Neutral Citation Number: [2021] EWHC 3097 (Admin)

Case No: CO/1504/2018 & CO/1773/2019

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

1 Bridge Street
Manchester
M60 9DJ

19th November 2021

Before:

MR JUSTICE FORDHAM

- -

Between:

MILAN ORSOS	**Appellant**
- and –	
PECS DISTRICT COURT, HUNGARY	**Respondent**

- -
- -

Florence Iveson (instructed by Oracles Solicitors) for the **Appellant**
Amanda Bostock (instructed by CPS) for the **Respondent**

Hearing date: 10/11/21

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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

MR JUSTICE FORDHAM:

Introduction

1. This is an extradition appeal with the permission of Johnson J (26.8.21) in which the sole issue is whether the Appellant's extradition to Hungary on an accusation European Extradition Warrant (EAW2) is compatible with ECHR Article 8. The argument on behalf of the Appellant relies on the combined effect of six factors: (1) the Appellant's mental health and the risk of self-harm and suicide; (2) the period of qualifying remand which he has served in the UK; (3) the period of time spent on an electronically monitored curfew in the UK; (4) the passage of time; (5) the lack of expeditious pursuit by the Respondent; and (6) the relative lack of seriousness of the index offending. I shall return in due course to examine each of these features in turn. Four extradition warrants (which I shall be calling EAW1, EAW2, EAW3 and EAW4) feature in this case and I will come on to describe their subject-matter in due course.

Mode of hearing

2. The hearing was a fully remote hearing by way of Microsoft Teams. Counsel were satisfied, as am I, that that mode of hearing involved no prejudice to the interests of their clients. I was satisfied that a remote hearing was necessary and appropriate in the present case. The open justice principle was secured. The cause list published the case and its start time, the mode of hearing and an email address usable by any member of the press or public who wished to observe the hearing.

The procedural picture

3. The Appellant is aged 28 and is wanted for extradition to Hungary. The case has a complicated background and procedural history, which it will be necessary for me to unpack. The Appellant came to the UK in early 2016. His family had come several years earlier (one reference says 2010). He was arrested on 26 May 2016 for the purposes of extradition, on a Form A (issued on 22.2.16) which stood as the precursor to EAW1, and was released on conditional bail at that stage (26.5.16). On 5 September 2016 he was remanded in relation to an allegation of a criminal offence in this country and his extradition bail was revoked. On 18 October 2016 he was arrested on EAW2. No further action was taken in relation to the allegation of a criminal offence in this country and the Appellant was re-released on conditional bail on 16 January 2017. His extradition bail (after 26.5.16 and after 16.1.17) involved a tagged curfew for five hours per day (11pm-4am). Having failed to surrender on 12 April 2017 and absconded, he was rearrested on 6 March 2018 and remained on remand until granted bail on 7 September 2021, this time with no curfew.

4. The Appellant's extradition involved a first oral hearing in the magistrates' court in front of DJ Jabbitt on 9 March 2017 which concerned EAW1 and EAW2. That led to a judgment of DJ Jabbitt which was due to be handed down on 12 April 2017. In that judgment DJ Jabbitt rejected arguments based on Extradition Act 2003 section 21A (proportionality); Article 8 ECHR (private and family life); and section 25 (oppression by reason of mental health). At the date of proposed hand down (12.4.17) the Appellant failed to surrender and absconded. The hand down was deferred and took place on 7 March 2018, the day after his rearrest, and DJ Jabbitt ordered the Appellant's extradition on EAW1 and EAW2. An appeal to the High Court was lodged and

permission to appeal was granted on 2 May 2018 on Article 3 ECHR grounds (not argued before DJ Jabbitt) relating to prison conditions. After that, test cases on Article 3, prison conditions and Hungary made their way through the legal system, culminating in the Supreme Court decision in Zabalotnyi [2021] UKSC 14 on 30 April 2021. Article 3 has been abandoned.

5. The Appellant's extradition involved a further arrest (21 June 2018), and a second oral hearing on 18 April 2019 before DJ Snow, each of which related to EAW3. Four reports of a consultant psychiatrist Dr Satinder Sahota were relied on at the second oral hearing (these being dated 30.8.18, 17.12.18, 13.3.19 and 18.4.19). DJ Snow handed down judgment on 25 April 2019 ordering extradition on EAW3. In that judgment DJ Snow rejected arguments based on Article 3 ECHR; Article 8 ECHR; and section 25 (oppression by reason of mental health). A second appeal to the High Court was lodged.

6. The two appeals were joined and have been listed together. The Article 8 grounds of appeal, now relied on before me, were the subject of an application for permission to appeal, on amended grounds, made on 26 August 2021. Fresh evidence is put forward on both sides. On behalf of the Appellant, two further psychiatric reports by Dr Andrew Iles are relied on (dated 9.6.21 and 26.8.21). It is common ground that I should consider those materials – and the up to date picture – as to the substantive legal merits and, if (but not unless) capable of being decisive the Appellant's fresh evidence should be formally admitted. Documents constituting "Further Information" from or on behalf of the Respondent were placed before the Court (these were dated 1.8.18, 17.8.21, 3.9.21, 22.9.21, 2.11.21, 9.11.21), and there is a witness statement (dated 9.11.21) from an officer of the NCA and an untranslated copy of EAW4 (27.7.21). There is no opposition to the Court considering the further information which has emanated from the Respondent and both Counsel are to be commended for taking new information in their stride.

Background: 2008-2010

7. It is appropriate to recognise – as is recorded in the international conviction record for the Appellant – the series of offences committed by him in Hungary between 29 October 2008 (when he was aged 15) and 15 July 2010 (when he was aged 17), for which he was convicted and sentenced by the Hungarian criminal courts. That line of offences included: a robbery (aged 15), for which he was sentenced to 12 months custody suspended for 3 years; thefts and an assault occasioning grievous bodily harm (aged 15 and 16), for which he was sentenced to 7 months custody suspended for 2 years; battery, illegal entry with a weapon and theft (aged 16 and 17), for which he was sentenced to 16 months custody; theft of a motor vehicle (aged 16), for which he received 6 months custody; and assault occasioning grievous bodily harm causing life-threatening injury (aged 16), for which he was sentenced to 2 years 6 months custody. That was his record as a 15 to 17 year old. It was against that background that the Appellant was in prison in Hungary in January 2013 (aged 19).

29.1.13 (assault on a fellow prisoner): EAW3

8. On 29 January 2013 (aged 19) the Appellant committed an assault on a fellow prisoner whom he left with a broken jaw. Following trial – which he attended – he was convicted and sentenced. He launched an appeal which was unsuccessful and the sentence became final on 22 September 2015. The sentence was 2 years 8 months (32 months) custody.

The Appellant was due to surrender to prison on 5 January 2016. Instead, in early 2016 he came to the UK, aged 22. The assault on a fellow prisoner in respect of which he has been convicted and sentenced was in due course the subject of EAW3, a conviction warrant issued on 22 May 2018 and certified by the NCA on 12 June 2018. EAW3 post-dated the judgment of DJ Jabbitt and was the reason why there was a separate arrest (21 June 2018), a separate hearing in front of DJ Snow on 18 April 2019 culminating in DJ Snow's judgment handed down on 25 April 2019. The Appellant had been formally arrested on EAW3 on 21 June 2018.

30.5.15 (alleged theft and fraud): EAW1

9. EAW1 was issued on 15 June 2016 and certified on 2 August 2016. It was an accusation warrant relating to alleged offences of fraud and theft committed on 30 May 2015 when the Appellant was aged 22.

13.8.15 (alleged assault and affray): EAW2

10. EAW2 was issued on 14 July 2016 and certified on 15 September 2016. It too was an accusation warrant. It related to alleged offences of assault and affray committed on 13 August 2015 when the Appellant was aged 22.

Bail and remand

11. I have explained that the Appellant came to the UK in early 2016, that he was on conditional bail with a tagged-curfew (26.5.16-5.9.16), was remanded (5.9.16-16.1.17: 133 days), was on conditional bail with tagged-curfew (16.1.17-12.4.17), absconded (12.4.17-6.3.18), was remanded (6.3.18-7.9.21), and was on conditional bail without a curfew (7.9.21-present). The longest period of remand (6.3.18-7.9.21) included a period of 32 months (21.6.18-21.2.21) which – as was common ground – has served to extinguish EAW3, as I shall explain. When those 32 months (21.6.18-21.2.21) are deducted from the longest period of remand (6.3.18-7.9.21) what is left is 305 days.

EAW3 has been extinguished by qualifying remand (22.5.18-21.2.21)

12. Because the Appellant was formally arrested on EAW3 on 22 May 2018 and remained in custody 32 months later on 21 February 2021, what followed – as is common ground – is that he had served a period of qualifying remand amounting to the 32 months (2 years 8 months) for which he had been sentenced in relation to the assault on the fellow prisoner (29.1.13) which was the subject of EAW3. The Further Information (2.11.21 and 9.11.21) explains that, in these circumstances and for this reason, EAW3 was revoked on 27.10.21. The principle of extradition law under which qualifying remand reduces or extinguishes the time to serve under an EAW can be found discussed in the Luxembourg court's judgment in the case of JZ Case C-294/16 PPU (28.7.16) at §42. This has a number of consequences, as is common ground. (1) The Respondent cannot seek to extradite the Appellant in respect of EAW3, as ordered by DJ Snow, and a formal order of discharge of EAW3 is appropriately now to be made by this Court. (2) The 32 month custodial sentence is 'off the books': the Appellant cannot be required to serve this sentence or any part of it in Hungary. (3) The Appellant cannot rely on the remand between 22 May 2018 and 21 February 2021 as relevant qualifying remand to reduce or extinguish any other period of custody which he is required to serve in Hungary.

EAW1 was withdrawn: because of an 8 month custodial sentence

13. In relation to EAW1 (the alleged fraud and theft on 30.5.15), the Appellant was convicted in his absence in the Hungarian courts, and a sentence of 8 months custody was imposed. This became final on 2 April 2019. On that basis, EAW1 was withdrawn (2.4.19), revoked (30.4.19) and discharged (1.5.19). This was subsequently explained in Further Information (3.9.21) and the most recent witness statement (9.11.21). The rationale for this withdrawal was that an accusation EAW was inapt given that there was now a conviction and sentence. Acting under delegated powers, the Administrative Court lawyer made an order (30.4.19, sealed on 1.5.19) for the discharge of EAW1 under section 42.

EAW4 (regarding the 8 month custodial sentence) came and has gone

14. EAW4 was an extradition Arrest Warrant – which Ms Bostock tells me is the correct post-Brexit name – which was dated 27 July 2021. It was never certified and the Appellant was never arrested on it. EAW4 related to the 8 month custodial sentence arising out of the fraud and theft on 30.5.15. The Further Information (2.11.21) described it as a "valid EAW" reference number "7.Szv.240/2019" issued by the Prison Group of Courts Pecs. The witness statement (9.11.21) describes it as an "Annex Law 43 Warrant" which was "still live" but "has not been certified and is currently under review". Ms Bostock's skeleton argument (28.10.21) told me that EAW1 had been "replaced by a conviction warrant" on which the Appellant "has not yet been arrested". The Respondent's latest Further Information explains that the Respondent acceded to an invitation – first put by the CPS on 23 August 2021 – which had been put (again) on 29 October 2021. The invitation was to withdraw EAW4 on the basis that the further qualifying remand served by the Appellant served to extinguish the 8 months custody which were the subject of EAW4. It is clear from the latest Further Information (9.11.21) that this is what has now happened, on 9 November 2021, the day before the hearing in this Court.

Questions regarding EAW4 and 8 months remand

15. Ms Iveson for the Appellant invited me to adjourn the hearing of this appeal, so as to require further information from the Respondent. She described a concern as to whether there is sufficient clarity regarding whether the consequences of the withdrawal of EAW4 are that the 8 months custody is 'off the books' and the Appellant cannot in any circumstances be required to serve that period or any part of it in Hungary. She accepted that, if that matter were clear, it would follow that the Appellant would not be able to rely on the eight months of qualifying remand which had provided the basis for withdrawing EAW4. She also accepted that this was the only aspect regarding EAW4 and its withdrawal which was relevant to this Court's decision on this appeal, as to the proportionality of extradition in respect of EAW2. Ms Iveson submitted that the Court should adjourn part-heard, for further information from the Respondent. Her position, absent clarity as to 8 months being 'off the books' was that the Appellant ought to be permitted to rely, in relation to proportionality and EAW2, on the 8 months qualifying remand which is said by the Respondent to have been the reason for withdrawing EAW4. Ms Iveson made other points, in particular: that the Appellant has never been arrested on EAW4 and so has been unable to raise any issues relating to it; and that since EAW4 is based on trial in absence issues arise as to retrial rights. But Ms Iveson

accepted that the clarity issue was the only aspect which could make a difference to Article 8 proportionality on this appeal and that, if there were sufficient clarity, the 8 months said by the Respondent to be referable to withdrawal of EAW4 could not be relied on by the Appellant. I had to decide what to make of this, including whether to adjourn this appeal part-heard to allow information or further steps to be taken.

16. I have concluded as follows. I am quite satisfied that the materials provided to this Court by the Respondent make clear that the eight-month custodial sentence for the matters which were the subject of EAW1, and subsequently EAW4, are 'off the books'. There is no prospect of the Appellant being required to serve that custodial sentence or any part of it in Hungary. The sentence has been extinguished by a period of 8 months remand served in the UK. The position is in my judgment every bit as clear as it was and is in relation to the 32 months and EAW3. It follows from that conclusion, as Ms Iveson accepts that it would if the Court were to reach that conclusion, that the period of 8 months which has had that extinguishing effect cannot be relied on in this appeal for the purposes of Article 8 and proportionality and EAW2. The position is directly parallel to that which applies to the 32 months of qualifying remand which served to have the extinguishing effect in relation to EAW3. It also follows, as Ms Iveson accepts it would, that there is no further feature relating to EAW1 or EAW4 – including procedural matters relating to 'retrial' – which is legally relevant to the article 8 proportionality exercise in relation to EAW2, which is the sole exercise with which this Court on this appeal is concerned. That position having become clear, having heard the submissions of both Counsel, there was and is no justification for adjourning part-heard in order for some further information or further step to be taken. I can and should deal with the article 8 evaluative exercise on its legal merits.

EAW2 and the limitation period

17. In relation to EAW2 (the alleged assault and affray on 13.8.15) it had been recognised – and stated on the face of EAW2 itself – that the Hungarian limitation period would be due to expire on 13 July 2021. Any such expiry would rule out prosecution for those alleged offences. However, the subsequent further information (22.9.21) explains that action taken in Hungary on 9 July 2021 by the police had the effect of extending the limitation period, so that a prosecution can in fact still take place.

The basis for permission to appeal

18. It is helpful at this stage to focus on the reasons given by Johnson J when granting permission to appeal on Article 8 ECHR grounds on 2 October 2021. He considered it arguable that various features in the case relied on by the Appellant rendered extradition disproportionate for the purposes of Article 8. In particular, he identified three unanswered points. The first point was the fact that the 32 months of qualifying remand between 22 May 2018 and 21 February 2021 (arguably) served to extinguish the 32 months custodial sentence in relation to EAW3. That point stands vindicated. The second point was the fact that the 305 days of further qualifying remand would (arguably) further serve to extinguish the 8 months custody imposed in relation to the fraud and theft which were the subject of EAW1. To that point can be added the fact that EAW1 was in any event withdrawn. The third point was the fact that on the face of EAW2 the limitation period for prosecution had been due to expire on 13 July 2021 and (arguably) had now expired. That point stands answered by the Further Information

(22.9.21), subsequently filed with the Court, explaining that action taken (9.7.21) had served to extend the limitation period so that prosecution in relation to the EAW2 matters remains possible. The combination of these points, together with the Respondent's failure to take the opportunity to file (by 17.9.21) a substantive response to the Appellant's application for permission to amend the grounds of appeal, has particular significance in Johnson J's grant of permission to appeal. Having said that, I am satisfied that the points advanced before me under the rubric of Article 8 fall within the scope of the permission to appeal and need to be considered on their legal merits.

The six features relied on

19. I have set the scene in some detail. I can now return to identify the six features on which the Appellant relies, and which I identified at the start of this judgment, as being the basis of the Article 8 ECHR argument.

20. First, mental health. On this feature of the case, reliance is placed on the fresh evidence in the form of the two reports of Dr Iles, alongside the four reports of Dr Sahota which were before DJ Snow. Ms Iveson for the Appellant does not submit that the thresholds applicable to section 25 (oppression on grounds of mental health) or Article 3 ECHR (inhuman or degrading treatment or punishment) are crossed. It is appropriate to have in mind that DJ Jabbitt's judgment dealt with section 25 (oppression by reason of mental health) and Article 8, and that DJ Snow's judgment dealt with those topics and Dr Sahota's evidence. Ms Iveson accepts that this is not a case in which there can be said to have been any dramatic worsening as to mental health condition or harm related to mental health condition, nor as to the impact of extradition in those respects. She submits, and I accept, that what DJ Snow accurately encapsulated in relation to mental health – and which Dr Iles confirms is still the case – needs now to be considered in the context of an Article 8 balancing exercise which weighs this factor against all the considerations, as they are now. DJ Snow's encapsulation was as follows. The Appellant "is at most at moderate risk of suicide if he is extradited … because he will be separated from his family"; that extradition is "likely to lead to an increased risk 'in frequency and severity of self-harm behaviour which could lead to more serious physical harm'"; that his "condition has apparently been long-standing"; and that he has been "imprisoned in Hungary previously" and "there is no evidence that the Hungarian authorities failed to treat his condition appropriately". Dr Iles expresses this opinion: that the Appellant "poses a high risk of repeated self-harm"; that "it appears that he uses self-injury as maladaptive strategies to manage and modulate his emotions and in order to elicit care"; that "this is a reinforced and rehearsed pattern"; that it is anticipated that "there will be further episodes of the same whilst he remains in prison custody"; that "the situation is volatile and changeable as is demonstrated by occasions when he is seen in between emotional crises when he appears happy and stable"; that "the risk of suicide is … less than the risk of self-harm", although "there have been times when he has disclosed the wish to die"; that "if he is to remain in prison custody it is likely to perpetuate his mental health symptoms and risk of self-harm, although there are health services in prison to mitigate these risks"; and that "one of the most significant concerns about him remaining in prison is the isolation from his family".

21. Secondly, qualifying remand. On this feature of the case, reliance is placed by Ms Iveson on two periods, identifiable from the complicated sequence of events with which I have dealt above. The first of Ms Iveson's qualifying remand periods is the 305 days

arising from taking the remand between 6 March 2018 and 7 September 2021 and subtracting the 32 months (21.6.18-21.2.21) which served to extinguish EAW3. As to that, for reasons which I have already given, I accept Ms Bostock's submission that a further 8 months must be subtracted as serving to extinguish the 8 months custody in respect of EAW4 and the matters which were the subject of EAW1. The relevant first period is therefore around 65 days. The second period of qualifying remand relied on by Ms Iveson, and accepted by Ms Bostock, is the period of 133 days between 5 September 2016 and 16 January 2017 when the Appellant was on remand in relation to the allegation of a criminal offence committed in the UK (an allegation which was not subsequently proceeded with). Ms Iveson submitted, and Ms Bostock accepted, that this 133 days constitutes qualifying remand – or alternatively requires in fairness to be treated as qualifying remand – in relation to EAW2. The reason is this: during that period the Appellant was on "dual remand", remanded both (a) in relation to his arrest on suspicion of committing the offence in the UK (which was not subsequently proceeded with) but also (b) for the purposes of extradition. During the period of "dual remand" his extradition bail was formally revoked. The answer to the question 'what is his status in the extradition proceedings?' was 'he is on remand'. All of that was common ground. In those circumstances the relevant credit for qualifying remand – operating in the way discussed in the JZ case – is 198 days.

22. At this point I interpose the following. After the hearing in the present case (on 10 November 2021), and after I had written and circulated this judgment in draft (on 12 November 2021), I came to deal with another case called Marosan v Romania [2021] EWHC 3098 (Admin) (heard on 16 November 2021). What emerged was that what was in issue in Marosan was the "dual remand" point, described in the previous paragraph of this judgment, which had been the subject of agreement in the present case. In Marosan that issue squarely arose, for determination by the Court on contested argument, and I proceeded to consider and determine it (see Marosan at §15). I announced the outcome in open court with reasons to follow (see §3), and my judgment in that case explains why I concluded that this species of "dual" remand (see §§1, 19iii) does constitute qualifying remand (see §24).

23. Thirdly, electronically monitored curfew. On this feature of the case, Ms Iveson relies on the period of conditional bail with tagged-curfew, from 27 May 2016 to 5 September 2016 and from 16 January 2017 to 12 April 2017. That is a period of some six months. The tagged-curfew was a five-hour curfew (11pm-4am). It was not the 'qualifying curfew' (which in relation to sentencing in this jurisdiction would lead to half-credit) which featured as a factor in Toleikis v Lithuania [2015] EWHC 904 (Admin) at §§10, 23-24. Ms Iveson submits that it is nevertheless a species of "time served on curfew" which can be "a factor" whose "weight depends on all the circumstances": Toleikis at §24.

24. Fourthly, passage of time. In circumstances where EAW3 has been withdrawn as extinguished by the 32 months of qualifying remand (between 22.5.18 and 21.2.21), where EAW1 was withdrawn because of the 8 month custodial sentence, and where EAW4 has been withdrawn as extinguished by 8 months of qualifying remand, the focus is on EAW2. Ms Iveson relies on the passage of time between 13 August 2015 – the date of the alleged assault and affray which are the subject of EAW2 – and the present time. She emphasises that the alleged offending was more than 6 years ago. She has reminded me in her written submissions of Lady Hale's well-known explanation in

HH v Italy [2012] UKSC 25 at §8 about how the passage of time has two consequences relevant for the Article 8 balancing exercise. One is that the passage of time tends to weaken the public interest considerations in favour of extradition. The other is that the passage of time tends to strengthen the individual's ties with the United Kingdom. Those, she submits, are relevant factors to weigh in the Article 8 ECHR balance.

25. Fifthly, the Respondent's lack of expedition. On this feature of the case, which is linked to the passage of time, Ms Iveson again relies on the circumstances relating to EAW2. She accepts that the limitation period, which was due to expire on 13 July 2021, did not expire (as Johnson J, on the materials then before the Court, thought it arguably had). That was because of action taken by the Respondent on 9 July 2021. Her submission is that this single and last minute step indicates a lack of urgency and lack of expedition on the part of the Respondent, which serves as a factor to undermine the public interest considerations in favour of extradition. This is linked to Lady Hale's first consequence, and the passage in the same judgment in HH at §46 about a sequence of events which "does not suggest any urgency about bringing the appellant to justice". Ms Iveson says that there is no evidence that, in relation to the EAW2 matters, the Hungarian authorities took any other act, to get (or towards getting) 'trial ready'. She contrasts the way in which the Hungarian authorities pressed on with trial, conviction and sentence in relation to EAW1.

26. Sixthly, seriousness of the offending. On this feature of the case, Ms Iveson submits that the alleged assault and affray on 13 August 2015, although not trivial, was not the most serious of offending. On this point, EAW2 records that the maximum sentence in Hungary is 4 years 6 months, and gives the following description of the allegation (I have substituted letters instead of names; B is the Appellant):

> ***X filed a report against A, B and juvenile C, who, acting jointly and being aware of one another's activity, assaulted X and her daughter Y on 13 August 2015, between 10am and 10:30am in the common yard of the condominium located at [an address in] Pecs. A hit Y several times in her face, back and upper body, while juvenile C kicked X once in her leg. Subsequently B hit X once in her stomach and hit Y twice in her face.***
>
> ***As a result of the above assault, Y suffered minor injuries healing within less than eight days, wherefore she filed a legally effective private motion against B on 3 September 2015. The violent and blatantly anti-social conduct of B was suitable to incite indignation in others.***

Both Counsel made submissions – each accepting that the exercise is of some, but limited, assistance – about how this offence would be likely to be dealt with in England and Wales, if the Appellant were convicted, having regard to the sentencing guideline for affray (with its maximum 3 year sentence). Ms Iveson submits that this would be likely to be a starting point of 26 weeks. Ms Bostock submits that there are both (i) "targeting of individual(s) by a group" and (ii) "serious fear/distress caused", meaning a starting point of two years; or alternatively a starting point of one year based on one of these two features if not the other. Ms Bostock points out that the sentencing guideline starting point is based on an individual of previous good character, and there would be the strongly aggravating factor of the Appellant's previous convictions including the assault on the fellow prisoner in January 2013, in respect of which the Appellant was pursuing an appeal at the time of the assault and affray. In relation to likely sentence in Hungary, Ms Iveson says that, after deducting the relevant qualifying credit, the Appellant would be being extradited to face a "very short sentence", meaning "months" and not "years", and "maybe up to 12 months". Ms Bostock says that this

Court can be "confident" as to the inevitability of immediate custody, and as to the likelihood of a sentence "substantially in excess of ten months".

Discussion

27. The question is whether extradition of the Appellant on EAW2 is disproportionate in Article 8 terms, having regard to the weighing of these six features and their cumulative effect, alongside the other features of the case. Extradition on EAW2 was dealt with by Jabbitt J in a judgment written in April 2017 and I accept that it is appropriate in this case for this Court to consider all the evidence and the submissions, looking at the up to date picture.

28. In my judgment, the features relied on by Ms Iveson on behalf of the Appellant, viewed individually and in combination, are clearly and decisively outweighed by the public interest considerations in favour of extradition. Ms Bostock submits that extradition is in all the circumstances proportionate, where the qualifying remand is the 198 days (65 days plus 133 days); but she submits in the alternative that extradition would still be proportionate, even if the qualifying remand were Ms Iveson's 438 days (305 days plus 133 days). I accept both of those submissions.

29. Starting with the impact of the qualifying remand, alongside the seriousness of the offence, I cannot accept Ms Iveson's submission that the Appellant would be being extradited to Hungary to face "a very short sentence", if convicted of the assault and affray which is the subject of EAW2. What is alleged is a group attack, where the Appellant violently assaulted both victims: he hit the mother (X) in the stomach and he twice hit the daughter (Y) in the face. It was in broad daylight. There was some physical injury. The nature of the culpability would I think be likely to justify a 12 month starting point were there a conviction and sentence in this jurisdiction. Then there is the serious aggravation of the previous convictions, including multiple offences of violence which I identified as relevant background near the start of this judgment, and Ms Bostock's characterisation of "prolific" prior offending is apt. I referred to the previous custodial sentences for: grievous bodily harm; battery; and grievous bodily harm causing life-threatening injury. In addition to these, there was the punching of a fellow cell-mate (breaking their jaw) which was still under appeal at the time of the index assault and affray, for which the Appellant received 32 months custody. I cannot accept that it is likely that the Appellant's sentence in Hungary, against the background of his previous violent offending, would be less than say 18 months custody, and I think it could well be significantly higher than that. All of this is, of course, for the Hungarian authorities. But this offence alleged is of real seriousness. And there is a strong and substantial public interest in him being extradited: to face trial (involving considerations of justice and vindication for the victims of crime); and to serve the balance (after deduction for qualifying remand) of any custodial sentence imposed.

30. As to the passage of time, and the suggestion of lack of expedition, in my judgment the features identified by Lady Hale in HH at paragraph 8 have limited weight in the context and circumstances of the present case. Importantly, the Appellant came to the United Kingdom in early 2016 as a fugitive. It is common ground that this Court should not go behind DJ Jabbitt's finding of "insufficient information to find whether or not [the Appellant] left Hungary knowing the proceeding in EAW2 had started". The focus for this appeal is on EAW2. However, DJ Jabbit found as a fact that the Appellant left

Hungary knowing about the matters which were the subject of EAW1, and knowing that they had not concluded. Moreover, it is very clear that the Appellant left Hungary knowing about the 32 months custodial sentence in relation to EAW3: he was present at trial and had pursued an unsuccessful appeal. DJ Snow unimpeachably found him to be a fugitive. The fact that EAW3, referable to that 32 month custodial sentence, was subsequently extinguished on 21 February 2021 through the serving of 32 months qualifying remand in the UK, does not undermine the weight attributable to the Appellant's fugitivity, when considering the passage of time. That fugitivity also informs the 'safe haven' public interest consideration in support of extradition. There are other features, in response to the context of the Appellant's invocation of the passage of time. These include that the Appellant failed to surrender and absconded in April 2017 when DJ Jabbitt was poised to order his extradition, and was unlawfully at large here until rearrested in March 2018. Ms Bostock persuasively submits that EAW2 has involved expeditious action by the Respondent: the alleged offending was 13 August 2015 and EAW2 was issued on 14 July 2016. It is unsurprising that extension of a limitation period should be triggered when it is about to expire. The Hungarian authorities cannot be criticised for not proceeding by trial in absence in relation to the EAW2 matters, just because they did so in relation to the EAW1 matters. The Appellant had put himself beyond the reach of Hungarian justice by coming to the UK in early 2016, and again by absconding in April 2017. Moreover, the passage of time has to be seen in the context of an Article 3 prison conditions point – recognised in May 2018 when permission to appeal was granted and only finally resolved in April 2021 – during which time the Respondent could not, by reason of pending test cases, secure the Appellant's extradition. Although the Appellant joined family here, they having come several years earlier, he has had limited time living with family: having been on remand between September 2016 and January 2017, having absconded in April 2017, and having been again on remand between March 2018 and September 2021. The tagged-curfew, of some six months, would not be a qualifying curfew and is a factor of some weight, but not substantial weight, in the circumstances of this case.

31. What remains is the evidence relating to the Appellant's mental health condition and difficulties, including the many incidents of self-harm and the assessed risks of future self-harm and relating to suicide. This is a feature of relevance and significance for Article 8 purposes, albeit falling far short of the thresholds for Article 3 (inhuman or degrading treatment or punishment) or section 25 (oppression on grounds of mental health). The Appellant has experienced incarceration in Hungary, and a long period of incarceration in this country. It cannot be said, on the evidence before the Court, that there is an absence of the treatment and support for his mental health condition; nor (as DJ Snow found) that the Hungarian authorities failed to treat his condition appropriately. The exacerbating feature of separation from family needs to be seen against the backcloth of the separation which arose when family members came to the United Kingdom several years before the Appellant did, and the separation which has arisen from his long periods of incarceration. The evidence relating to mental health conditions and vulnerabilities, and the impact of extradition in these respects, does not – including in combination with other features which can count in the balance against extradition – come close, in my judgment, to outweighing the weighty public interest considerations in favour of extradition.

Conclusion

32. In my judgment, the strong public interest considerations in favour of extradition decisively outweigh those which are capable of weighing against it, including the cumulative effect of the six features emphasised on behalf of the Appellant. I will – as invited by Ms Bostock – make an order discharging the Appellant in respect of EAW3. I have recorded in this judgment that the Respondent has made clear, to this Court's satisfaction, that the Appellant cannot be required to serve the 32 months custody (EAW3), or the 8 months custody (EAW1 and EAW4). Having seen a confidential draft of this judgment the parties were agreed that it would be appropriate for my Order to record in a recital, as it will, that the Appellant has served 198 days of qualifying remand which is applicable (for the purposes of Article 26 of the Framework Decision) in relation to any sentence imposed for EAW2. But for the reasons I have given, the appeal against the order for extradition on EAW2 is dismissed. Finally, it having proved incapable of being decisive, I formally refuse the Appellant permission to rely on the fresh evidence on which he sought to rely.