Neutral Citation Number: [2023] EWHC 2319 (Admin)

Case No: AC-2022-LON-002533
CO/3372/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday 19th September 2023

Before :

MR JUSTICE FORDHAM

- -

Between :

SEBASTIAN GRZELAK	**Appellant**
- and -	
CIRCUIT COURT IN LODZ, POLAND	**Respondent**

- -
- -

Andrew Zalewski (instructed by AM International) for the **Appellant**
The **Respondent** did not appear and was not represented

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Hearing date: 19.9.23

Judgment as delivered in open court at the hearing

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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
from the ex tempore judgment delivered in open court.

MR JUSTICE FORDHAM:

1. The Appellant was born in July 1988 and is now 35. He is wanted for extradition to Poland. That is in conjunction with a conviction Extradition Arrest Warrant issued on 1 March 2017, updated on 28 May 2021 and certified on 23 December 2021. He was arrested on 14 May 2022 and released on conditional bail two days later. In 2010 he had come to the United Kingdom (then aged 21) and had been joined here by his partner (then aged 20, now aged 33) and their daughter (then aged 2 or 3, now aged 15). Their son (now aged 5) was born in the UK in late 2017. Both parents work and both children have Polish and British nationality.

2. In February and June 2006 (then aged 17) the Appellant committed the two assaults which are the index offences for the purposes of the Extradition Arrest Warrant. The February 2006 offence took place at 8pm in the street. The Appellant was part of a group of 3 (all aged under 18) who assaulted a man in the street. The Appellant knocked the victim down and then punched him the face. The others also assaulted the victim and he was left with a bloody nose and mouth, injuries described as a broken nose and facial trauma. The June 2006 offence began at 10pm in the street. The Appellant accosted a 14-year-old boy, acting jointly with another, demanding money from the victim and threatening to batter him if he did not pay. When the victim said he had no cash he was punched in the face by the other offender. Then both offenders repeatedly kicked him to the body and continued to demand money from him. They then followed the victim to his home and there was a further confrontation with the victim's parents. The victim was left with multiple bruising.

3. The Appellant appeared at his trials and his sentencing hearings. The February 2006 assault led to a one-year custodial sentence imposed on him as a 17 year old and initially suspended for 3 years. That sentence was activated in December 2008 after the Appellant (by now aged 20) committed a further offence of violence. The commencement of his custody was deferred to September 2009 but the Appellant did not then surrender. A summons followed in March 2010. He had left Poland knowing that the sentence was to be served and with the specific intention of avoiding serving it, as District Judge McGarva ("the Judge") found in his 8 September 2022 judgment ordering extradition. For the June 2006 assault the sentence had been a further two years custody, suspended for a period of 5 years. This was activated on 26 October 2010 for default by the Appellant of compliance with the conditions of the suspension.

4. A number of key points, in writing and orally, individually and in combination, have been emphasised on the Appellant's behalf by Mr Zalewski, in support of the argument maintained on appeal, namely that extradition would be incompatible with the Article 8 ECHR (private and family law) rights of the Appellant, his partner and/or the children. Reliance is placed on the long delay and passage of time. First, between 2010 (when the Appellant was summonsed to prison to serve the one year sentence and the two-year sentence was later activated) and March 2017 (when the Extradition Arrest Warrant was first issued). Secondly, between March 2017 and May 2021 (when the Extradition Arrest Warrant was updated) and May 2022 (when the Appellant was arrested). It is said that this is a significant and weighty factor against extradition, which is unexplained and culpable delay, in circumstances where the Appellant had lived openly in the United Kingdom and – says Mr Zalewski – was not therefore a fugitive in the "classic" sense. Emphasis is placed, as a significant factor at

the forefront of the oral and written submissions, on the fact that the Appellant was aged 17 in February and June 2006 at the time of the assaults, so that this was youth offending. The act of fugitivity also needs to be seen in the context of relative youth. Reliance is placed on the Youth Court Bench Book, which Mr Zalewski says indicates that the (ECHR-compatible) sentencing range in England and Wales for comparable offending by a 17 year old would be 4 months to 2 years, taking effect as a Detention and Training Order. It is also emphasised that the Appellant has transformed in the UK, as an adult. Leaving aside what Mr Zalewski calls the "blemish" of a June 2012 caution for shoplifting (aged 23), the Appellant has a blameless record in the United Kingdom. He has been living a productive and gainfully employed life here. Emphasis is placed on the impact of extradition for the Appellant and in particular for the partner (whose earnings are only sufficient to pay the rent) and the 2 children. In conjunction with that impact, Mr Zalewski also emphasises the strong possibility of a material effect, given that the Appellant does not have settled status, that he would not be able to return to the family in the UK.

5. Mr Zalewski has cited and strongly relied on Deaconescu v Romania [2023] EWHC 870 (Admin) which he deploys as a 'working illustration' case. There, the High Court retook the Article 8 balancing exercise (§18) because the judge's 'balance sheet' did not take account of the age (17½) at the time of the domestic burglary (of property whose current value would be £3,264) which had resulted in the 2 year sentence of imprisonment, which the appellant had avoided through fugitivity while an appeal was outstanding. His age at the time of offending was a "highly significant" factor (§11). The passage of time was said to be around 4 years (§7). It was a private life case, with no family life. The case was finely balanced (§23), and the Court concluded that extradition would be disproportionate. As Mr Zalewski emphasises, in Deaconescu there was reference (at §12) to a passage from Stragauskas v Lithuania [2017] EWHC 1231 (Admin) which declined to assume an Article 8-compatible youth sentencing policy within that requesting state.

6. Every Article 8 case turns on its specific facts and combination of features. Here the Judge specifically included within the 'balance sheet' – within the factors weighing against extradition – both that the offences were committed a long time ago in 2006, that there had been a long delay, and expressly that the offences were committed when the Appellant was only 17 years old. These same points alongside others also featured in the Judge's later analysis paragraph. I cannot accept, even arguably, the submission made orally today that these "did not go far enough". I can see no arguable error of approach. The Respondent's Notice and the refusal of permission to appeal are each criticised but each of those emphasises that the relevant points were specifically addressed by the Judge, as they were.

7. So far as the passage of time is concerned, the delays are properly seen in the context of the decision by the Appellant (then joined by his partner and their daughter) to leave Poland in 2010 (aged 21). He was not awaiting an appeal. He knew he now needed to surrender to face his term of custody. He was unassailably found to have left as a fugitive – and I would add, a fugitive in the "classic" sense – and the Judge was justified in characterising the new life built in the UK as having been "built on the falsehood of fugitivity". The materials before the Judge and before me referred to the searches that were being undertaken to track him down, including that by October 2016 it was believed that the Appellant was in Germany. It is quite right of course

that, even in a fugitivity case, the passage of time can operate as tending to weaken the public interest in favour of extradition, as well as tending to strengthen the private and family life considerations capable of weighing against extradition. That is why the Judge carefully weighed the long delay and its implications.

8. In conducting the 'balance-sheet' exercise the Judge concluded that the key points on which reliance has been placed and everything capable of weighing against extradition were decisively outweighed by the strong public interest considerations supporting extradition. The Judge took account of all of the factors on which reliance is placed, including the interests of the partner and the children and the impact on them, the Appellant's blameless life in the United Kingdom and the prospect of him being unable to return. The Judge recognised, as do I, that the Appellant's children will suffer; and also that the partner will be affected financially. The Judge concluded that the impact of extradition on the family would not be exceptionally severe and the constant and weighty public interest in extradition was not outweighed by the impact on the Appellant and innocent members of his family. This is a case – as the Judge explained – of relatively serious offences of violence. There are two offences of violence and two sentences of custody. The offences involved group action and the June 2006 offence involved an attempted robbery and was prolonged. There is also the fact that the activation of the first sentence was in 2008, following a further act of violence committed during the suspension period. The Appellant is wanted to serve a relatively substantial term (2 years 7 months and 13 days, credit being given for his period of remand between 28 June 2006 and 15 November 2006). There are strong public interest considerations in favour of extradition, made all the stronger by the fact and circumstances of the Appellant's fugitivity. Linden J on the papers concluded that there was no realistic prospect that this Court on a substantive appeal would overturn that outcome. I agree. In my judgment, this appeal has no realistic prospect of success.

9. When the renewal hearing was fixed for today Tuesday 19 September 2023, there was a Court Order (2 June 2023) requiring the hearing bundle 14 days later (16 June 2023) and any skeleton argument and authorities 7 days before the hearing. Late on the afternoon of Friday 15 September 2023, Counsel filed an "Urgent Note". Late in the morning of yesterday Monday 18 September 2023, Counsel resubmitted the Note in revised form, with further points and materials. I have already referred to Deaconescu and the Bench Book. Everything should have been provided in proper time, in accordance with the Court's Order. There was a further item of material. The Notes said that, given the lapse of time since the notice of renewal (15 March 2023), it had been necessary to seek additional instructions. It said that the situation was dynamic, because of an application said to have been made by a Polish lawyer (19 June 2023), asking the Polish court to aggregate and resuspend the sentences, which it was said was expected to be dealt with in 3 months. A document was provided in support of this. It was stamped with the date 19 June 2023. It was in Polish. Mr Zalewski has not emphasised this aspect in his oral submissions. I record that this approach to preparing for a renewal hearing is regrettable. This document is date-stamped 3 months ago. There was and is no explanation why it was not provided – to the Court and to the CPS and in English – promptly and in good time. There has been no application to adduce putative fresh evidence. It is sufficient to say that this and the other new materials are incapable of being decisive. In all the circumstances I will refuse

permission to appeal, and formally refuse permission to rely on any putative fresh evidence.

19.9.23