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



No. AC-2023-LON-001798
Neutral Citation Number:
[2024] EWHC 183 (Admin)

Royal Courts of Justice

Wednesday, 24 January 2024

Before:

MRS JUSTICE HILL DBE

IN THE MATTER OF AN APPEAL

B E T W E E N :

TOMA

Appellant

- and -

MORENI COURT (ROMANIA)

Respondent

MS L STOCKDALE (instructed by Berris Law) appeared on behalf of the Appellant.

MR G DOLAN (instructed by CPS Extradition) appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE HILL DBE:

- 1 This is an appeal under s.26 of the Extradition Act 2003 (“the 2003 Act”). The appellant appeals the order to extradite him to Romania made by District Judge Curtis (“the Judge”), sitting at Westminster Magistrates’ Court on 6 June 2023.
- 2 In granting the appellant permission to appeal on the papers on 24 October 2023, Jay J observed that while the District Judge “properly addressed the issues of fugitivity and the seriousness of the offence”, it was “arguable that the mental health of the appellant’s son and his dependency on the appellant were not properly considered.”
- 3 The respondent’s position, in summary, is that Judge directed himself properly and carried out an appropriate balancing exercise in accordance with the guidance given by Lord Thomas CJ in the well-known case of *Polish Judicial Authority v Celinski* [2015] EWHC 1274 (Admin); [2016] 1 WLR 551.
- 4 I have been greatly assisted by the written and oral submissions from Ms Stockdale, for the appellant, and Mr Dolan for the respondent.

The Factual Background

- 5 The appellant is a Romanian national. He was born on 16 January 1974 and has, thus, just had his 50th birthday. Aside from the extradition offence he has no convictions in Romania. His extradition is sought in relation to a conviction warrant issued on 6 October 2022 and certified by the National Crime Agency on 17 October 2022. The warrant relates to one offence of “refusing or evading the taking of biological samples” which were necessary to determine his blood alcohol level.

- 6 The offence was committed on 14 December 2015. The appellant, having been stopped by police driving a vehicle and undertaken a roadside breath test with a positive indication for alcohol, refused to provide a blood sample at the hospital.
- 7 His evidence was that he told the doctor at the hospital that he had had a fear of needles since he was a child; and that his father had contracted hepatitis and, as a result, suffered from cirrhosis for the rest of his life.
- 8 On 14 April 2016, the appellant pleaded guilty to the offence at the Moreni Court. He was sentenced to 10 months' imprisonment, which was suspended for a period of 2 years. He was required to comply with various conditions, including remaining in contact with the Probation Service.
- 9 The appellant properly attended the Dâmbovița Probation Service from 25 October 2016 to 24 March 2017. The arrest warrant states that he showed "a positive attitude towards the supervision activity, wanting to respect the measures imposed by the court in his task, as well as towards the obligations imposed" and that "he showed up on the set dates and presented the requested documents, collaborating with the Probation Service in order to achieve the objectives of the supervision".
- 10 The appellant then wished to go to France to find agricultural work. He properly informed the Probation Service of this. The respondent's case was that he became unlawfully at large from 30 June 2017, when he failed to report back to the Probation Service. The appellant disputed that Probation Service had given him any date by which he had to return to Romania. In April 2017, the appellant travelled from France to the UK for work. He has not returned to Romania since then. By December 2017, his wife and two children had joined him in the UK.

- 11 The appellant has been in continuous employment since arriving in the UK in the care sector and as a forklift driver, until being prevented from working by his own ill health.
- 12 The respondent's case, denied by the appellant, but accepted by the Judge, was that on 2 November 2018, he called the Dâmbovița Probation Service and told them he was in England.
- 13 The appellant now has settled status in the UK, having applied for pre-settlement status in October 2019 and settlement status in December 2021.
- 14 On 18 March 2019, the Moreni Court activated the appellant's suspended sentence. This decision became final on 2 April 2019. The appellant therefore has 10 months' imprisonment left to serve if he is extradited.
- 15 In 2020, the appellant separated from his wife. He has two criminal convictions in England arising out of that. The first, dated 6 April 2020, was for offences of battery and criminal damage, for which the appellant received suspended sentences of, respectively 12 and 4 weeks imprisonment. The second, dated 22 May 2020, was for offences of harassment / breach of a restraining order. He was sentenced to 9 weeks imprisonment for this offence. The Magistrates also activated the longer of the two suspended sentences, requiring him to serve a further 12 weeks imprisonment. The appellant therefore received a total of 21 weeks' imprisonment for these offences.
- 16 The appellant has a son, X, who is now aged 22. He also has a daughter, now aged 14. X began using cannabis in 2018. The appellant relied on an expert report prepared by Dr Indranil Chakrabarti, a psychiatrist in forensic mental health, dated 20 February 2023. The

report explains at section 10.1 that X now suffers from major depressive disorder of moderate severity and cannabis use disorder of a severe nature.

- 17 Following his parents' separation, X and his sister lived with his mother and her new partner. However in the autumn of 2020 X was evicted from their house. He was aged 19 at this point. X's evidence before the Judge was that after being – what he described as “thrown out” - he went to Harplands mental health hospital. He said that this was the third time he had been so admitted. The medical records refer only to an admission in February 2021, suggesting that that was his first admission, but it is accepted that these medical records are not complete and Dr Chakrabarti, at para.9.4 of his report, appeared to accept X's evidence that there had been three such admissions. He was admitted again in January 2023 under section.
- 18 Picking up the chronology, after X's discharge from Harplands he was homeless for what he describes as “a long time”. In June 2021, the appellant found X “on the streets”. Since then, X has lived with the appellant, aside from one further admission to Harplands in January 2023.
- 19 X's evidence was to the effect that his father provides significant support for his day-to-day needs, more than one would perhaps expect for a young man of his age. He said at para.17 through to para.19 of his statement:

“My father is my carer and main support mechanism. He reminds me to take my medication every day. He deals with my money and pays all the bills. He washes my clothes and cleans the house. He is my mum and dad at the same time.”

He also referred to his father encouraging him to study and the difficulties that his mental health causes him in terms of sleeping. He explained that he has no contact with his mother and she will not provide any care for him.

- 20 On 22 February 2022, the appellant suffered a suspected heart attack, having had one previously in 2014. He was admitted to Leighton Hospital and has been under investigations for coronary artery disease. He has been unfit to work since August 2022.
- 21 As noted earlier, the arrest warrant was issued and certified in October 2022. The appellant was arrested on 9 November 2022 and appeared at the Magistrates’ Court the following day. He has been on conditional bail with a residence condition and an electronically monitored curfew throughout. The extradition hearing took place on 4 May 2023. The appellant gave live evidence. He also relied on a statement from X and Dr Chakrabarti’s report, which were unchallenged by the Judicial Authority.

The Legal Framework

- 22 The single question in an appeal of this nature is whether the judge at first instance “made the wrong decision”: *Celinski* at [24].
- 23 In *Belbin v Regional Court of Lille, France* [2015] EWHC 149 (Admin) at [66] the Divisional Court considered the approach to be taken by appellate courts in cases of this nature and said the following:

“...generally speaking and in cases where no question of “fresh evidence” arises on an appeal on “proportionality”, a successful challenge can only be mounted if it is demonstrated, on review, that the judge below; (i) misapplied the well established legal principles, or (ii) made a relevant finding of fact that no reasonable judge could have reached on the evidence, which had a material effect on the value-judgment, or (iii) failed to take into account a relevant fact or factor, or took into account an irrelevant fact or factor, or (iv) reached a conclusion overall that was irrational or perverse.”

- 24 These observations were endorsed by the Court of Appeal in *Celinski* at [23], albeit that Lord Thomas held that “application of that approach by use of the analysis of Lord

Neuberger PSC [in the case of *In Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33; [2013] 1 WLR 1911]] is likely to achieve a more consistent approach that is compliant with article 8 and the provisions of the 2003 Act dealing with appeals”.

25 The relevant analysis of Lord Neuberger PSC from *In Re B* was to this effect:

“93. There is a danger in over-analysis, but I would add this. An appellate judge may conclude that the trial judge's conclusion on proportionality was (i) the only possible view, (ii) a view which she considers was right, (iii) a view on which she has doubts, but on balance considers was right, (iv) a view which she cannot say was right or wrong, (v) a view on which she has doubts, but on balance considers was wrong, (vi) a view which she considers was wrong, or (vii) a view which is unsupportable. The appeal must be dismissed if the appellate judge’s view is in category (i) to (iv) and allowed if it is in category (vi) or (vii)”.

26 The appellant did not seek to persuade me that the Judge’s overall conclusion was unsupportable and thus within category (vii). The question is therefore whether this case falls within category (vi), i.e., a view which I consider was wrong.

27 In *Norris v Government of the United States of America* [2010] UKSC, in particular at [50] to [65] the Supreme Court held that the consequences of interference with Article 8 rights have to be exceptionally serious before they can outweigh the importance of extradition. At [65] Lord Phillips PSC said this:

“... in trying to envisage a situation in which interference with article 8 might prevent extradition, I have concluded that the effect of extradition on innocent members of the extraditee’s family might well be a particularly cogent consideration. If extradition for an offence of no great gravity were sought in relation to someone who had sole responsibility for an incapacitated family member, this combination of circumstances might well lead a judge to discharge the extraditee under section 87 of the 2003 Act.”

The Appeal

28 The appellant advances a single ground of appeal based on Article 8 to the effect that the Judge was wrong to find that extradition was proportionate, in particular, given the impact of extradition on the appellant's son, X. It is said that the Judge was wrong, both in his analysis of the material facts within the balance, as well as in his overall assessment, and it is argued that on a fair assessment now, taking into account the additional delay, extradition would be disproportionate. Ms Stockdale distilled this overarching argument into several themes.

29 First, she contended that the Judge wrongly discounted the impact that the appellant's extradition would have on X on the basis that his mental health condition was aggravated by a drug addiction. She referred to [63]-[64] of the judgment, where the Judge observed that while X has a significant health condition "a real aggravating feature of that condition is his dependency and addiction to controlled drugs" and that "despite the input of his father it seems that the mental health problems persist largely due to his admitted drug use". She argued that giving less weight to the impact of the appellant's extradition on his son was wrong as X suffers from major depressive disorder, as well as cannabis use disorder.

30 While it is right to recognise, as Dr Chakrabarti did, that cannabis use disorder is a recognised medical condition in its own right, I do not consider that the Judge was inappropriately discounting the significance of this or penalising the appellant for it. Rather, I accept the submission made by the respondent, that the Judge was simply noting that there was a link between his drug use and his mental health condition and that is, in fact, made clear in the expert report. Simply by way of example, at para.10.1.3, Dr Chakrabarti said that X's admissions to mental health hospitals with psychotic symptoms were likely to be drug induced in nature. The observations of the Judge at [63]-[64], seen in context, were also effectively indicating that X's mental health problems had persisted, even while living with his father.

31 Second, Ms Stockdale argued that the Judge wrongly speculated about alternative care and treatment available for X if his mental health did deteriorate following his father's extradition. She referred to [64] of the judgment, where the Judge observed that there had been substantial input into X's condition by the NHS and "that there is additional input available within the NHS and mental health providers for assistance and respite in the event of deterioration".

32 However, I agree with Mr Dolan that the Judge did not speculate that additional care would be available on the NHS. He simply noted that care had, in fact, been provided, including residential treatment, and would be available in the future as and when needed.

33 Third, she argued that the Judge was wrong to conclude that there was no suggestion of X suffering or his condition deteriorating while the appellant served a sentence of two-and-a-half months for his conviction in the UK. She submitted that the evidence suggested that it was around this period of time that X's mental health condition worsened significantly.

34 She referred to the Police National Computer entry showing the appellant was convicted of the relevant offences on 22 May 2020 and received a sentence of 21 weeks in prison, of which he served approximately 10.5 weeks between May and August of 2020.

35 She referred to the fact that the first entry in the medical records suggesting psychotic symptoms dates to October 2020. In my judgment, some care is needed about the accuracy of these medical records and their completeness, not least in light of the fact that the expert psychiatrist appears to have accepted X's view, which was not necessarily borne out by the medical records, about the number of admissions he had had. However, even if the first sign of psychotic symptoms was in October 2020, that is still some time after the period of incarceration between May and August of 2020 and therefore hard to link with it.

36 She initially sought to argue that X's first hospitalisation was in 2021. Again, that is some time after the period of the appellant's incarceration. In any event, as I have said, X's evidence, which was accepted by the psychiatrist, shows that his first admission to hospital was not in 2021; and counsel accepted that.

37 I therefore consider that the evidence does not clearly show a link between the appellant's incarceration and X's deterioration, such that it can be said that the Judge erred in the finding that was made.

38 Fourth, Ms Stockdale contended that the Judge failed to consider the serious consequences that the extradition would have on X and made no reference in the balancing exercise to the psychiatrist's opinion at para.10.6.1 of the report.

39 This was an important conclusion and I quote it in full, together with the preceding paragraphs of the report, so it can be seen in its full context:

“10.5.2 It is highly likely that [X] would be non-compliant with medication in the absence of his father. He is likely to suffer from a relapse of drug-induced psychosis as a result of cannabis abuse and non-compliance with antipsychotic medication.

10.5.3 [X] will lose the oversight that is currently being provided by his father for his mental and physical well-being.

10.5.4 [X's] ability to care for himself will be impoverished if he loses contact with his father.

10.5.5. The factors mentioned above are likely to have a detrimental impact upon his mood and may aggravate symptoms of depression...

10.6.1 [x] reports a history of self-harming behaviour by cutting himself. As mentioned earlier in the report...a separation from his father may aggravate symptoms of depression and escalate chances of being a risk to self. [X] denied having thoughts of taking his own life at the time of my assessment. However, chances of a fatality, as a result of misadventure is likely to be high if he is non-compliant with mental health medications and consuming significant amounts of substances”.

- 40 These aspects of the unchallenged expert evidence therefore bear directly on the very serious potential consequences of extradition. The doctor's opinion can properly be summarised as being that in the absence of his father, X is "highly likely" to be non-compliant with medication; and if he is so non-compliant there is a "high" chance that he will lose his life due to misadventure.
- 41 It is right to acknowledge that the Judge set out these parts of the report earlier in the judgment, in the factors against extradition.
- 42 However these potentially very serious consequences of extradition did not feature in terms in the balancing exercise, beyond the Judge observing that the absence of his father would have a "significant" impact on X and impact his life "in many ways". I accept Ms Stockdale's submission that, with all due respect to the Judge, this failed to reflect the potentially very serious consequences in terms of the risk of a fatality that may flow directly from extradition.
- 43 X is a young adult, not technically a child, but the Judge was quite right, in my judgment, to regard him as akin to a child, given his significant vulnerabilities, and the case law well recognises the need to have the interests of children in mind.
- 44 I therefore accept Ms Stockdale's submission that the Judge was wrong to conclude as he did at [67] that while the impact of extradition on X would be inevitable and may be significant, it was not exceptionally severe. A fairer assessment of the evidence is that, given the history of X's mental health difficulties and his present extensive reliance on his father for support, it would be.
- 45 In my judgment, the scenario in this case chimes with the sorts of cases described by Lord Phillips in the passage from *Norris* which I have quoted, in that the appellant has "sole

responsibility for an incapacitated family member”. As His Lordship said, the effect of extradition on an innocent member of the extraditee’s family can be a particularly cogent consideration.

46 Although Jay J made the observations he did regarding the Judge’s assessment of the seriousness of the offence, Mr Dolan accepted that if I concluded that the Judge had erred in the approach to the expert evidence, it was appropriate to look at the other issues in the round, because not to do so would be artificial.

47 I turn, then, to consider whether this was an offence of, and again I quote Lord Phillips in *Norris*, “no great gravity”. This was an offence, as the Judge himself said, that while it may not be described as trivial, was perhaps not the most serious in the context of extradition cases. It involved no injury, loss or damage to persons or property. Applying *Prusianu v Braila Court of Law (Romania)* [2022] EWHC 192 (Admin); [2023] 1 WLR at [48], it was appropriate to have regard to the Sentencing Council Guidelines that would apply to an offence of this nature in this country. Having done so, I accept Ms Stockdale’s submission that it would be unlikely to meet the custody threshold.

48 The passage of time is also relevant. The extradition offence occurred on 14 December 2015, over 7½ years ago. Ms Stockdale highlighted a period of 21 months’ delay, between 30 June 2017 (when the appellant breached the term of the suspended sentence) and 18 March 2019 (when the sentence was activated). There was then a further 2½ year delay between 2 April 2019 (when the decision was finalised and the prison execution warrant issued) and 6 October 2022 (when the arrest warrant was issued).

49 It is also material that the chronology indicates that the appellant complied with the probation requirements for a lengthy period before he left Romania and has now spent over

14 months on tagged curfew in England. Such a curfew was described in *Prusianu* at p.528 as “a real restriction on freedom of movement and autonomy”.

50 I therefore conclude that the Judge did err in the balancing exercise. I have had regard to the exceptionally serious consequences for X if the appellant is extradited, the nature of this offence, the delays, the elements of the sentence that have already been complied with and the curfew restrictions since then, as well as the appellant’s strong ties to the UK. As was said in *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2022] UKSC 25 at [8], the public interest in extradition is less where the extradition offence is not serious and there has been significant delay, which is a principle that applies here.

51 I fully recognise, as the Judge did, that this was a difficult exercise. However, standing back, and addressing the central question set out in *Celinski* at [24], “Was the decision made by the District Judge the wrong decision?”, I consider that it was. I therefore allow the appeal.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.