realistic prospect that this Court at a substantive hearing would conclude that the evaluative outcome arrived at by the Judge was 'wrong' and that extradition would breach any Article 8 right or rights. The index offences were rightly described as not "particularly serious". But they are multiple offences committed by the Appellant in his late 20s. They were offences of criminal damage involving smashing windows: one offence in which the damage was £240 equivalent; and the other the smashing of a bus window where the damage was the equivalent of £509. And there were offences of supplying drugs (marijuana): one offence of the supply between June and September 2010 of marijuana of a value of £4,790 equivalent; another offence between November 2010 and January 2011 of supplying marijuana of a value of £2,395 equivalent. This offending was against the backcloth of a previous conviction for burglary for which a 6-months suspended custodial sentence had been imposed, which was subsequently activated for breach. The time to be served is 3 years 6 months custody. There are strong public interest considerations in favour of extradition. Like the Judge, I have considered the ongoing implications of the serious hand injury three years ago, and the advantages which the Appellant describes in having multiple surgery in the United Kingdom, and the disadvantages in new clinicians in Poland having to deal with his future needs. This is a factor which can be considered in the Article 8 balancing exercise. But it is also right to recognise that this is against the backcloth where section 25 (injustice/oppression by reason of health condition) ground has rightly been abandoned. There is an active presumption, not displaced, of suitable healthcare. In the nuanced evaluation of the passage of time for which Article 8 calls, the Judge's findings that the Appellant had "made a deliberate decision to leave Poland primarily because he knew that he faced a substantial prison sentence" and that the "delay is principally his fault" are relevant findings at which the Judge was unassailably entitled to arrive. As the Judge also found, the private life (and I will add family life) build-up in the United Kingdom had been against that backcloth and "with that knowledge". The relationship is relatively recent. It was 8 months old at the time of the Appellant's proof of evidence in December 2019, a point at which the Appellant and his partner were not living together but were seeing each other on a daily basis. They subsequently cohabited for a time, but this has not been able to continue on the evidence, I accept, because of the curfew conditions imposed in conjunction with the Appellant's bail. The Appellant has served 2 years on curfew. The impact of extradition is significant and will have serious implications for all four of the individuals affected. But the features which operate, in combination, against extradition are in my judgment – beyond reasonable argument – decisively outweighed by those which operate, in combination, in favour of extradition. Permission to appeal on the Article 8 ground is refused.

20.5.21