Neutral Citation Number: [2024] EWHC 624 (Admin)

Case No: AC-2023-LON-000463

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2024

Before :

THE HONOURABLE MRS JUSTICE FARBEY

- -

Between :

ARKADIUSZ ROZWENS	**Appellant**
- and -	
CIRCUIT COURT IN LODZ, POLAND	**Respondent**

- -
- -

Ciju Puthuppally (instructed by **Sperrin Law**) for the **Appellant**
Tom Davies (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 7 February 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 21 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MRS JUSTICE FARBEY:

1. The appellant is a Polish national born on 4 August 1979. He appeals against the decision of District Judge Clarke ("the DJ") dated 16 January 2023 to order his extradition to Poland. The reasons for the decision are set out in the DJ's judgment of the same date. A European Arrest Warrant ("EAW") was issued by the Polish authorities on 9 April 2019 and certified by the National Crime Agency on 1 March 2022. It is an "accusation" warrant. The extradition hearing took place at Westminster Magistrates' Court on 6 December 2022.

2. There are three grounds of appeal. Under Ground 1, the appellant submits that the DJ was wrong to conclude that his extradition is not oppressive under section 14 of the Extradition Act 2003 ("the Act"). Under Ground 2, he submits that the DJ was wrong to conclude that extradition is compatible with Article 8 of the European Convention on Human Rights ("the Convention"). Under Ground 3, he submits that the DJ was wrong to find that extradition is proportionate under section 21A(1)(b) of the Act. In granting leave to appeal, Sir Duncan Ouseley sitting as a High Court Judge noted that there is some overlap between the three grounds.

Facts

3. The appellant has five previous convictions in Poland accrued between 2004 and 2007: three convictions for theft, one for burglary and one for possession of drugs. He is now sought by the Circuit Court in Lodz in relation to one further offence. It is alleged that on 17 February 2005, he and two others burgled a second-hand mobile phone shop in Konstantynow Lodzki. The two others broke off the bolts or outer roller blind on the shop and then broke down the entrance door to get inside. It is alleged that the appellant acted as a look-out from outside the shop. The group stole 8 mobile phones with a value of PLN 3,200 (which the DJ found was equivalent to £550). The phones were sold to other second hand shops. The proceeds were shared between the group members.

4. The appellant has lived in the United Kingdom since 5 March 2006. He lived first of all in Scotland, moving to England in 2008. On 30 April 2008, he was cautioned for non-domestic burglary. On 30 March 2009, he pleaded guilty in Warwickshire Magistrates' Court to one offence of shoplifting and one offence of resisting a constable. The appellant was arrested under the EAW on 22 March 2022 and produced at Westminster Magistrates' Court on the following day when his extradition hearing was fixed for 1 August 2022.

5. Thereafter, the appellant failed to comply with case management directions. As a result of his failure to file evidence, the hearing listed for 1 August was adjourned until 22 August 2022. That hearing was itself adjourned so that the appellant could obtain evidence from a Polish lawyer as to the delay by the Polish authorities in issuing the EAW and medical evidence relating to his mother's cancer.

6. The appellant again failed to serve evidence. At a case management hearing on 25 November 2022, District Judge Minhas described the situation as a "wholly unsatisfactory state of affairs" and noted the appellant's "wholesale failure" to comply with directions. Further directions for serving evidence were made but breached. On

1 December 2022, the appellant served a proof of evidence. On 5 December 2022, he served a statement of issues.

7. At the extradition hearing before the DJ, the appellant served a witness statement from his close friend Anna Bieniewska and a character reference from his employer Scott Rowland. As neither Ms Bieniewska nor Mr Rowland were required to give oral evidence, the late service of this written evidence did not pose a practical problem. However, the appellant also brought medical evidence relating to his mother that had not been translated from Polish. It was agreed that it would be interpreted in court so that Mr Tom Davies (who appeared for the respondent before the DJ as he appeared before me) would be aware of its content and could ask questions if necessary. The DJ ordered that a translation be served by 13 December 2022.

8. On 14 December 2022, the appellant served translations of the medical documents that had been interpreted at the hearing. He also served documentation relating to his mother's medical appointment on 7 December 2022. Both parties then made written submissions. In the interests of justice, the DJ admitted and considered all the medical documents – whenever served.

The DJ's judgment

Findings of fact adverse to the appellant

9. In her written judgment, the DJ found that the appellant was "evasive in his evidence" and that he was "exaggerating his position" in the sense that he was exaggerating his ties to the United Kingdom in order to strengthen his case. She observed that the appellant had in his proof of evidence said that he had no previous convictions in the United Kingdom when he had the convictions and the caution that I have mentioned above. She emphasised that the appellant had said in his proof of evidence that he had worked for Mr Rowland's company for about 1 year and 8 months when Mr Rowland had stated that the appellant had worked there for three years. The appellant had diverged from his proof of evidence by saying in oral evidence that he had worked for the company for three years. Given these discrepancies, the DJ inferred that the appellant had asked his employer to say that he had worked for this longer period, having forgotten what he had said in his proof of evidence.

10. The DJ did not accept that the appellant supported his mother financially by transferring money to her. In rejecting his evidence about financial support, the DJ found that the appellant was evasive about his mother's medical condition. He was unable to give specific details of her diagnosis, prognosis or the treatment she had received or was due to receive. The medical documents were limited and had been provided only on the morning of the hearing. There was no independent evidence to show the transfer of money. The DJ said that it would be "very easy to produce the bank statements or similar showing that money had been sent but the appellant had not done so." The DJ rejected the appellant's evidence that he supported his mother by sending her money whenever he could (about £50 every two weeks) in order to help her pay for medication.

Findings of fact in the appellant's favour

11. The DJ accepted in the appellant's favour that he is not a fugitive from justice. She accepted that he had lived and worked in the United Kingdom for a number of years and that he was currently working for Mr Rowland. She accepted that his sister and niece live in the United Kingdom. She accepted that the appellant had not committed any offence in the United Kingdom since 2009 (which was correct at the time of the DJ's judgment). She concluded in his favour that the medical evidence showed that his mother "does have cancer and is undergoing treatment."

Section 14 of the Act: the passage of time

12. In relation to section 14 of the Act, the DJ set out the relevant case law on the approach to be taken to the passage of time. She observed that 17 years had passed since the date of the extradition offence and that such a long delay fell to be "considered carefully." She set out the chronology of the Polish investigation into the extradition offence and the causes of delay in considerable detail. She concluded that there had been no culpable delay on the part of the Polish authorities. Dealing carefully with each aspect of section 14, she concluded that it would be neither unjust nor oppressive to extradite the appellant.

Section 21A(1)(a) of the Act: Convention rights

13. The DJ considered the compatibility of the appellant's extradition with Article 8 of the Convention, as required by section 21A(1)(a) of the Act. She applied the correct legal principles, balancing the factors for and against extradition in accordance with the familiar balance sheet approach (*Polish Judicial Authorities v Celinski & Ors* [2015] EWHC 1274 (Admin), [2016] WLR 551). Having identified the relevant factors on either side of the scales, she concluded:

> " I find that it will not be a disproportionate interference with the Article 8 Rights of the requested person ["RP"] for extradition to be ordered. My reasons and findings are as follows:
>
> a. It is very important for the UK to be seen to be upholding its international extradition obligations and Judicial authorities should be afforded a proper degree of mutual trust and confidence.
>
> b. The offending is serious. Whilst it is not of the most serious offending on the criminal calendar, and it is not exceptionally grave, it is still serious offending, similar to the offending for which he was convicted in Poland previously and if convicted of this offence he faces up to 10 years imprisonment.
>
> c. The RP has lived and worked in the UK for a number of years. However, he has not led an entirely law abiding life here, despite what he tried to assert, as he has a caution and conviction here. It is said that he has lived openly here in the UK, however, I bear in mind what is said in T v Poland [2017] EWHC 1978 (Admin) and bear in mind that the JA nor NCA

> can be expected to explore the byways and alleyways of British officialdom to discover whether someone is in this country.
>
> d. I bear in mind that the RP's mother is unwell. However, given the limited information provided, all I am able to conclude is that she has been diagnosed with cancer and is or was having treatment. I am unable to assess the impact that extradition will have upon his mother or her treatment, should she in fact need further treatment. I have found that the RP has been exaggerating his role in assisting his mother and cannot find that he has been sending money to her. I also note that the RP said that his mother may be able to cope with the money from his sister.
>
> e. Perhaps the most important factor in this case is delay. I have not found that it is culpable delay but can take it into account as part of this challenge regardless of that finding. Clearly the delay in this case diminishes the public interest in extradition, clearly the RP will have been given a false sense of security given that time that has passed, however, I have made my findings above about the reason for the delay. Whilst it inevitably diminishes the public interest in extradition, it is still a serious offence for which the RP is sought. Balanced against that, the RP does not have any dependants here in the UK, or any such other counterbalancing factors which may outweigh the public interest in extradition. His mother can still be assisted by the RP's sister. There are not such factors as to make extradition disproportionate."

Section 21A(1)(b) of the Act: proportionality

14. Turning to the question of proportionality under section 21A(1)(b), the DJ held:

> "79. I have considered Criminal Practice Direction 2015 Amendment 11 and *Miraszewski v District Court in Torun, Poland*, 2015 1 WLR 3929. This authority permits the Court to consider the likely penalty upon conviction by consideration to domestic sentencing practice in the absence of information from the requesting state.
>
> 80. We do not have any information from the JA other than the allegations themselves and the fact that the maximum sentence available is one of 10 years. I have considered the Guidelines in England and Wales. I agree with the JA submissions that this would be a category B2 offence which would mean a starting point of 6 months custody with a range of a medium level community order to 1 year in custody. I also bear in mind that the RP has a caution for burglary in the UK and convictions for dishonesty offences in Poland which would aggravate matters. The RP submits that because he has previously been given suspended sentences in Poland, that is an indicator that he will

> be given a suspended sentence for this offence if convicted. I cannot find that to follow. Whilst it indicates how Poland deals with such offences perhaps, I have no details of the nature of those offences. Furthermore, it seems that all but one of those sentences were activated, no doubt due to non-compliance or further offending. In the criminal courts in the UK that perhaps would mean that it would be less likely that a defendant would receive another such sentence, given previous lack of compliance.
>
> 81. Therefore, taking into account all of the information that I have available to me I find that
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> a. The allegations are serious – not the most serious but involve and offence committed with others where damage was caused during the court of the offence.
>
> b. Considering the UK sentencing guidelines there is a serious possibility that a prison term of some length may be imposed in the event of conviction after return to Poland.
>
> c. I have not been made [aware] of any coercive measures short of extradition that would be appropriate, and I do not consider that there are any in this case."

15. In the absence of any other bars to extradition, the DJ ordered the appellant's extradition to Poland.

Fresh evidence

16. By way of fresh evidence, my attention was drawn to the appellant's further convictions for offences committed after the extradition order was made. On 2 May 2023, he pleaded guilty in Greater Manchester Magistrates' Court to one offence of drink driving, one offence of driving otherwise than in accordance with a licence and one offence of using a vehicle while uninsured. He was sentenced to a community order with unpaid work and a rehabilitation activity requirement. Mr Ciju Puthuppally (who appeared before me as he did before the DJ) properly accepted that the evidence of these convictions was admissible on appeal.

Legal framework

The nature of an appeal

17. Under section 27(3) of the Act, this court may only allow an appeal if the judge ought to have decided a question at the extradition hearing differently; and if the judge had decided the question in the way he ought to have done, the judge would have been required to order the person's discharge. This is an outcome-based test (*Celinksi*, para 24). If a judge makes an error that has no material effect on the outcome of the case, the appeal will fall to be dismissed.

18. An outcome-based test that focuses on the ultimate question of whether or not a person ought to have been discharged is consistent with the very high public interest

in ensuring that extradition arrangements are honoured (*Celinski*, para 9). It is consistent with the United Kingdom's obligations to enforce arrest warrants, subject only to the formal requirements of section 2 of the Act and the various statutory bars (*Miraszewski v District Court of Torun, Poland* [2014] EWHC 4261 (Admin), [2015] 1 WLR 3929, para 31).

19. In considering whether the statutory test for allowing an appeal is met, this court should review the judge's decision and should not interfere simply because it takes a different overall view (*Belbin v The Regional Court of Lille, France* [2015] EWHC 149 (Admin), para 66). Findings of fact, especially if evidence has been heard, must ordinarily be respected (*Celinski*, para 24).

Section 14 of the Act: oppression

20. Section 14 of the Act provides that a person's extradition is barred if it appears that it would be "unjust or oppressive" to extradite him by reason of the passage of time since he is alleged to have committed the extradition offence. The appellant in this case relies only on oppression - which is directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration (*Kakis v Government of The Republic of Cyprus* [1978] 1 WLR 779, 782H-783A, per Lord Diplock).

21. Even culpable delay on the part of the state does not necessarily make it oppressive to extradite (*Croatia v Spanovic* [2007] EWHC 1770 (Admin), para 16). An unexplained delay by the requesting state is not necessarily to be taken to show fault on the part of the requesting authority; all the circumstances of the case should be considered (*La Torre v Italy* [2007] EWHC 1370 (Admin), para 37).

Section 21A(1)(a) of the Act: Article 8 of the Convention

22. Under section 21A(1)(a) of the Act, a judge must consider whether a person's extradition would be compatible with his or her Convention rights. As regards the compatibility of extradition with a person's Article 8 rights, the single question for the appellate court is whether or not the judge made the wrong decision (*Celinski*, para 24). In considering that single question, the court exercises a review function. The court will not make a fresh determination of proportionality simply because it takes a different view to the judge (*Celinski*, para 20).

23. It is not in dispute that the seriousness of the extradition offence will be an important factor in the *Celinski* balancing exercise. In *Smulczyk v Judicial Authority of Poland* [2022] EWHC 1697 (Admin), Fordham J considered how the seriousness of the extradition offence may be assessed. He held (at para 46):

> "Seriousness – and relative seriousness – of the alleged crime or crimes is a relevant factor in the Article 8 evaluative exercise. A relevant question can be whether the extradition court is able to say that the alleged index offending would on conviction be likely or unlikely to attract an immediate custodial sentence in the requesting state court. **A useful cross-check can be whether an equivalent case would be likely or unlikely to attract an immediate custodial sentence if it**

> **were a domestic sentencing exercise applying domestic Sentencing Guidelines here.** Part of that useful cross-check could also involve considering the likely length (or range) of that sentence here. Seriousness is relative and the extradition court will be able to have in mind the range of offending capable of arising in the context of the type of alleged offence with which the case is concerned" (emphasis added).

24. Relying on this passage, Mr Puthuppally submitted that, in assessing the seriousness of the extradition offence, a judge should consider the application of domestic Sentencing Guidelines. He submitted that it is possible for a judge to consider the correct starting point for the extradition offence under the relevant offence-specific Guideline. A judge can then assess the likely sentence by applying the factors in the Guideline that would warrant an upward or downward adjustment from the starting point by reference to the particulars of the offence in the warrant. A judge can take account of any personal mitigation and any other Guidelines, such as the Overarching Guideline on the Imposition of Community and Custodial Sentences ("the Imposition Guideline"), in order to reach a conclusion as to whether the likely sentence by English standards would be a community order, suspended sentence order or term of immediate imprisonment.

25. Mr Puthuppally submitted that, in "accusation" cases, the judge will not have the benefit of a sentencing decision from the requesting state. In the absence of a sentencing decision, there would in "accusation" cases be no damage to the principle of mutual trust and respect if the judge were to assess the seriousness of the extradition offence as if the appellant were being sentenced for the same offence in England by reference to the Guidelines. In the absence of information from the requesting state, the application of the Sentencing Guidelines as a measure of the seriousness of the extradition offence was what Mr Puthuppally called the "least worst option." Such an approach would afford a reasonable degree of consistency in extradition cases. He founded this submission on *Smulczyk*, paras 45-46.

26. By virtue of sections 59-62 of the Sentencing Act 2020, the English courts are required to follow the applicable Sentencing Guidelines unless it is in the interests of justice not to do so. Unconstrained by *Smulczyk*, I would not agree that a judge is bound to apply domestic Sentencing Guidelines to an offence that will be tried and sentenced not in England but in the requesting state. As Lord Hope of Craighead DPSC said in a different context: "This is their case, not ours" (*HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25, [2013] 1 AC 338, para 95). It is not for the domestic courts to impose their views on the nature or length of the sentence that may be expected in the requesting state.

27. The question is whether I am constrained by *Smulczyk* to reach a different view. The court in *Smulczyk* observed no more than that the application of domestic Sentencing Guidelines could be a "useful cross-check" in the assessment of the seriousness of an extradition offence. That is a far cry from holding that the Guidelines should be applied in all cases. In my judgment, the appellant seeks to elevate a nuanced judicial observation into a rigid principle. I do not accept that *Smulczyk* intended such rigidity.

28. Consistent with well-established principle, the judgment in *Smulczyk* makes plain (at para 46) that the domestic court must not impose its own view of the appropriate sentence and must respect the degree of seriousness of a matter as seen within the criminal justice system of the requesting state:

> "None of this is the imposition, in an extradition context, of the view of the extradition court as to the appropriate sentence. And there must always be room for respecting the degree of seriousness of a matter as seen within the criminal justice system of the requesting state, where the extradition court has information from which it can identify that feature. In a conviction case, where the requesting state has convicted and sentenced the requested person for the index offending, there is a self-evident and powerful reference point. In an accusation case, there may be no real reference point of that kind, and the requesting state's statutory maximum sentence may be of very limited assistance."

29. Given what Fordham J says about the need to avoid imposing a domestic view of sentence, I do not derive from *Smulcyzk* that a judge should be burdened by a mini-sentencing exercise involving the detailed application of offence-specific or Overarching Guidelines. Domestic sentencing policy is not set in stone. The approach advocated by Mr Puthuppally would run the risk of reflecting the inevitable vicissitudes of domestic sentencing priorities and undermining the mutual trust and confidence that is an essential element of the important public interest in upholding extradition arrangements.

30. Such an approach would in addition introduce an element of complexity that is not foreshadowed by other case law. By way of illustrating the likely complexity, I was provided with a copy of the Sentencing Guideline for Non-Domestic Burglary; the Imposition Guideline; section 189 of the Criminal Justice Act 2003 which provides the framework for suspended sentences of imprisonment; section 289 of the Sentencing Act 2020 which makes provision for suspended sentences to be treated generally as sentences of imprisonment for statutory purposes; and additional case law said to support the proposition that suspended sentences should be regarded as non-custodial sentences for the purposes of section 21A(3)(a): *Antochi v Germany* [2020] EWHC 3092 (Admin), paras 21-22. Yet, the extradition offence in the present case can be summarised in a few sentences, involves no complex factual background and may easily be analysed without reference to multiple sources of English law. Mr Puthuppally relied on these sources to support a submission that the extradition offence would not be likely to attract an immediate custodial sentence under English sentencing practice. But I was not directed to any authority of the Divisional Court or of the Supreme Court to suggest that the Sentencing Guidelines ought to be regarded as the primary measure of the seriousness of the extradition offence.

31. Appropriate consistency between different cases is achieved by the structured approach for judicial decisions laid down by *Celinski* (see para 14(i)). Contrary to Mr Puthuppally's submissions, the Administrative Court should be slow to provide a more rigid structure in an area of judicial decision-making that is "invariably fact specific" (*Celinski*, para 14(iii)).

32. It seems to me that *Smulczyk* concerns the notion of measured reference to domestic Sentencing Guidelines in an appropriate case. The judgment is not intended to herald a new approach. I do not regard myself as constrained by *Smulczyk* to reach a conclusion that could not be derived from, or would not be warranted by, previous Divisional Court or Supreme Court authority.

Section 21A(1)(b) of the Act: proportionality

33. By virtue of the separate provisions of section 21A(1)(b) of the Act, a person may not be extradited if the extradition would be disproportionate. Parliament has in section 21A(2)-(3) specified the approach to be taken to determining this discrete statutory question:

> "(2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.
>
> (3) These are the specified matters relating to proportionality —
>
> (a) the seriousness of the conduct alleged to constitute the extradition offence;
>
> (b) the likely penalty that would be imposed if D was found guilty of the extradition offence;
>
> (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D."

34. In *Miraszewski v District Court of Torun, Poland* [2014] EWHC 4261 (Admin), [2015] 1 WLR 3929, the Divisional Court (Pitchford LJ with whom Collins J agreed) considered section 21A(3) and held at paras 36-41:

(i) Under subsection 3(a), the seriousness of the extradition offence is to be judged in the first instance against domestic standards, although the court will respect the views of the requesting state if they are offered. The maximum penalty for the offence is a relevant consideration but it is of limited assistance because it is the seriousness of the requested person's conduct that must be assessed. The main components of the seriousness of conduct are the nature and quality of the acts alleged, the requested person's culpability for those acts and the harm caused to the victim.

(ii) Under subsection 3(b), the principal focus is whether it would be proportionate to order the extradition of a person who is not likely to receive a custodial sentence in the requesting state. The judge may make the assessment on the information provided. When specific information from the requesting state is absent, the judge is entitled to draw inferences from the contents of the arrest warrant and to apply domestic sentencing practice as a measure of likelihood. It would only be in "particular and unusual circumstances" that the judge may

require further assistance from the requesting state before making the proportionality decision.

35. The application of section 21A(3) therefore involves some consideration of domestic sentencing standards and practice. I would add that, in considering the likely sentence in the requesting state, the judge will consider all the information before the court, whether in the warrant or in any further information that has been provided. It is not the function of the warrant, however, to comment on sentencing policy in the requesting state. If the domestic courts were regularly to require a requesting state to supply further information on the subject, the risk would arise that the information required of requesting states would be augmented beyond the requirements of the law.

36. As I have set out above, *Miraszewski* held that the seriousness of the extradition offence is to be judged in the first instance against domestic standards. The Criminal Practice Directions provide guidance for judges as to how assess the seriousness of the offence under section 21A(3)(a) of the Act. The judge will determine the issue on the facts of each case as set out in the warrant save that, where the conduct alleged to constitute the offence falls into one of the categories listed in a table, the judge should generally determine that extradition would be disproportionate. Listed in the table is minor theft but the table states expressly that burglary is not included (see Cr PD XI paras 50A.1 – 50A.5 as in force at the date of the extradition order; see now Cr PD para 12.2 which is in materially the same terms).

37. An offence outside the listed categories may also be identified by a judge as non-serious or trivial (*Miraszewski*, para 32). Neither in the Practice Directions nor in *Miraszewski* is there a suggestion that a judge must apply domestic sentencing practice to the extent of performing a mini-sentencing exercise of the sort that the granular consideration of Sentencing Guidelines would involve. In my judgment, such an approach would undercut the guidance in the Practice Directions and would go beyond anything said in *Miraszewski*.

Overarching submissions on factual findings

38. Before I turn to the individual grounds of appeal, I shall consider Mr Puthuppally's overarching submissions on the DJ's findings of fact which underpinned all the grounds of appeal. Mr Puthuppally submitted that, in reaching her decision to order the appellant's extradition, the DJ had relied on her flawed and irrational assessment that the appellant had exaggerated the impact that extradition would have on him. She was wrong to have treated significant parts of his oral evidence as evasive.

39. Mr Puthuppally elaborated his submissions by contending that, upon proper analysis, the appellant's evidence of sending to his mother only £50 every two weeks was credible. The small amount that the appellant claimed to send was inconsistent with any exaggeration. The appellant had volunteered the fact that his mother was not wholly dependent on him but also financially dependent on his sister. He had also voluntarily disclosed his mother's latest, more positive medical assessment from 7 December 2022. These aspects of his evidence were contrary to his interest and so gained credibility.

40. Mr Puthuppally relied on Ms Bieniewska's unchallenged evidence that the appellant was extremely stressed about his mother's health which corroborated his account of

sending money. The medical evidence supported his account of his mother's health problems and made it less likely that he was being evasive about her health and the financial support he was giving her. It was more likely that the appellant was too upset to give coherent evidence than that he was being evasive. There were innocent explanations for other inconsistencies and weaknesses in his evidence.

41. While recognising that the DJ had the advantage of seeing and hearing the appellant, Mr Puthuppally submitted that I was in a good position to assess the rationality of the DJ's credibility findings by reference to the internal logic of the judgment and the DJ's reasoning. The criticisms levelled at the DJ's findings of fact did not depend to any material degree on how the appellant would have presented to the DJ while giving evidence. The DJ had reached her conclusions on the content of what he did and did not say in his evidence. She had recorded the evidence in detail such that I was able fully to scrutinise and analyse her factual conclusions from my own consideration of her written judgment. An analysis of the judgment demonstrated no rational basis for any finding that the appellant's evidence was evasive or that he had exaggerated the impact of extradition.

42. Mr Davies submitted that the DJ was entitled to find that the appellant had exaggerated his case. She had seen and heard him give evasive answers to straightforward questions. In any event, the appellant's grounds of appeal were all based on his ties to the United Kingdom. Those ties were plainly weak. Even if the DJ had not concluded that the appellant was exaggerating his case, it would have made no difference to the overall outcome.

43. In my judgment, the DJ was entitled to conclude that the appellant did not tell the truth in material respects. The appellant's assertion in his proof of evidence that he had no previous convictions was false. His explanation was that the proof of evidence contained an error. The DJ was entitled to reject that explanation and to conclude that the appellant had been evasive.

44. Given the inconsistency between his proof of evidence and his oral evidence, the DJ was entitled to conclude that the appellant was evasive in relation to how long he had worked for his current employer.

45. The DJ's conclusion that the appellant had been evasive about sending financial support to his mother was based in part on her finding that he had been evasive about his mother's medical condition. She took into consideration that the medical evidence had been served late and the appellant had given confusing and contradictory accounts of his mother's medical condition.

46. I agree with Mr Puthuppally that the DJ may have misunderstood the evidence about whether the appellant's mother still had cancer and whether she was still receiving treatment for cancer. I agree that the evidence probably shows that the appellant's mother (i) had cancer; (ii) was treated for that cancer; and (iii) was at the time of the DJ's decision undergoing adjuvant therapy in order to reduce the risk of the cancer coming back. In the absence of any allegation that the medical documents were in some way not genuine, it made no difference that the appellant was vague or evasive about this mother's ill health: the medical documents probably show that the mother had had cancer and was on adjuvant therapy.

47. However, any misunderstanding about the mother's state of health is immaterial. The DJ found that the mother had cancer and was undergoing treatment. This finding favoured the appellant. It cannot sensibly be argued that the DJ underestimated the seriousness of the mother's medical condition.

48. A separate question arises as to whether the DJ was entitled to use the appellant's evasiveness about his mother's medical condition as one of the planks for rejecting his evidence that he supported his mother financially. The DJ was in my judgment entitled to conclude that if the appellant was concerned that his extradition would affect his mother, he would have a better knowledge of her ill health and would have produced evidence to support his case much earlier than he did. The vagueness of his oral evidence coupled with the late service of documentary evidence entitled the DJ to infer that this part of his case was an afterthought, typifying the appellant's exaggeration of the effect of extradition.

49. The DJ further rejected the appellant's evidence of sending money to his mother on the grounds that he had produced no independent documents when he could easily have produced bank statements or other documents showing money sent by him to Poland. Mr Puthuppally submitted that the DJ was wrong to hold this against the appellant when he had not been given the opportunity in oral evidence to deal with the lack of supporting evidence.

50. I shall assume that Mr Puthuppally is right and that the appellant's failure to supply supporting documents was not put to him in cross-examination. The problem which confronts the appellant is that, in rejecting his evidence about financial support, the DJ did not rely solely on the failure to provide documents. In these circumstances, any unfairness in relying on the absence of documents was immaterial.

51. Mr Puthuppally directed my attention to various aspects of the evidence that were consistent with the appellant telling the truth about supporting his mother. Merely reciting points about the evidence that may favour an appellant fails to respect the review function of this court. It is not a permissible approach on appeal. The appellant raises no grounds for this court to give anything other than the usual respect to the findings of fact made by a judge who has seen and heard a person give evidence.

52. The overarching submissions on the DJ's factual findings fail. The appellant cannot invoke them in relation to his specific grounds of appeal.

Ground 1: The passage of time

53. Ground 1 contends that the DJ was wrong to hold that the appellant's extradition would not be "oppressive" within the meaning of section 14 of the Act. In support of this ground, Mr Puthuppally submitted that the DJ had erred in her approach to the seriousness of the extradition offence and in her approach to delay by the respondent between the date of the offence and the issue of the EAW. I shall consider these submissions in turn.

Seriousness of the extradition offence

54. Mr Puthuppally submitted that the DJ had erred in her assessment of the extradition offence which she should have recognised as lacking any great gravity. The value of the allegedly stolen goods was low and the appellant could have made only a modest personal gain. As a look-out, he could not have had a central role. It was extremely unlikely that the appellant would receive an immediate custodial sentence for the offence in the United Kingdom. It was implausible that he would be given a custodial sentence in Poland.

55. Mr Puthuppally emphasised that the DJ had treated the burglary as falling within Category 2B of the Sentencing Guideline on Non-domestic Burglary, meaning that the DJ assessed it as an offence of medium culpability and medium harm. As the DJ set out in her judgment, the starting point for a Category 2B offence is 6 months' custody; the category range is a medium level community order to 1 year's custody. Mr Puthuppally emphasised that the category range permits a suspended sentence of imprisonment even without consideration of any mitigating factors. He submitted that it is likely that the appellant will, if convicted, receive a suspended sentence in Poland because he has always received a suspended sentence in the past. Contrary to the position at the time of his earlier offending, he is now generally rehabilitated. There would therefore be no reason to impose a more severe sentence now than in the past.

56. Mr Davies submitted that the judge was entitled to conclude that the extradition offence was a serious one. There were ample aggravating factors which would (under the Sentencing Guidelines) justify a term of immediate imprisonment. The appellant has had all but one of his suspended sentences activated, so that the court can be confident that he would not now receive a further suspended sentence.

57. Mr Davies submitted that, in any event, the domestic courts should not engage in a detailed sentencing exercise as opposed to a general assessment of the seriousness of the offence; otherwise, English judges will pre-judge and usurp the sentencing process of the requesting state. The DJ was entitled to find that the custody threshold was met and that a prison term may be imposed.

58. I agree with Mr Davies. The appellant is accused of a burglary on commercial premises. Even applying the Sentencing Guidelines, the offence was committed for personal gain. It involved criminal damage to the premises. It was a group offence. The appellant may not have entered the premises but, as the look-out, he played an integral part in the group. He has a history of acquisitive offending. The judge was entitled to conclude that this sort of offence would be punished with an immediate custodial term in the United Kingdom. She made no error of law or of approach in concluding that the offence was serious by application of the Guidelines.

59. In any event, the appellant's criticism of the DJ's application of the Sentencing Guidelines was a distraction from the real legal issues. The statutory question on an appeal is (in broad summary) whether the judge ought to have decided a question differently such as to require a person's discharge (see para 17 above). If a DJ decides to deploy the Sentencing Guidelines as a useful cross-check in assessing the seriousness of the offence, this court will be careful not to substitute that cross-check for the statutory question. An appellant must do more than point to some disagreement with how a judge has applied the Sentencing Guidelines. That has not been done in any persuasive way in the present case.

Delay

60. Mr Puthuppally submitted that the DJ was wrong to hold that the respondent's delay of around 18 years – including approximately 10 years since the appellant's identification as a suspect – was not culpable. He submitted that the delay could be broken down into five periods: 2005-2013 (eight years of delay between the discontinuance of the case on 20 March 2005 and its resumption on 2 March 2013); 2013-2016 (a further three years of delay until the decision to charge the appellant on 2 August 2016); 2016-2018 (a further two years of delay before the decision to issue a domestic arrest warrant on 20 February 2018); 2018-2019 (yet further delay before the issue of the EAW on 9 April 2019); 2019-2022 (wholly unexplained delay between the issue of the EAW and its certification by the NCA). Mr Puthuppally submitted that, given the exceptionally long, culpable and unexplained delay, it would not be fair to extradite the appellant. He had made a new life for himself in the United Kingdom. The test for oppression was met.

61. Mr Davies submitted that the EAW together with the further information from the respondent provided a clear and sufficient explanation for the passage of time in this case. A long investigation did not equate to culpable delay. The appellant's presence in the United Kingdom was not confirmed until 2019. The appellant's submissions about what could or should have been done at each stage were made without the benefit of any knowledge of surrounding contextual and operational factors.

62. The DJ's consideration of the reasons and causes of delay (broken down into different periods) was careful and scrupulous. The appellant faces an uphill task to persuade this court of some sort of material error. In a nutshell, the DJ held that the appellant's co-accused was the link which caused him to be investigated and charged with the extradition offence. The co-accused was apprehended in 2013 which led to the appellant being implicated in the offence at that time. The investigation into the appellant then took some further time which was understandable in the circumstances. Domestic searches for the appellant were ordered in late 2016. It was not until 2018 that it was established that the appellant was likely living in Manchester. There was then some delay before arrangements were made in February 2019 for the EAW to be issued. It was eventually confirmed in 2022 that the appellant was living in the United Kingdom and the EAW was certified shortly afterwards.

63. In my judgment, there is no proper challenge to the DJ's analysis of the facts or to her conclusion that the delay was not culpable. It is nothing to the point that the appellant simply disagrees with her conclusion.

64. As Mr Davies submitted, the appellant has despite his long residence developed limited ties to the United Kingdom. He has no dependants in the United Kingdom. His mother, his former partner and his child live in Poland. There was little evidence before the DJ about his relationship with his sister or niece. He has a strong friendship with Ms Bieniewska but there is little other evidence of community ties. His evidence about his current employment was found to be evasive. His recent convictions demonstrate that his claims to be a changed person since coming to the United Kingdom ring hollow. He appears to have put down only shallow roots in the United Kingdom. In these circumstances, the DJ's decision that his extradition will not be oppressive is not open to challenge.

65. For these reasons, Ground 1 fails.

Ground 2: Article 8 of the Convention

66. Mr Puthuppally accepted that there was an overlap between Ground 1 and Ground 2. He submitted nevertheless that the DJ should have found that the public interest in favour of extradition was outweighed by the appellant's individual circumstances. He emphasised that the appellant was not a fugitive and had been given a false sense of security. He reiterated his points about delay and about the extradition offence being not grave. Mr Davies submitted that Ground 2 raised no discrete new issues beyond Ground 1 and should fail for the same reasons.

67. The DJ applied the *Celinski* balance sheet approach and carried out a detailed balancing exercise. She took into consideration that the appellant is not a fugitive. She weighed in the balance that he has lived in the United Kingdom for a very long time. However, as I have said, the appellant has put down shallow roots. The proposition that his support for his mother would be harmed by his extradition to Poland is implausible in circumstances where his mother herself lives in Poland. I have been provided with no proper grounds for considering that the DJ reached the wrong decision about any matter relating to the appellant's right to respect for private and family life under Article 8.

68. The DJ was entitled to conclude that extradition is compatible with the appellant's Article 8 rights. There is no merit in Ground 2 which fails.

Ground 3: Proportionality

69. Mr Puthuppally submitted that the DJ was wrong to conclude that the appellant's extradition would be proportionate under section 21A(1)(b) but advanced no discrete reasons other than those already advanced under Grounds 1 and 2. He reiterated his submissions that the extradition offence is not particularly grave and that the DJ had erred in failing to recognise that it is highly unlikely that the appellant would receive a sentence of immediate custody. Mr Davies submitted that Ground 3 added nothing to the other grounds of appeal.

70. As I have mentioned, the offence of burglary is expressly said in the guidance within the Criminal Practice Directions to be excluded from the categories of offence where extradition is generally disproportionate. Appreciating that it is possible to depart from the guidance, I have been provided with no reason to do so in this case and certainly no reason to conclude that the DJ's conclusion was wrong. Ground 3 raises no other issues that have not been considered under Grounds 1 and 2 and so fails.

Conclusion

71. For these reasons, this appeal is dismissed. I am grateful to both counsel for their skilful oral submissions.