



Neutral Citation Number: [2022] EWHC 401 (Admin)

Case No: CO/4374/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday 24th February 2022

Before :

MR JUSTICE FORDHAM

Between :

JACEK TCHORZEWSKI

Appellant

- and -

REGIONAL COURT IN LUBLIN (POLAND)

Respondent

The Appellant appeared in person

The Respondent did not appear and was not represented

Hearing date: 24.2.22

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 and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM:

1. This is an extradition case, listed for a ten-minute “disposal” hearing, in-person, starting at 10:30am. A Polish interpreter was arranged for the Appellant by the Court. She attended promptly. She had been booked for the period of the hearing slot. That would have enabled the Appellant to address me, through her. Telephone contact had been made with the Appellant at 16:10 yesterday when he was told, by an ACO lawyer – who is a Polish speaker and spoke to him in Polish – that the hearing was in-person today at 10:30. The Appellant has not appeared. I know from a letter he wrote to the Court – in outline – what he wanted to raise with the Court.
2. On 20 January 2022 the Appellant’s solicitors applied to come off the record. They explained that the Appellant wished to advance an Article 8 argument. Article 8 had originally featured in initial grounds of appeal (dated 24 November 2020). It was dropped in the perfected grounds of appeal (dated 12 January 2021). On 26 January 2022 two separate emails were sent to the Appellant by the Court. The first notified him that he would need to apply (by 8 February 2022) to amend his grounds of appeal. What he did by the letter (dated 8 February 2022) was to tell the Court that he wanted to address this Court about his case for extradition, given that he has been living in the UK for six years with his wife and now three year old daughter. The Court’s second email on 26 January 2022 notified the Appellant of today’s hearing. He was emailed again on 21 February 2022 to remind him of today’s hearing. The email address used for him is the one which his solicitors had provided and was the one which was used in the email on 26 January 2022 which precipitated his letter of 8 February 2022.
3. I am satisfied that it is appropriate to proceed today. I released the interpreter at 10:40. I was not prepared in the circumstances to detain her. She has another appointment elsewhere at 11am. There has been clear notification and follow-up steps have been taken. This judgment will be made available to the Appellant, albeit in English, in writing.
4. If the Appellant considers that there is some basis for applying to reopen his appeal, he can make an application, and it will be considered on the papers. That will enable him also to inform the Court of what has happened this morning, from his point of view. If there is anything that from his body view he needs to bring to the attention of the Court he will have that as a means of doing so. He will need to act urgently. The Court will be able to consider anything that it is told. That safety net is an important one, though the threshold is a high one.
5. The Appellant is aged 32 and is wanted for extradition to Poland. His extradition was ordered by DJ Bristow (“the Judge”) on 18 November 2020 after an oral hearing on 21 October 2020 at which the Appellant appeared in person and gave evidence. The key facts and circumstances of the case were set out in the Judge’s judgment.
6. The Appellant’s extradition is sought in conjunction with a conviction European Arrest Warrant (“EAW”) issued on 18 February 2020 and certified on 17 March 2020. He was arrested on that EAW on 21 March 2020. He has been on bail since 23 March 2020. The EAW relates to a sentence of 2 years 6 months custody imposed in Poland on 26 June 2017. It became final on 21 December 2017. That was after an unsuccessful appeal by the Appellant. He did not surrender to serve his sentence on 26 February 2018 as required. His lawyer obtained a deferral of the sentence until 22 June 2019. He again

failed to surrender. A wanted notice was issued on 24 October 2019. He had come to the UK with his wife in August 2016. He came knowing about the criminal proceedings. He came, failing to notify any change of address. He knew he had a duty to do that. The duty had been communicated on 3 January 2015. In the EAW, 2 years 5 months 25 days of the sentence is identified as remaining to be served. The sentence relates to 11 index offences of theft, burglaries and handling. They were committed in Poland between December 2013 and April 2015.

7. An appeal was filed in this Court. The Appellant at that stage had lawyers. The perfected grounds of appeal which they filed (on 12 January 2021) raised two grounds. One of them related to abuse of process and the effect of Brexit. The Respondent on 25 January 2021 explained why the case of Polakowski v Poland 2021 EWHC 53 (Admin) (§§23, 25-29) was fatal to that argument. The Appellant's lawyers told the Court (16 March 2021) that that ground of appeal was no longer pursued. The other ground of appeal was the section 2 Wozniak point. It was stayed by order on 16 March 2021. The Wozniak appeal later failed. A certificate for the purposes of appeal to the Supreme Court was refused in Wozniak on 1 December 2021. The Appellant's solicitors confirmed on 17 January 2022 that that ground was also no longer pursued.
8. I will leave to one side the fact an application to amend the grounds of appeal to advance Article 8 should have been in the form of an application notice. It should have been accompanied by the relevant fee or fee remission. This was all explained to the Appellant in the careful and clear email from the ACO lawyer on 26 January 2022. I will treat the letter as an application to amend the grounds of appeal and to advance Article 8. I will proceed by considering Article 8 on its substantive merits, based on the materials.
9. There is no viable Article 8 ground of appeal in this case. The Appellant has been in the UK since August 2016 when he arrived here with his wife. They have a young child who is now three years old. She was aged two at the time of the consideration by the Judge. Her best interests are important. She, her mum and her dad (the Appellant) all have rights to respect for private and family life. They have an established family and private life here. The Appellant has no UK convictions during the now 5½ years that he has been here. There are serious and significant impacts, for all three family members, if the Appellant is extradited to Poland to serve this substantial criminal sentence. There are uncertainties as to any ability to return to the UK after doing so.
10. However, there are strong public interest considerations in support of extradition. Beyond reasonable argument, these decisively outweigh all features capable of weighing against extradition. The Judge has made unassailable findings. They include that the Appellant came to the UK in full knowledge of the criminal proceedings against him; in breach of the known duty to notify a change of address; he came as a fugitive; and he has been here as a fugitive. Matters were promptly pursued by the Polish authorities. There has been no relevant delay by them at any stage. The passage of time is the consequence of the Appellant's own actions: his actions as a fugitive; and his pursuit of fruitless grounds to resist extradition. The private and family life in the UK were all built knowingly under a shadow: he had evaded his responsibilities in relation to the Polish criminal proceedings. The criminal sentence to be served is a significant one. The criminal offences were correctly described by the Judge as serious, repeated, dishonest offences committed over a significant period of time. The daughter will remain with her mother and primary carer. The Judge conducted the Article 8 balance

sheet exercise. The Judge came to the conclusion that extradition was compatible with the Article 8 rights of all those concerned. There is no prospect of this Court overturning that outcome as wrong at a substantive appeal hearing. That includes on the basis of the current position referenced in the letter. The appropriate disposal of this appeal is clear. I will dismiss the application for permission to appeal. I will refuse the application to amend the previous grounds of appeal and rely on Article 8. I do so on the basis that there is no substantive legal merit in the Article 8 arguments, based on the materials before the Court.

Later:

11. Having delivered this ex tempore judgment, starting at 1043, it is now 1055. I have been able to check my mobile phone and there is an email timed at 1054 in which the same Polish speaking ACO lawyer who spoke yesterday afternoon to the Appellant has received a phone call from him. He says he is now outside Court 2. He says he has been there “for a while now”. He says there is nobody there. I am sitting in Court 2. The case was called on in the corridor at 1030 outside Court 2. The interpreter was sitting inside Court 2. Before starting my ex tempore judgment I took the step of asking the associate to go back out into the corridor and call the case on again, which he did. It was in those circumstances that I then delivered my judgment.

Later:

12. It is now 10:59. The Appellant was in the corridor outside the Court a moment ago. He has come into Court. The interpreter is no longer here. It is not appropriate for me to engage with him in English absent an interpreter. But I have been able to establish that he speaks a little bit of English. He told me that he arrived at “1035”. But I know that it was after 1035 that the interpreter left (at 1040), and it was after 1035 that the associate checked in the corridor outside the Court. I have explained in simple language three things. I am confident from his response that he has understood them. (1) First, I have dealt with his case and given a judgment. (2) Second, he will be sent the order and judgment by email later today. (3) Third, he will be able to make an application if he wishes to do so to reopen his case. I am satisfied in all the circumstances that this case has appropriately properly and justly been dealt with for the purposes of today.

24.2.22