



Neutral Citation Number: [2022] EWHC 2630 (Admin)

Case No: CO/4045/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 October 2022

Before:

SIR ROSS CRANSTON
(Sitting as a judge of the High Court)

Between:

PATRYCJUSZ BERNACKI

Appellant

- and -

THE REGIONAL COURT IN SLUPSK, POLAND

Respondent

NATASHA DRAYCOTT (instructed by **CPR Extradition Unit**) for the **Appellant**
DAVID BALL (instructed by **Lawrence & Co**) for the **Respondent**

Hearing date: 5 October 2022

Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10.30am on 19 October 2022

SIR ROSS CRANSTON:

1. This is an appeal against the decision of District Judge Bouch made on 10 October 2019 to order his extradition to Poland. That was pursuant to a conviction European Arrest Warrant (“EAW”) issued by the Judicial Authority on 24 July 2015 and certified by the National Crime Agency on 21 September 2019. The appeal has been delayed, partly because it was stayed behind the lead case on whether Poland was a valid judicial authority, *Wozniak v The Circuit Court in Gniezno, Poland* [2021] EWHC 2557 (Admin), and partly because of matters relating to the medical condition of the Appellant and his family.

The EAW

2. The EAW states the Appellant was born in Poland in 1979. The basis of the warrant is said to be a judgment of the District Court in Slupsk dated 12 October 2010, which became final on 13 January 2011. The EAW then sets out that the Appellant has been sentenced to 2 years’ imprisonment. He appeared at his trial.
3. Box E of the warrant explains that the conviction relates to nine offences, namely, that between September and October 2008, in various places in Poland, the Appellant broke into the fuel tanks of various trucks and vehicles and stole “heavy oil” from them. On each occasion he would steal between 100 to 300 litres. Three hundred litres of the oil were said to cost approximately PLN 1,200 at the time. The District Judge concluded that this meant that the total value of loss to the victims was in the sterling equivalent at the time some £1942.00.
4. The EAW also explains that the Appellant committed these thefts within 5 years of having been imprisoned for a similar offence: on 7 September 2001 he had been sentenced to 4 years’ imprisonment for theft, which he served between 26 October 2000 and 4 February 2004.
5. The Appellant was originally wanted under a “mixed” (conviction and accusation) European Arrest Warrant dated July 2014. Under this warrant he was wanted to stand trial for fraud as well as to serve a sentence of two years for theft. This mixed warrant was withdrawn on in July 2015 and re-issued without the accusation matter. Thus we have the conviction warrant of 24 July 2015 which gave rise to the extradition order of the District Judge currently under appeal.

Further Information

6. The Further Information from the Polish court dated 31 May 2019 explains that in the previous accusation matter the Appellant had been prohibited from leaving Poland, or being issued with travel documents, and had to inform the authorities of any change of residence. As well it states that although he signed a document on 21 January 2009, in which he confirmed that he knew of his obligations, in breach of these he left Poland by bus to the UK. In further breach of his obligations he failed to inform the authorities about his change of residence.

7. The Further Information (“FI”) also sets out how the Appellant went abroad without the permission of the Polish court and of the probation officer who was supervising him. On 31 January 2011, after he had left, his lawyer applied for the sentence of imprisonment to be stayed. On 4 April 2011 the Regional Court agreed to adjourn execution of the sentence for 3 months. The FI states that a probation officer reported that the Appellant had made contact by telephone from (the Appellant said) Holland where he said he was working. In early 2012 the Appellant again applied for the sentence to be stayed. Again the court adjourned service of the sentence. But, the FI states, the Appellant failed to appear at prison, as he was obliged to in early 2012. When he applied for the sentence to be amended to a conditional sentence, that was refused. He failed to attend prison as required in June 2012. Consequently, on 13 July 2012, as the FI explains, wanted notices were issued and a search initiated. In mid-2014 the Regional Court in Slupsk issued an EAW because of information that the Appellant was in Holland or the UK.
8. When the Appellant came to the United Kingdom he changed his name to Marcin Rosiak, with a date of birth in 1982.
9. The Appellant was finally arrested after he committed a minor theft here in early January 2019. He entered a guilty plea on 12 February 2019 and was fined £60 with a victim surcharge of £30. He was arrested later that day under the mixed EAW. In the run up to the extradition hearing he was arrested under the reissued conviction EAW.

The extradition proceedings

10. The initial hearing in the extradition proceedings was held on 13 February 2019 and set down for an extradition hearing, It was adjourned on a number of occasions but finally heard later that year.
11. After his arrest February 2019, the Appellant was on remand until released on bail on 27 March 2020. He has been on an electronically monitored curfew from 10pm-2am since then. The Polish authorities will credit the period on remand to the 2 year sentence, so that he has still to serve approximately 10 months and 15 days. It is in the discretion of the Polish courts as to how they will take into account the electronic monitoring.
12. Before the District Judge the sole bar to extradition raised was article 8 of the European Convention on Human Rights, in particular what was said to be the devastating impact that extradition would have on the daughter of the Appellant’s partner. There was also the emotional (and financial) implications for his partner and some concern about his own mental health. There was less concern with the partner’s son but his position was also raised.
13. In his evidence before the District Judge, the Appellant said that he came to the UK in spring 2011 (although he had been here previously) and was aware of the matters in the EAW. He asserted that, when released from the police station in Poland, he was not aware of any conditions, he was not prohibited from leaving the country, and he understood it to be a suspended sentence. When he discovered that it was not a suspended sentence he did not want to return to Poland. He started to use a different name to avoid arrest.

14. The Appellant told the District Judge that he had been in a relationship with MT for approximately 5 years. She had two children, a girl AK, born in October 2003 and then 16 years old, and a boy, OK, born in 2007 and then 14 years old. He had a new life in this country. When he met MT AK was 11 and OK was 6. He had a strong relationship with AK and was like a father to her.
15. MT's evidence was that life had been hard bringing up the children after their biological father left in 2009. AK had mental health problems since her father left and did not want to see the children. She had real difficulties with her daughter, but the Appellant had become a father to her. The Appellant had not told her about the Polish authorities wanting him.
16. Medical evidence was a strong part of the Appellant's case. First was the evidence of Dr Adam McLaughlin, a registered clinical psychologist. He had prepared two reports, a main report dated 10 July 2019 and an addendum report dated 14 August 2019. In them he opined that MT was suffering severe depression alongside moderate levels of anxiety. Were the Appellant's extradition to go ahead, her ability to care for her children's emotional well-being would be further compromised, at a time when the children's emotional needs would be elevated. She was struggling to manage her daughter's complex emotional and behavioural needs. She also had debts (loans and a credit card) and that was a burden and she struggled.
17. As to AK, who was 16 years old at the time, Dr McLaughlin said that she and her mother had a volatile relationship and AK had a history of running away and going missing. There was self-harm and drug abuse. There was a high risk of sexual exploitation. AK disclosed a historical suicide attempt, substantiated in her medical records. Since the Appellant's arrest, her mood had significantly deteriorated to a degree that she rarely left the house. Her mental health had become significantly more difficult for her since the arrest. Should the Appellant be extradited she may use more substances and by doing so whilst feeling extremely low. There was a risk of suicide, either accidental or otherwise, which would mark a significant impact upon her when she was currently presenting as extremely depressed.
18. In the addendum report of 14 August 2019, Dr McLaughlin reiterated the likelihood of a further significant deterioration in AK's condition should the Appellant be extradited. She continued to report suicidal ideation and the level of risk she presented to herself would be greatly heightened in the event of losing AK. Those concerns remained in the context of historical self-harm, suicidal thinking, current depressive symptomatology, and alcohol and substance misuse, all of which increased risks. She was unable to approach her mother; conversely, she felt that the Appellant did support her adequately.
19. Also before the District Judge was a report by Dr Marius Dreyer, a consultant psychiatrist dated 19 May 2019. He recorded that the Appellant told him that, whilst in prison in Poland, he tried to hang himself but was stopped. For one and-a-half months he refused to talk until his mother visited and persuaded him to behave normally. He was given psychiatric drugs and treated in a psychiatric hospital for 3 months. When imprisoned on remand here, on 3 April 2019 he was on ACCT ("Assessment, Care in Custody and Teamwork") for suicide prevention. He had a moderate depressive disorder as well as adjustment disorder. If the Appellant were

extradited, Dr Dreyer commented, it was likely that his mental state would deteriorate and he could become suicidal.

The judgment of the District Judge

20. The District Judge examined the expert evidence at length. She was critical of Dr McLaughlin's evidence. As regards MT he had opined on her depression, but there was nothing to note in MT's medical records about psychological difficulties. As well, Dr McLaughlin had omitted analysis of the four years MT had coped with the children after her abusive former partner had left.
21. As to AK, Dr McLaughlin had failed to analyse the work which had been undertaken with her by the body, Healthy Minds, and by school counselling. Indeed, Healthy Minds painted a different picture of AK. Given the failure to analyse how such services could mitigate the serious concerns about AK's health, she would attach little weight to the conclusion in his reports about the risks to AK. However, the District Judge accepted that AK had struggled with her mental health for several years and that she had taken an overdose in January 2019. She would miss the Appellant were he to be extradited, adding that she did not underestimate the distress this would cause AK. As regards OK, the District Judge was satisfied that support was available for him should it be required.
22. Turning to the Appellant, the District Judge commented that the Polish authorities managed him appropriately when he was in prison previously, and there was no evidence that they would not be able to manage any current concerns. There was nothing in the medical records of HMP Wandsworth, where he was being detained, to suggest that he currently presented a suicide risk. As to MT, there was no evidence she was seeking assistance or medication for depression from her GP. It was to her credit that she had raised her children, while working, for some 14 years. MT had not been frank about the support she had from friends, but it was clear that she could call on their support and could access agencies currently engaged with the family.
23. Regarding the Appellant, the District Judge concluded that he was a fugitive and had assumed a false name in the United Kingdom to avoid detection. He established his family life in the knowledge that he was required to serve this sentence in Poland. Any delay in the case was attributable to his putting himself outside of the jurisdiction of the authorities.
24. The District Judge set out the factors favouring and against extradition in accordance with the approach in *Polish Judicial Authorities v Celinski* [2015] EWHC 1274 (Admin). Apart from the public interest factors favouring extradition were the following: the offences, while not the most serious, could not be described as trivial and were aggravated by previous, similar offending; there was the sentence he had still to serve; he was a fugitive and had established his life in the knowledge he had to serve the sentence; his step-children were in the care of their mother, and there was support for them from others; his medical condition could be put to the Polish authorities; and he had a conviction in the UK for theft.

25. Against extradition was his settled life in the UK with the partner and step-children; there would be an emotional impact on all of them; he had physical and mental health issues, but she was satisfied the Polish authorities could meet them; his partner had ongoing health problems, but she was currently working and could also claim benefits; and they relied on his income, but her income from work and benefits would enable them to manage.
26. In her conclusions on Article 8, the District Judge said that there was nothing to suggest that the impact of extradition on the Appellant and his family was of such a level that the court ought not to uphold the UK's extradition obligations. There would be emotional and financial hardship, but that was almost always the case with extradition. She was satisfied that there was support available for MT and the children, that the family would be able to manage financially, and that friends and agencies would be there to meet their needs. She was also satisfied that the Polish authorities would meet the Appellant's medical needs.

The permission hearing, February 2020, and fresh evidence

27. The appellant appealed. Swift J refused permission on the papers.
28. At the renewal hearing on 11 February 2020 Lewis J gave permission to appeal. There was fresh evidence which he admitted. In a witness statement, MT explained that since the District Judge's decision, she had been struck by a vehicle, knocking her off her bicycle and causing injury to her leg. The family's financial position had worsened. AK had been diagnosed with ADHD. The Appellant in his addition proof repeated his concerns about his stepchildren and his health. He described feeling constantly depressed and anxious.
29. Apart from additional witness statements from the Appellant and MT, there was a second addendum report from Dr McLaughlin dated 5 February 2020, and an addendum psychiatric report of Dr Dreyer dated 31 January 2020.
30. Dr McLaughlin's second addendum report explained that the bicycle accident had given rise to what he described in MT as symptoms of post-traumatic stress disorder. That was relevant, he said, since prior to her accident MT's emotional stability was a concern, and it appeared that these additional difficulties marked a significant deterioration in her mental health. He was concerned that should the court extradite the Appellant the risk MT may pose to herself might increase. The significant decline in MT's mental health was a concern in respect of her ability to meet the emotional needs of her children, in particular AK.
31. As to AK, Dr McLaughlin expressed the view that the Appellant's extradition would re-trigger historical trauma for AK, who had lost her birth father through similar circumstance. Her levels of anxiety had significantly increased since the District Judge's decision. There was also evidence that AK's depression, as described in his previous report, had worsened.
32. Dr Dreyer's addendum report dated 31 January 2020 indicated that the Appellant appeared very depressed, and that he had stated that if he were sent back to Poland he would kill himself. He said that he had lost hope and his appetite, and he thought a great deal about suicide. The Appellant told Dr Dreyer that he had lost the ability to

concentrate. Dr McLaughlin concluded that the Appellant had experienced a major depressive episode.

Dr Turton's May 2022 report

33. In advance of the substantive appeal in May 2022, there was a report dated 4 May 2022 prepared by Dr Emily Turton, a clinical psychologist.
34. In her report, Dr Turton stated that the Appellant had told him that when he left Poland in 2011, he was not aware that he needed to serve a sentence or was wanted by the police and was not prevented from leaving Poland. He also said that MT had paid off the £8000 loan that MT and he had taken out to restart their lives.
35. When asked how things have been since 2020, the Appellant explained to Dr Turton that his mood and AK's mood were much better. He commented: "Everything is good with me and my family. My daughter was struggling with her peers before, her ADHD got worse when I was in prison, she had silly ideas such as the attempted suicide. Since I was released, she seems to have improved and is taking less medication now."
36. Dr Turton states how the Appellant completed several brief self-report measures for psychological distress, including the CORE-10, which is a ten-item assessment for assessing this. The Appellant had a score of 26, which indicated severe psychological distress. On the PHQ-9 - a 9-item scale assessing symptoms of depression – he attained a score of 18 points, indicating moderately severe depression. Functionally, he stated that he found it extremely difficult to perform life tasks due to his symptoms. As to the GAD-7, a 7-item scale assessing symptoms of anxiety, he attained a score of 16, indicating severe anxiety.
37. Dr Turton then turned to MT. She appeared to be experiencing low mood and anxiety, linked to the possible extradition of the Appellant. It was likely that if he were extradited this would trigger feelings of abandonment and associated hopelessness, anxiety, and depression, and may be re-traumatising given her previous partner went to prison and subsequently left the family. Dr Turton opined that it was possible that MT may develop suicidal ideation. However, given her focus on the need to care for her children, it was unlikely (but not impossible) that she would act on this. She relied on the Appellant for emotional and financial support, so his departure would likely lead to difficulty coping in both respects.
38. Dr Turton recalled the previous evidence about AK before reporting her own evaluation. She completed several brief self-report measures for psychological distress. On the CORE-10 AK had a score of 26 which indicated severe psychological distress, and on the PHQ-9 she attained a score of 21 points, indicating severe depression. Functionally, she stated that she found it extremely difficult to perform life tasks due to her symptoms. As to the GAD-7 she attained a score of 16, indicating severe anxiety.
39. In the report, Dr Turton recorded that AK had told her that although she had had a bad relationship with her mother, and although her mother still got under her skin, it was a bit better than in the past, ever since she had stopped hanging around with her friends and had stopped getting into trouble. At that point she was working a couple of times

a week in the kitchens of one of her mother's friends, although it seems that she subsequently lost that employment. AK also told Dr Turton that the ADHD diagnosis was helpful since it explained for her why she had said or done certain things.

40. AK recalled to Dr Turton that she had self-harmed on one occasion aged 14 by cutting herself. It didn't help her feel better, so she did not do it again. She told Dr Turton that she did not currently self-harm, but sometimes thought of hurting herself. She had said "sometimes I think I am not good enough, so think I should hurt myself". When Dr Turton asked her how she would hurt herself she had said "I don't know, maybe I would take drugs."

Dr Thakkar's report

41. The appeal hearing was listed for 11 May 2022 but was adjourned the day before when the Appellant was reported to have had a psychotic episode in which he attempted to harm himself with a knife. He was admitted to a Psychiatric Clinical Decisions Unit. The representation order was extended yet again to allow for preparation of a further report. That was dated 7 September 2022 and prepared by Dr Thakkar, a consultant forensic psychiatrist.
42. Dr Thakkar took the Appellant's history. As regards his forensic history the Appellant denied he had any offending in this country and expressed surprise at the recording of a theft in 2019. He accepted that he committed the 9 thefts of oil, but he said that was 23 years ago and he was surprised when the EAW was made.
43. Dr Thakkar then summarised the Appellant's experience in the Psychiatric Clinical Decisions Unit in May. That was that he was settled and stable on the ward and slept well. He engaged with staff in an appropriate manner. He reported that he wanted to be in the UK to support his partner and children. He described that he was struggling with his mental health. He reported that he wanted to die due to feeling broken. He had taken a knife to harm himself. He described feeling stressed and anxious and being out of zone. He told the Mental Health Team that he stole some petrol and he had served time in Poland. He described how he had made a life in the UK, owning a car cleaning company. He wanted to live and wanted help. During the admission, he stated that he had felt like he had had suicidal thoughts ongoing all the time. He also "crashed his car twice in two days". He was described as very upset and distressed. He was prescribed Zopiclone 3.75 mg. He was discharged. The Unit noted that no new mental health needs were identified. No risks were noted.
44. Dr Thakkar then turned to his assessment of the Appellant. That was that he was suffering from an adjustment reaction secondary to his extradition and had developed depressive symptoms including hopelessness and suicidal thoughts. It was not of a nature or degree that required treatment in hospital. In his view the Appellant had stress response syndrome, a short-term condition caused by the difficulty managing with, or adjusting to, a particular source of stress, but that had become severe enough that he has started to develop symptoms of depression such as suicidal thinking or behaviour.
45. In Dr Thakkar's opinion, the Appellant's mental health had deteriorated after he heard the news of his extradition, and it would remain a significant factor in his presentation. In his view, if the Appellant did not face this possibility of extradition,

he would have remained stable in his mental health. It was likely that if he were extradited his risk of self-harm and suicide would increase significantly. He would need close monitoring and supervision during this time.

Fresh evidence for 5 October 2022 appeal hearing

46. There was an additional statement from the Appellant dated 26 September 2022, served on Friday 29 September. The Appellant stated that he was concerned how the family would cope in his absence since he was the only member with an income at present with his car cleaning firm. MT had lost her job a few weeks previously. He had applied for settled status but his application had not yet been considered. He was scared that if extradited he would not be able to return. MT had been given a council property and had been able to move there in May 2022, although the property had required a lot of work. He added that AK's mental health seemed more stable in his presence, but he was worried that if he were extradited, she could revert to her old behaviour.
47. On the eve of the appeal hearing additional evidence was filed. First was a statement from MT, about how on the 3 October 2022 the Appellant started crying, took something from the car and disappeared. She tried to call him on his mobile but there was no response. She called a friend, who soon arrived. Sometime later the friend and the Appellant returned, and the friend took the Appellant to the Psychiatric Clinical Decisions Unit where he had been the previous May.
48. Second, there is a statement from the friend, who runs an advice bureau for the local Polish community. He states that he discovered the Appellant in a nearby park and saw him from a distance standing by a tree with his arms above his head, holding a rope. He took the Appellant to the Unit.
49. Following the hearing medical notes from the Unit became available. The Appellant was admitted and kept there overnight. The Unit's team state that their initial impression was that the Appellant was not suffering with a long-term medical disorder but presenting as a risk to himself, due to reactive low mood as a result of the ongoing court case. The Appellant had requested medicine to deal with his anxiety and was prescribed medication. The Unit's medical notes state that he was insightful and stated that he knew he could access the services again if he received bad news from the court. He also stated that he could not end his life by suicide due to the distress that it would cause his family. He was happy to be discharged home to his wife and children. He denied suicidal thoughts and intent and wished to be supported by family.
50. The Appellant is described by the Unit's medical notes as having fleeting thoughts of suicide due to current stressors, no current thoughts or intent to end his life. The Unit state that a negative outcome of the case was a factor that may trigger the exacerbation of risk to self. Protective factors were described as a stable relationship with children, his friends, his willingness to work with services, and his employment.

The Appeal

51. It was common ground that the appeal turned on the material now before the court. Lewis J had admitted the fresh evidence under *Hungary v Fenyvesi* [2009] EWHC

231 (Admin) in granting permission to appeal. At the time this was primarily the addendum reports of Dr McLaughlin and Dr Dreyer. Since then there is additional evidence, principally from Dr Turton, Dr Thakkar and the Psychiatric Clinical Decisions Unit, all of which I have considered de bene esse.

The Appellant's case

52. The Appellant's case is that this fresh evidence would have resulted in the District Judge answering the Article 8 question differently such that she would have been required to order his discharge: Extradition Act 2003, s.27(2), (4). Conducting the Article 8 balancing exercise anew on the basis of the fresh evidence would lead to the conclusion that the Appellant's extradition would represent a disproportionate interference with his and his family's right to a private and family life when applying the leading authorities of *Norris v Government of United States of America* [2010] UKSC 9, *HH and PH v Deputy Prosecutor of the Italian Republic, Genoa: F-K (FC) v Judicial Authority* [2012] UKSC 25, and *Polish Judicial Authorities v Celinski* [2015] EWHC 1274 (Admin).
53. For the Appellant Ms Draycott majored on the psychological evidence. First, there was the impact of extradition on the Appellant himself. He had a history of mental health issues and had previously attempted suicide in prison in Poland, where he was treated in a psychiatric hospital for three months. Dr Turton noted that the Appellant suffered from severe psychological distress, moderately severe depression, and severe anxiety. Then on 10 May 2022 he was admitted to the Psychiatric Clinical Decisions Unit when he tried to harm himself with a knife prior to his appeal hearing, which was consequently adjourned. Dr Thakkar's psychiatric report dated early September states that the Appellant told him that he crashed his car twice in two days and opines that, if extradited, the Appellant's risk of self-harm and suicide would increase significantly. In his proof of evidence dated 26 September 2022 the Appellant explains that his mental health has deteriorated and that he is regularly having suicidal thoughts.
54. Then on the eve of the appeal hearing there was his admission again to the Psychiatric Clinical Decisions Unit. Ms Draycott submitted that the Appellant's mental health and well-being were inextricably linked to the extradition proceedings. The Unit's medical notes describe the Appellant as fluctuating between suicidal thoughts and a desire to protect his family. They state that a negative outcome in relation to his appeal may trigger the exacerbation of risk to self. Ms Draycott submitted that the Appellant's recent behaviour, suicidal thoughts, and risk of self-harm, combined with the other factors, made his extradition a disproportionate interference with his and his family's right to a private and family life pursuant to Article 8 ECHR.
55. Among the other factors Ms Draycott identified was the position of MT, with whom the Appellant had been in a relationship for eight years, and the close relationship he had with her two children, her daughter AK, and her son OK. As to MT herself, she was suffering from low mood and anxiety, and Dr Turton's opinion was that the Appellant's extradition would lead her to struggle both emotionally and financially.
56. As regards AK, Ms Draycott pointed to her history of mental health issues. She had suffered from severe psychological distress and severe depression and anxiety. She was diagnosed with ADHD in 2019 and had also reported an autism diagnosis. Her mental health deteriorated significantly when the Appellant was in custody. There was

a real risk that her condition would worsen if the Appellant was returned to Poland. She was reported to be an extremely vulnerable child, largely reliant on the Appellant for her emotional well-being. The Appellant had taken his role as a stepfather extremely seriously and had made his relationship with his partner and her children a priority. He has been a very stabilising influence in their lives and the period during which he was remanded in custody caused them a great deal of suffering.

57. In addition to this evidence about the impact of extradition on the Appellant's and on the family's mental (and financial) health, Ms Draycott made three additional points. First there was the time the Appellant had spent on remand, so that the District Judge was wrong to have placed in the balance the 2 years sentence rather than the 10 months and 15 days remaining to be served. Quite apart from that was the two years and six months he had now spent on electronic curfew. Secondly, Ms Draycott submitted that the offences for which the Appellant was sought took place fourteen years ago and were at the relatively minor end of the offending scale, the total value of the thefts being some £2000. Finally, there was the difficulty which the Appellant would face in returning to the UK following Brexit.

Discussion

58. In my view the District Judge would not have been required to order the Appellant's discharge if considering the Article 8 balancing exercise in the light of the fresh evidence. In other words, the fresh evidence would not have resulted in her deciding that the Appellant's extradition would represent a disproportionate interference with his and the family's right to a private and family life.
59. First to be considered is the impact that extradition will have on the Appellant's own mental health. At the time she made the extradition order, the District Judge did not accept that the Appellant presented a suicide risk, despite the evidence of Dr Dreyer. Now we have Dr Thakkar's report last month, where he opines that it was likely that if the Appellant were extradited his risk of self-harm and suicide would increase significantly and he would need close monitoring and supervision. Against that, Mr Ball for the Respondent rightly cautions about the unreliability of some of the Appellant's own reporting. Contrary to what he had earlier accepted, he told Dr Turton that when he left Poland for the second time he was not aware that he needed to serve a sentence and there was what he must have known was a false claim that he had not been convicted of theft in the UK.
60. There is also what happened on his admission to the Psychiatric Clinical Decisions Unit in May 2022 and then earlier this month, both admissions on the eve of the hearing of his appeal in this court. His May 2022 admission led to his discharge with no risks to self and after having been described as settled and stable. On his recent admission he is described as having fleeting thoughts of suicide due to current stressors but stated that he would not commit suicide because of the stress to his family.
61. Compared with the situation when the District Judge considered the case, we now have a more nuanced picture of the Appellant's mental health. There must be a concern about the psychological impact which extradition might have on the Appellant. In my view, however, there is nothing in the current evidence which in the *Celinski* balance would require the District Judge to order the Appellant's discharge.

In any event, the District Judge rightly noted the presumption that Poland would manage the situation. As she also observed, the Appellant had served a previous 4 year sentence in Poland and on his account when he had mental health issues the prison authorities had managed it by sending him to the psychiatric unit and prescribing medication.

62. Then there is the position of AK, which at the hearing before the District Judge was advanced as a weighty factor against extradition. Albeit that there must still be a real concern about the impact of the Appellant's extradition on AK, there are positive developments in her situation. First, she is now an adult, 19 years old, no longer the 16-year-old, rather immature teenager she was at the time of the hearing before the District Judge. Secondly, Dr Turton's report is not the same gloomy picture as painted by Dr McLaughlin. She informed Dr Turton that she is no longer associating with those who had previously been a bad influence on her. Moreover, her self-harming turns out to be one occasion when she was 14 years old which, as she made clear to Dr Turton, she had never repeated. Thirdly, on her own account her formal diagnosis of ADHD has been helpful since she now better understands her own behaviour. As Mr Ball submits, it also means that the prospect of her receiving the necessary psychological support and interventions has significantly increased because professionals know the areas where she needs support. Overall, AK appears to be in a much more stable position than she was when extradition was ordered.
63. There is then MT and the family generally. As to MT, there can be no denying that extradition will have an adverse emotional and financial impact. However, as Mr Ball rightly submits, there is some consolation in the positive developments since extradition was ordered. First, the family have paid off their debts, which were described in the reports of Dr McLaughlin as a significant stressor. Secondly, the Appellant reported in his Addendum witness statement that the family have recently been granted a home through the local authority.
64. As to the three points Ms Draycott made, I am not persuaded that they mean that the District Judge would have decided the question before her as to the Appellant's Article 8 rights differently. It is the case that given the period the Appellant spent on remand here he no longer faces a 2 year sentence. However, the time left to serve, over 10 months is significant; this is not anywhere near the threshold in *Molik v Poland* [2020] EWHC 2836 (Admin) and the other cases cited there where the situation has become 'remand time served.' Secondly, the offending did occur long ago. However, the Appellant is a fugitive. Before the District Judge he accepted that he knew that it was likely that he would have to serve the sentence and agreed that he should have sorted it out. Instead, he ran away and changed his name to avoid doing so. Thirdly, the Appellant has not advanced the implications of Brexit for his case such that it can be a determining feature in this appeal: *Merticariu v Romania* [2022] EWHC 1507 (Admin), [55]-[57].

Conclusion

65. Extradition frequently leads to hardship, including emotional distress for the requested person and emotional (and financial) distress for the requested person's family. That will be the result of dismissing the appeal in this case. However, for the reasons given in the judgment hardship is not of itself sufficient to prevent extradition from taking place.

66. The appeal is dismissed.