Neutral Citation Number: [2021] EWHC 917 (Admin)

Case No: CO/4177/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15th April 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

KRZYSZTOF BIZON	**Appellant**
- and -	
CIRCUIT COURT IN KATOWICE, POLAND	**Respondent**

- -
- -

Martin Henley (instructed by AM International Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 15.4.21

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.

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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. The Appellant is aged 36 and is wanted for extradition to Poland. That is in conjunction with a conviction EAW (European Arrest Warrant) issued on 10 December 2019 and certified on 17 December 2019. The warrant relates to a conviction and 4 year prison sentence imposed by the Polish court on 2 February 2018 in proceedings in which the Appellant participated and was legally represented. That conviction and sentence were upheld on appeal on 9 August 2018. The Appellant was due to begin serving his sentence on 5 December 2018. He launched a review in Poland against the decision which was rejected in January 2020. He was arrested on 27 January 2020 and was on remand until bailed on 3 June 2020. The Polish conviction which is the subject of the EAW relates to a 'historical' complaint of rape, an offence which took place on 26/27 August 2006 when the Appellant was 21. The details of the criminal conduct, which the Appellant has denied throughout and continues to deny, are as follows in the EAW: "On the night of 26-27 August 2006 in Bierun [the Appellant] used violence against [the victim] by pushing her into a basement room, removing her clothes, hitting her on the head with a stone, pushing her to the floor and, with his hand over her mouth and was threatening to kill her, penetrated her vagina, mouth and anus with his penis. This caused multiple injuries of bruising and skin abrasions as well as swelling to the scalp which lasted no more than 7 days". Extradition was ordered by District Judge Zani on 10 November 2020 following an oral hearing at which the Appellant gave evidence and was cross examined. On 26 February 2021 Johnson J granted a stay in relation to an application for permission to appeal based on the well-known Wozniak/Chlabicz section 2/Article 6 ECHR point, due to be heard by a Divisional Court in those linked cases next month. Johnson J refused permission to appeal on an Article 8 ECHR ground. It is that Article 8 ground which is renewed before me at this hearing, and the question for me is whether the Article 8 ground of appeal is reasonably arguable.

2. The mode of hearing was Microsoft Teams. The Respondent indicated to the Court that it did not intend to participate in this hearing, having filed a Respondent's Notice (together with an application for an extension of time). The Appellant's team sought a remote hearing in the context of the pandemic, and asked that the mode of hearing be by Microsoft Teams to facilitate the Appellant's ability to observe the hearing from his home address where he is on bail. Mr Henley was satisfied, as am I, that a remote hearing by MS Teams involved no prejudice to the interests of the Appellant. In-person hearings are taking place the present stage of the pandemic and the present stage as to national restrictions, but there remain good reasons for taking a precautionary approach carefully considering each individual case. That is what has been done in the present case. By having a remote hearing we eliminated any risk to any person, whether associated with the parties or a member of the public or member of the press, in 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 public or press who wished to observe this hearing. I am satisfied that the mode of hearing was justified and appropriate in the circumstances. The hearing was recorded and this ruling will be released in the public domain.

3. The Article 8 argument has been advanced in writing and orally by Mr Henley, with conspicuous thoroughness. Its essence, as I see it, is as follows (I leave aside a specific

point as to credibility, with which I will deal separately). Mr Henley submits as follows. This is a classic case where the appeal does not principally turn on any specific failing as to law or fact, but rather where the appeal Court can and should 'stand back' and re-evaluate the overall outcome and, having done so, should conclude that the decision on Article 8 is wrong. Although the conviction and sentence are relatively recent (February 2018) and although the EAW is recent (December 2019), a very important feature of this case is that they relate to a 'historical' offence, involving a previous sexual partner, which is alleged to have taken place in August 2006 (15 years ago), and which the Appellant has always strenuously denied. Although rape is always serious, and though this Court cannot, and should not, go behind the conviction in the Polish court, it is relevant – and should in the same way be respected – that this offence attracted a four year sentence, and not a longer one. The Appellant has served 4 months of qualifying remand. He and his partner have a 14 year relationship, and they have been married since December 2008. They have two daughters born in September 2011 in Poland (now aged 9) and in November 2014 in the UK (now aged 6), both settled and in school here. The Appellant has been in the UK since January 2013, has been in employment and has no convictions here. His wife and the oldest daughter (then aged 1½) joined him here in April 2013, and they have lived here together at a stable address, openly, ever since. They came here – as Mr Henley put it today – openly and lawfully, as a family. There is therefore long-term presence in the United Kingdom, and private life and family life are clearly engaged and would seriously be interfered with if the Appellant were extradited to Poland. The Appellant is not a fugitive, as the District Judge rightly found. He engaged with the Polish legal process throughout. He made appropriate protective arrangements to return to Poland for interview and was given permission having done so to return to the United Kingdom. The District Judge inaptly referred to a public interest consideration as to avoiding use of the UK as a "safe haven", given the position on non-fugitivity, and in all the circumstances, including where the Appellant was cooperating and maintaining his innocence. The daughters are very well established in the United Kingdom. Their mum has medical issues and there will be significant hardship to the family if the Appellant is extradited. There are strong character references, which Mr Henley has emphasised at today's hearing, to which the District Judge did not make express reference. There is the serious problem as to whether the Appellant would be allowed to return to the United Kingdom, as a consequence of Brexit, which means separation from family could be for a much longer period. The Home Office declined to allow the sentence to be served in the United Kingdom, which Mr Henley says is something that the Polish authorities for their part can be taken to have supported. Overall, the District Judge was "wrong" to find that extradition would not be a disproportionate interference with the Appellant's and his family's Article 8 rights, and it is reasonably arguable that this Court would come to the opposite conclusion.

4. I will return to the overall evaluation, but there is (as I have indicated) a discrete point about credibility, with which I will deal separately now. Mr Henley says the District Judge's adverse credibility finding on one aspect was unjustified. He has helpfully taken me through the relevant passages in the judgment and in the Appellants proof of evidence. The District Judge did not accept that the Appellant had believed, as at one point he had claimed in his oral evidence, that a clemency application had succeeded when a cash security was returned in June 2019; he knew – as had been reflected in his proof of evidence and as he corrected when pressed in cross-examination – that it had not succeeded and in fact he believed it was pending. Mr Henley criticises the way the

judge dealt with this point, in a passage which appears to attribute the rejected belief to the proof of evidence. Mr Henley submits that the District Judge ought not to have concluded and recorded a finding that the Appellant was not "a completely truthful witness", and ought not later to have recorded "some serious reservations about some of the evidence given by [the Appellant]". There is nothing in this point. The position is clear when the judgment is read as a whole, and there was no material error or arguably impeachable finding. The adverse conclusion was limited (the Appellant was not a "completely" truthful witness). It did not prevent the District Judge's finding of non-fugitivity (despite "some serious reservations"). It related to a claim which was made orally by the appellant at the hearing before the District Judge , and was squarely a matter for evaluation by the District Judge. The attack on what the District Judge said on this point, even were it sustainable, would not begin to be a basis for overturning the Article 8 evaluation. The Article 8 assessment did not in any way turn on this point. There is no general adverse finding as to credibility and no adverse factual finding features in the Article 8 balancing assessment. Having dealt with that discrete point, I will return to the Article 8 assessment and balancing exercise, in the light of all of the other points made by Mr Henley.

5. In my judgment, it is not reasonably arguable that the District Judge was wrong in concluding that extradition in this case would not breach the Article 8 rights of the Appellant or any member of the family. In my judgment, none of the points advanced by Mr Henley whether considered each on their merits or whether considered in combination, give rise to a realistic prospect that this Court - standing back and evaluating the outcome - would conclude that extradition is incompatible with Article 8. Although the Appellant is not a fugitive, there are nevertheless strong public interest considerations in favour of granting extradition. The reference to a "safe haven" was not linked by the District Judge to fugitivity. The District Judge recorded expressly as a factor in favour of refusing extradition that the Appellant "not to be treated as a fugitive from Polish justice". The District Judge referred to a safe haven in stating: "it is very important for the UK to be seen to be upholding its international extradition obligations. The UK is not to be considered a 'safe haven' for those sought by other Convention countries either to stand trial or to serve a prison sentence". The "safe haven" reference was part of an observation entirely appropriately made about resisting extradition and accountability. The District Judge did not weigh in the balancing exercise the sort of "safe haven" consideration, with its greater weight, that arises in a case where the individual is a fugitive. The offence in respect of which the Appellant has been convicted and sentenced is, as Mr Henley has rightly accepted, very serious. The 4 year sentence is itself reflective of the seriousness and itself engages the strength of the public interest considerations in favour of extradition. Although settled in the UK since 2013 with employment and fixed accommodation, living as a family with his wife and two young daughters and providing substantial financial and emotional support to his family, having lived an open and law-abiding life here, and notwithstanding the hardship that will be caused to the Appellant and his wife and their two daughters, the balance comes down decisively in favour of extradition. The District Judge considered and balanced all the relevant considerations, and Mr Henley was right not to seek to identify any particular feature as having been left been left out of account. In my judgment, the District Judge plainly had in mind all of the evidence, including for example the character references, and it is not reasonably arguable that anything of materiality was excluded from the balance or anything of immateriality was included within it. The District Judge recognised that the Appellant's wife had worked on a part-

time basis and that it could reasonably be anticipated that she would be able to make any necessary applications for further state benefits in addition to those currently received, were the Appellant extradited. It is relevant that the wife has settled status, as Mr Henley has emphasised. It is also right to recognise, alongside the other facts and circumstances of the case, that the two children are Polish nationals and speak Polish. The District Judge also observed that there are extended family members in the United Kingdom who could assist.

6. Ultimately, the fundamental difficulty in my judgment is this. Even if I take the most favourable approach to the appellant court's function, and posit this Court considering afresh the striking of the Article 8 balance in this case – with credibility and truthfulness treated as entirely accepted, having regard to the character references emphasised by Mr Henley, and having regard to the Brexit implications to which he has referred, and having regard to all of the other matters which he has emphasised – I can still see no realistic prospect that this Court at a substantive appeal would interfere with the outcome. Put another way, the outcome arrived at by the District Judge is, in my judgment and beyond reasonable argument, correct. In those circumstances, and grateful that I am as always to Mr Henley for the care and thoroughness of the assistance he has given the Court, the renewed application for permission to appeal on the Article 8 ground is refused.

15.4.21