



Neutral Citation Number: [2023] EWHC 557 (Admin)

Case No: CO/3546/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 14th March 2022

Before:

MR JUSTICE FORDHAM

Between:

KEITH ABDI

- and -

STUTTGART LOCAL COURT (GERMANY)

Appellant

Respondent

Malcolm Hawkes (instructed by Nicholls & Nicholls) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 14.3.23

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.

.....
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:

Introduction

1. The Appellant is aged 45 and wanted for extradition to Germany. That is in conjunction with an accusation Extradition Arrest Warrant. It was issued on 9 February 2022 and he was arrested on it on 21 February 2022. The index offending is an alleged lead role as arranger in the transporting by courier of a large quantity (8 kg) of cocaine between the Netherlands and Germany in December 2020. The maximum prison sentence is 15 years. The Appellant denies any involvement. Extradition was ordered by DJ Sternberg (“the Judge”) for the reasons given in a judgment dated 23 September 2022. The oral hearing had been held on 10 June 2022 including oral evidence from the Appellant and the Appellant’s sister. The Judge then acceded to an invitation to adjourn the proceedings, directing a Social Services Report (pursuant to section 7 of the Children Act 1989) in relation to the Appellant’s then 14 year old son (“the Teenage Son”), directing written submissions with a deadline of 12 September 2022. The Section 7 Report was produced, dated 18 August 2022. On 9 September 2022, the Appellant’s representatives served – unheralded – an independent psychologist’s report of Dr Crumpton. It was dated 22 July 2022.
2. The single issue is Article 8 ECHR and whether extradition would be a disproportionate interference with the rights to respect for private and family life: in particular, of the Teenage Son and/or the Appellant’s 77 year old mother (“the Grandmother”). In his submissions, Mr Hawkes urges me to consider the position as before the Judge and also as at today. That is what I have done. The background is that all three of them - the Appellant, the Teenage Son and the Grandmother - had and have been living at the Grandmother’s house in North London. The Teenage Son, now aged 15½ (born in August 2007), had lived with his three sisters, his mother (the Appellant’s ex-wife) (“the Mother”) and her partner until moving out, and moving in with the Appellant and the Grandmother. That was when he was aged 13 in December 2020. The Judge found as a fact that the Appellant stands as the “primary carer” for the Teenage Son and also for the Grandmother.

Less Coercive Measures

3. A section 21B request, dated 13 May 2022, inviting the less coercive measure of being interviewed, was refused by the Respondent on 2 June 2022. Mr Hawkes says that this refusal betrayed a clear misunderstanding of what was being suggested. He says its contents “spectacularly missed the point”. The request was for interview. The refusal focused on the evidence which the German authorities have and their view that the Appellant should be kept in custody in light of an abscond risk. I am satisfied that there is nothing in this point. The Judge unassailably concluded that the refusal of 2 June 2022, which detailed the strength of the evidence against the Appellant and the seriousness of the offence, was a reasoned decision which included an unequivocal statement, namely that: “no other mitigating measures than his extradition should ... be considered”. The Judge, moreover, unassailably concluded that an adjournment would serve no purpose. He also observed that it was open to the Appellant’s representatives after 10 June 2022 to pursue the point with the German authorities; and nothing had come of it. There is no basis, even arguably, for impugning the Judge’s approach or the outcome on this aspect of the case. Nor can this point substantially affect the Article 8 balancing exercise.

The Teenage Son: Dr Crumpton's Report

4. So far as Dr Crumpton's Report was concerned there was an undoubted problem with it. It was served, unheralded, on 9 September 2022. There was no good reason, in the Judge's assessment, for the delay. It was dated 22 July 2022. It was opposed. Mr Hawkes submits that it is arguable that the Judge was wrong in discounting and downplaying this expert evidence. The Judge admitted and considered the Report but said that he would give it and its conclusions only "limited weight", in the circumstances, including where it had "not been tested". Later in the Judgment he repeated that he had given it "limited weight" and "little weight". Mr Hawkes points to the timing of the Section 7 Report and the absence of cross-examination of its writer, as being logically similar. But the Judge had pointed to specific illustrative problems with the contents of Dr Crumpton's Report, as well as its lateness, and the fact that it was opposed. He did not shut it out, but he identified reduced weight to its untested contents. I can see no arguable error of approach.
5. In any event, what matters is the position regarding impacts of extradition for the Teenage Son. Mr Hawkes emphasises that Dr Crumpton's Report characterised the impact of extradition on the Teenage Son as being that he would "likely suffer severe harm". The Judge recorded that very content in the Judgment. Mr Hawkes points out that the Judge did not, later in the Judgment, ever use the word "severe". The position was this. The Judge had and considered the detailed Section 7 Report which focused specifically on the position of the Teenage Son. He gave that report full weight. In his findings, the Judge found as a fact that it was "likely" that the Teenage Son "would be taken into care" if the Appellant were extradited. He also specifically accepted that the Teenage Son "would suffer real harm to his mental well-being". As to that, although referring to giving Dr Crumpton's Report "little weight", he said this: "that conclusion is an obvious finding that I make following [the Appellant]'s evidence and the Section 7 Report prepared by Social Services". The Judge went on to say that extradition would have a "significant and serious impact" on the Teenage Son. He repeated that it was "likely" that he would be "taken into care". He also said there would "inevitably" be a "seriously detrimental impact on his mental well-being and his mental health". The Judge went on to describe the "real hardship and distress", including in the context of recent years of upheaval and uncertainty, and the lack of any realistic prospect of being able to visit his father if in custody if Germany. I do not accept that there was, even arguably, a discounting or downplaying of the impact and consequences for the Teenage Son.

The Teenage Son: the Section 7 Report

6. Next, Mr Hawkes points to the limitations of the Section 7 Social Services Report. That is because the writer had not been able to make enquiries with the Mother, as to whether the Teenage Son could be reunited to live with her. Mr Hawkes submits that it is arguable that the Judge ought to have adjourned with a direction to permit social services to contact the Mother, the Appellant had refused having his consent. The writer of the Section 7 Report had raised this and called it the "only option". Importantly, that was as an "option" in identifying any "caregiver" from the "family network". Mr Hawkes emphasised orally the background in the evidence, relevant to the idea of the Teenage Son returning to the Mother. In my judgment, it is not reasonably arguable that the Judge was wrong to take the course of action that he did. The Appellant was recorded as having declined his consent in June 2022, July 2022

and August 2022 for the Mother to be contacted. The Section 7 Report painted the picture of the ‘worst case scenario’ from the Teenage Son’s perspective, being “taken into care”. The Judge found as a fact that that was the relevant impact of extradition for the Teenage Son. The Judge thus proceeded on the basis that there was no option for identifying any “caregiver” from the “family network”. The Judge focused on that and proceeded on the basis of weighing that as the consequence. The Section 7 Report, and the Judge, proceeded on the basis of what the Teenage Son was himself saying, namely that he would not return to live with the Mother. The Judge recorded that the Appellant’s actions had meant that Social Services were “not able to comment or assess” the Mother’s “parental capacity to meet [the Teenage Son’s] needs”. I can see that the Judge could not rely on the prospect of the Mother resuming as the Teenage Son’s primary carer, without directing a further enquiry. But the Judge proceeded on the basis that the Mother would not resume as primary carer. In oral submissions on his feet Mr Hawkes now says there was a course of enquiry which the Judge did not take: namely considering the Mother purporting to ‘assert rights’ to have the Teenage Son back in her care, and the Teenage Son facing difficulties in resisting that as a damaging course. But the Judge unassailably found, on the evidence, that the impacts for the Teenage Son would involve being taken into care. He unassailably found as a fact that this is what was likely to happen. There is nothing in the new point about the new enquiry, made for the first time this afternoon.

The Grandmother

7. So far as the Grandmother is concerned the Judge recognised that she, the Appellant and the Teenage Son were currently living together in her house. The Judge recognised the position of the Appellant’s sister, who gave oral evidence. She had previously been the Grandmother’s carer. She was now married and living with her husband elsewhere in North London, where her husband had care responsibilities for his own live-in mother. The Judge said it was “possible” that, upon the Appellant’s extradition, the sister might again become the Grandmother’s carer. But the Judge specifically found that it was “more likely” that the impact of extradition was that the Grandmother would have to move “to a care home”. The Judge described extradition as “undoubtedly” having a “serious and substantial impact” on the Grandmother. The Judge accepted that extradition would “cause hardship and distress to [the Appellant’s] mother who relies on him for his care”, repeating that it was likely that “she will have to move to a care home to receive the assistance that she requires”, and adding in that context that he did not “underestimate the impact on her of the loss of her son’s care”. Mr Hawkes submits that this was dismissive of the Grandmother’s position “in a few bland lines”. I cannot accept, even arguably, that this is right. The impact on the Grandmother was understood, and was fully and carefully considered, with no material understatement or misappreciation, beyond reasonable argument.

Further Material

8. This case was fixed for an oral hearing after its renewal on 13 February 2023. Directions were made on 14 February 2023. In the late afternoon of Friday 10 March 2023 an email from the Appellant’s solicitors said that they had held a conference that afternoon, and were going to provide an update to the Court by the close of play on Monday 13 March 2023. That was the day before the hearing had been scheduled. It was necessarily going to be after the slot allocated for the Court’s pre-reading for the hearing. It was necessarily not going to involve any realistic opportunity for the

Respondent to respond, if it wished to do so. The fact that a Respondent, having filed a Respondent's Notice in extradition proceedings, routinely will not appear at a renewal hearing does not mean they can be ignored. As to the updating material, there are statements from the Appellant and his sister; in particular the sister gives further evidence as to why she cannot assist; there is an October 2022 Occupational Therapy report (which I am told was only received yesterday) about an assessment and proposals to support the Grandmother and make the Grandmother more independent within her home. There is evidence of the Teenage Son's identifiable progress at school. I have read and considered these.

Overall

9. I have anxiously considered the Article 8 rights of the Teenage Son, and the very serious implications for him of his father's extradition, which Mr Hawkes describes as "being orphaned" and at a critical juncture in his education (with GCSEs later this year). I have also anxiously considered the implications for the Grandmother. I have considered these cumulatively, alongside the other aspects of the case. And I remind myself that today I only need to be persuaded that the appeal is reasonably arguable. But in my judgment, it is not reasonably arguable that the Judge made any error of approach; nor in any event that the outcome was wrong. Although the Appellant is not a fugitive, his extradition engages weighty public interest considerations in favour of extradition, in the context of what is undoubtedly a very serious alleged offence, with a likely sentence, if convicted, of many years of custody, in a case in which there has been no delay of any significance. The Judge made all of these points. The Judge concluded that the features in favour of extradition decisively outweighed those capable of weighing against extradition. I agree, beyond reasonable argument. That includes the serious impacts for the Teenage Son; and for the Grandmother. It also includes other features, such as the position of the Appellant's three daughters who live with the Mother, and the position of the Appellant's wife in Morocco. The outcome, in my judgment, is unassailable. I refuse permission to appeal. The fresh evidence is incapable of being decisive and I formally refuse permission to adduce it.

A Further Application

10. In light of the judgment which I have just given, Mr Hawkes has made an application. He asked that I include within my Order that the time for the Appellant's removal which, under the statutory scheme, is calculated as starting at the date when permission to appeal is refused by this Court, should be deferred until July 2023. He says that would strike a proper balance, securing the public interest in extradition, and preserving progress by the Teenage Son at school. He also points to the practicalities so far as the Teenage Son and the Grandmother are concerned. I am not prepared to make an Order deferring extradition for that period. I will, however, provide a calendar month, with liberty to apply to the Respondent to apply in writing on notice should it wish to do so. This Further Application was an unheralded fall-back position. In my judgment, there is no justification – whether by reference to my duties as a public authority under the Human Rights Act 1998 or Article 8 ECHR considerations as they arise in these extradition proceedings, or otherwise – for ordering the lengthy period of deferral which is sought. I do accept in all the circumstances that it is appropriate that there be, and be known to be, a decent window of time so that steps can now be taken. That is notwithstanding that everybody will have understood that one possibility was that permission to appeal

would be refused today, as it had been on the papers at the end of January 2023. I am persuaded that a one-month period is appropriate, but with liberty to the Respondent to apply.

Order

11. My Order was as follows. (1) The application for permission to appeal is refused. (2) The application to adduce the fresh evidence is refused. (3) For the purposes of section 35(4) of the Extradition Act 2003, the refusal of permission to appeal becomes final on 14 April 2023. (4) The Respondent has liberty to apply on notice to vary or discharge paragraph (3). (5) No order as to costs save that there be a detailed assessment of the Appellant's legally aided costs.

14.3.23