Neutral Citation Number: [2021] EWHC 896 (Admin)

Case No: CO/3707/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14th April 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

SEBASTIAN MALINOWSKI	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

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

Hearing date: 14.4.21

Judgment as delivered in open court at the hearing

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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

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. On 26 February 2021, dealing with the matter on the papers, Johnson J did two things. First, he granted a stay with directions of the Appellant's application for permission to appeal on the section 2/Article 6 ECHR points raised in the well-known linked cases of Wozniak and Chlabicz, which a Divisional Court is due to hear next month (May 2021). Secondly, Johnson J refused permission to appeal on the remaining grounds: section 14 (passage of time) and Article 8 ECHR. The renewed application for permission to appeal before me today concerns Article 8 only, section 14 not being pursued.

2. The Appellant is aged 40 and is wanted for extradition to Poland. That is in conjunction with two EAWs (European Arrest Warrants). The first (EAW1) was issued on 11 April 2007, certified on 19 December 2014, and subsequently amended on 28 January 2016. EAW1 is a conviction warrant relating to a 3 year custodial sentence imposed on 6 May 2004 and upheld on appeal on 16 December 2004. The offences to which that 3 year sentence relates involved a burglary of a dwelling and theft of a car in April 1998 and a robbery in September 2002. The second warrant (EAW2) was issued on 17 August 2010 and certified on 23 December 2014. It is an accusation warrant. It relates to five offences allegedly committed by the Appellant. They are as follows. First, the supply of class B drugs on dates between 2001 and 2005. Secondly, a robbery with violence in January 2005. Thirdly, a blackmail with violence in 2005. Fourthly, a further offence of blackmail in 2005. Fifthly, an offence of drink-driving also in 2005. Extradition was ordered by District Judge Griffiths on 12 October 2020 following an oral hearing.

3. The mode of hearing today was by BT conference call. The Respondent had indicated to the Court that it would not be participating in this hearing. The Appellant's legal representatives requested a remote hearing, rather than an in-person hearing in Court. Mr Hepburne Scott for the Appellant was satisfied, as am I, that a remote hearing – by means of BT conference call – involved no prejudice to the interests of his client. By having a remote hearing, in what we all hope are the latter stages of the pandemic and national restrictions but where a precautionary approach it is still being encouraged wherever possible, we eliminated any risk to any person from having to travel to a court room or be present in one. The open justice principle was secured. The case and its start time were published in the cause list. Also published was an email address usable by any member of the press or public who wished to observe this public hearing. That facility has been used. All that any person needed to do to observe the hearing was send an email and then make a telephone call. The hearing was recorded and this ruling will be released in the public domain. I am satisfied that the mode of hearing was justified and appropriate.

4. The Article 8 argument advanced before me in writing and orally today, in essence, is as follows. This Court only needs to be satisfied that the ground is reasonably arguable. The Appellant has been in the United Kingdom, having come here with his partner, since 2011: that is, 10 years. He has established an employment record in this country and has no United Kingdom convictions. As Mr Hepburne Scott put it the Court can in effect treat him as being crime free since about April 2005 and thus having rehabilitated himself. He has strong family relationships with his partner and their (now 8 year old) son who was born here in December 2012. Although they were separated for a time prior to the Appellant's arrest in December 2019, they were subsequently reconciled and when bailed in May 2020 the Appellant was released to reside with his partner and

their son. Although found by the District Judge to be a fugitive in relation to EAW1, the Appellant was not found to be a fugitive in relation to EAW2. The partner and son are reliant on the Appellant, not only in terms of the personal and family relationships and support, but also for financial support. The impact on the 8 year old son, in particular, will be serious – as Mr Hepburne Scott put it in writing "devastating". There is a significant period of unexplained delay in this case, between the dates of the offences and the EAWs in particular, and a significant lapse of time since the EAWs were issued. That delay properly stands to be characterised as "culpable" but in any event has the dual effect described by Lady Hale in HH [2012] UKSC 25 at paragraph 8: as tending to reduce the weight of the public interest in favour of extradition and as tending to increase the weight of the private and family life implications of extradition. It is relevant that the Appellant served a six-month period of qualifying remand between his arrest in December 2019 and his bail in May 2020. Overall, extradition is arguably a violation of Article 8 and the District Judge's evaluation and/or conclusion were arguably wrong. As always Mr Hepburne Scott has put his submissions in writing and orally with precision, realism and conciseness.

5. Johnson J concluded that it was not arguable that the District Judge should have found that extradition in this case would be incompatible with Article 8. I agree. In my judgment, there is no realistic prospect that this Court would allow this appeal, overturning the outcome arrived at by the District Judge in the familiar balancing exercise required by Article 8 and the authorities. In my judgment, the District Judge's conclusion was plainly right. There are strong public interest considerations in this case in favour of extradition, and they remain powerful notwithstanding the lapse of time. The underlying offending which is the subject of the accusation warrant EAW2, and the offending which is the subject of the conviction warrant EAW1 (together with the 3 year custodial sentence), are all plainly serious matters. The period of time remaining to be served in relation to the conviction warrant, taking into account the period of qualifying remand served, remains significant. The Appellant has been found to be a fugitive in relation to EAW1. That conclusion, as the District Judge rightly recognised, itself limits the force of the submission that the Applicant was not then found to be a fugitive in relation to the later EAW2. The fact is that the Appellant had already deliberately put himself out of the reach of the judicial authorities: the Appellant left Poland a matter of months after he was due to begin serving his 3 year sentence. He left in breach of his obligations and in the knowledge that he was due to serve that sentence of imprisonment. The subsequent lapse of time and the roots that have been placed down in the United Kingdom, with the partner and child, need to be seen in that context. Although I accept that the Appellant's conviction free since 2005, and that is a factor which weighs in the balance, it is also relevant that the Appellant gave false details when arrested in December 2019, in an attempt to evade the process. There is, in my judgment beyond argument, no obvious or culpable delay by the judicial authorities in this case; but still less delay of such a character and attracting such weight as to support a finding a breach of Article 8, including when put alongside the other factors that can be said to weigh against extradition. Notwithstanding the close relationship between the Appellant and his son and the reconciliation and cohabiting relationship as a family, and the strong and very well established relationship between the Appellant and his partner, it is relevant that there was a time when they lived separately. Although substantial weight is to be given to the emotional distress which extradition will inevitably bring for all 3 of them, and in particular that which will be suffered by the 8 year old son and by the Appellant's partner who are innocent third parties, this –

including when considered in conjunction with the other factors weighing against extradition – cannot outweigh the strong public interest considerations in favour of extradition. This is not a sole carer case. All of these matters were carefully considered and evaluated and balanced by the District judge. It is relevant, as the Respondent has pointed out, that no psychiatric evidence was adduced in the present case. There was no error of approach by the District Judge. But even if I posit this Court conducting the balancing exercise afresh, I see no realistic prospect of this Court coming to the opposite conclusion and holding that extradition in this case would be unjustified and disproportionate in Article 8 terms. I therefore refuse permission to appeal on the Article 8 ground.

14.4.21