Neutral Citation Number: [2022] EWHC 2913 (Admin)

Case No: CO/1541/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/11/2022

Before :

MR JUSTICE JULIAN KNOWLES

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Between :

DANIEL OWCZAREK	**Appellant**
- and –	
POLISH JUDICIAL AUTHORITY	**Respondent**

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- -

George Hepburne Scott (instructed by **Bark & Co Solicitors**) for the **Appellant**
Stefan Hyman (instructed by **CPS**) for the **Respondent**

Hearing date: **9 November 2022**

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APPROVED JUDGMENT

Mr Justice Julian Knowles:

Introduction

1. This is an appeal with the permission of Bourne J under Part 1 of the Extradition Act 2003 (EA 2003) against the order dated 26 April 2022 for the Appellant's extradition to Poland for an offence involving the forging of a cheque in the sum (then) equivalent to about £80. The offence was committed in 2003. The Appellant forged his mother's signature on the cheque, which was made out to cash. The Appellant says he spent the money on groceries. His mother reported him to the police and he admitted the offence on arrest. The European arrest warrant was issued in Poland in July 2014 and certified by the NCA in December 2014.

2. The single ground of appeal is that District Judge Coleman who heard the case on 20 July 2015 was wrong to conclude that the Appellant's extradition would constitute a proportionate interference to his right to respect for his private life and so in breach of Article 8(1) of the European Convention on Human Rights.

3. A number of matters are common ground. Firstly, the Appellant was originally sentenced to a suspended sentence of two years imprisonment with conditions including probation supervision. He breached those conditions and the sentence was activated. Second, he is a fugitive, having knowingly left Poland in breach of his sentence conditions and knowing his sentence had been activated (or was going to be). Third, he did not attend the extradition hearing before the district judge, who proceeded in his absence. Whilst there was a proof of evidence, as the district judge noted, what the Appellant said in it was not tested in cross-examination. Fourth, it was not until 2022 that the Appellant was arrested for failing to attend the extradition hearing. He was sentenced to a period of imprisonment, which he has now served. Fifth, the Appellant does not have a family and so his right to family life under Article 8(1) is not engaged. The suggested interference is to the private life he has established in the UK since his arrival here, which he says was in 2005.

The district judge's judgment

4. The district judge set out the factual background. She said that the Appellant had made a conscious decision not to attend the hearing and that it was in the interests of justice to proceed. She said it was clear from Further Information from the Respondent that the Appellant was a fugitive, and his own proof confirmed he had left Poland because he knew his sentence was going to be activated. She said that the Appellant had come to the UK in 2005; had established a life here; and that he had asked for a re-suspension of his sentence but had never heard back from the Polish authorities. The sentence was activated and he was summonsed to prison in 2006. A domestic Polish warrant was issued in 2007 but the Appellant could not be found. Information that he was in the UK emerged in 2014.

5. The district judge found as a fact that the Appellant was a fugitive, and therefore that he could not rely on the delay bar in s 14 of the EA 2003. She then went on

to direct herself on Article 8 by reference to *Norris v Government of the USA (No 2)* [2010] 2 AC 487; *H(H) v Italy Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338; and *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551. She said that the factors in favour of extradition included that the Appellant is a fugitive and has two years of imprisonment to serve, and had committed offences in the UK during his time here. As against extradition, she said that they included that he had been in the UK for 10 years, was in employment and was well-regarded by his employer. She noted the absence of any children or family members and held that extradition would not be disproportionate.

Submissions

6. On behalf of the Appellant Mr Hepburne Scott said that the judge's Article 8 conclusion was wrong in that: nearly 20 years had passed since the offence; the offence was minor; it was committed out of desperation; and he now had a settled private life in the UK (albeit no family life). He pointed out that being a fugitive did not bar reliance on Article 8, and pointed to *FK*, one of the cases decided with *H(H)*, where the appellant had been a fugitive but the appeal was allowed on Article 8 grounds (although the facts were obviously different). He also relied on Brexit uncertainty if the Appellant were to be extradited: he had come to the UK pre-Brexit, when there had been free movement within the EU, but might not now be entitled return because of his conviction and prison sentence.

7. On behalf of the Respondent, Mr Hyman accepted that notwithstanding the Appellant was a fugitive, he was entitled to rely in principle on the passage of time since his offence and conviction in support of his Article 8 argument. Nonetheless, Mr Hyman said that given his fugitivity, it carried little weight; moreover, the Appellant had been directly responsible for a large amount of the delay by absconding between 2015 and 2022 (as well as fleeing Poland); there was no tested evidence about the impact of extradition on him (because he had not given evidence); and there was no evidence about what, if any, impact Brexit might have upon him and his ability to return to the UK following completion of his sentence.

Discussion

8. The question for me is whether the district judge's Article 8 decision was wrong, in the sense explained in *Celinski*, [24].

9. I am unable to accede to the submissions made on behalf of the Appellant. I cannot say the district judge's decision was wrong. She had all relevant matters in mind and came to a conclusion that was open to her. The fundamental difficulty facing the Appellant is that there is no firm evidence of any exceptionally severe consequences for him of extradition, because he absconded from the extradition hearing and did not give evidence. There are assertions in his proof of evidence about losing his job and flat, but these are untested. Furthermore, there is the point that the Appellant built his life in the UK knowing of the outstanding sentence in Poland, and must have realised that it had not gone away (especially as he said he asked for a re-suspension of his sentence but this

was never responded to). Hence, there was always the risk that Poland would catch up with him, and he established his life here in the face of that risk.

10. I also accept the offence is now of some age, but that is mainly down to the Appellant having left Poland as a fugitive and then absconded in the UK. In those circumstances, it is imperative that defendants are not encouraged to think that they can escape justice by absconding and then hiding out for as long as possible, hoping that sufficient time will pass to defeat extradition. I do not accept that the district judge did not take into account the age of the offence. She did not specifically refer to it, but it is unrealistic to suggest she did not have it in mind.

11. As for Brexit uncertainty, I was referred to recent case law on the topic, including *Gurskis v Latvian Judicial Authority* [2022] 4 WLR 82; *Hojden v District Court, Gorzow, Wielkopolski, Poland* [2022] EWHC 2725 (Admin); and *Merticariu v Judecatoria Arad, Romania* [2022] EWHC 1507 (Admin). Overall, I accept Mr Hyman's submission that given the lack of any evidence about the Appellant's status (eg, whether he has applied or been granted settled status) the position is just too uncertain for this factor to provide a basis for refusing extradition. Resolution of the issue requires evidence, as Chamberlain J noted at [55] of *Merticariu*, and here there is none.

12. For these reasons, the appeal is dismissed.