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*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

ICOS No: 20/014169

Delivered: 23/11/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION UNDER  
THE EXTRADITION ACT 2003

Between:

REPUBLIC OF POLAND

Requesting State/Respondent

and

WITOLD KNIAŻ

Requested Person/Appellant

Before: Treacy LJ and Keegan J

**TREACY LJ**

**Introduction**

[1] The appellant was convicted in Poland of rape and robbery and given a 5 year sentence of imprisonment. A substantial part of that term of imprisonment remains to be served.

[2] Pursuant to section 26 of the Extradition Act 2003 ("the 2003 Act") he appeals against his surrender to Poland on foot of a conviction extradition warrant, ordered by Her Honour Judge Smyth ("Judge Smyth"). The Single Judge refused leave to appeal and the application was renewed before us.

[3] The appeal is confined to Judge Smyth's findings with respect to the section 20 bar to extradition (person convicted in absence). The appellant did not pursue his

appeal in respect of the judge's finding with respect to her finding with respect to section 21 of the 2003 Act (human rights).

[4] The full chronology of events has been set out in the appendix to the appellant's skeleton argument. The core elements are:

- 9 August 2009 – Incident when male victim is anally raped and robbed;
- 28 October 2009 – Appellant arrested and held in custody;
- 23 July 2010 – Appellant convicted;
- 18 March 2011 – Conviction overturned and referred back to first instance court for re-consideration;
- 16 June 2011 – Appellant released pending re-trial, having been alerted to maintain contact and inform authorities of any change of address;
- During 2011 and 2012 – hearings;
- 14 September 2012 – Last appearance by Appellant at a court hearing;
- January 2013 – Appellant states he leaves Poland;
- Year up to 5 April 2013 – P60 evidencing employment of Appellant in Northern Ireland during year to 5 April 2013;
- 30 April 2013 – First instance court issues what could be described as an interim acquittal, subject to a final judgment;
- 8 April 2014 – Interim acquittal overturned on appeal and case remitted back for further consideration;
- 23 December 2014 – Appellant's sister collects a summons for hearing;
- 14 January 2015 – Appellant is in Poland and is stopped by police for a driving matter;
- 27 February 2015 – Adult household member collects summons;
- 8 May 2015 – Adult household member collects summons;
- 15 March 2017 – Trial proceeds in absence of Appellant;
- 24 May 2017 – Trial continues in absence of Appellant;
- 7 September 2017 – Conviction and sentence of Appellant to 5 years;
- 15 September 2017 – Conviction becomes final;
- 30 January 2018 – Domestic warrant for Appellant's arrest issued;
- 21 January 2019 – European arrest warrant issued by Poland;
- 5 September 2019 – Warrant certified by the National Crime Agency;
- 10 February 2020 – Appellant arrested in Northern Ireland.

### **Section 20 bar – conviction in the appellant's absence**

[5] The basis of the appeal in respect of the appellant's absence is Judge Smyth's finding that the appellant had deliberately absented himself from Poland and his trial. It is submitted that this finding was inconsistent with the evidence, and on any consideration of the undisputed evidence should have created substantial doubt in Judge Smyth's mind.

[6] Judge Smyth dealt with this at [35] – [39] of her judgment as follows:

“[35] The starting point for consideration is that the requesting state must prove to the criminal standard that the defendant deliberately absented himself from trial which includes the situation where he has waived his right to attend by deliberately breaching his obligations to inform the authorities of his change of address so as to prevent the authorities informing him of the date and place of trial. A “*manifest lack of diligence*” on the defendant’s part is not in itself proof beyond a reasonable doubt.

[36] The court also has to proceed on the basis that the EAW system is based on trust and confidence as between territories and the Act must be interpreted as far as possible in accordance with the Framework Decision. As Higgenbottom J stated in Stryjecky, the consequence of this fundamental principle is that where the EAW contains a statement from the requesting judicial authority as required by para 4A(1)(a) of the Framework Decision, that will be respected and accepted by the Court considering the extradition request, unless the statement is ambiguous (or, possibly, if there is an argument that the warrant is an abuse of process). If the statement is unambiguous, the Court will not conduct its own examination into those matters, nor will it press the requesting authority for further information.

[37] In my view, the statement at Box D of the EAW is unambiguous and therefore must be accepted without further enquiry. However, the defendant has pointed out that ambiguity arises because of another statement in response to question two of box D namely that- *‘Witold Kniaź was appropriately notified of the date of the trial by leaving a notice twice. The summons was sent to Witold Kniaź’s address provided by him but he has not collected the letter sent by the court.’*

[38] In those circumstances, I consider that it is appropriate to consider all of the evidence in order to determine whether the requesting state has discharged the onus upon it. Having done so, I am satisfied beyond reasonable doubt that the defendant did deliberately absent himself from his trial for the following reasons:

- He had the benefit of legal representation and therefore, it can reasonably be inferred that he was

informed that the decision to acquit him after the first re-examination was a “*not yet final judgment.*”

- That inference is strengthened by the fact that he was required to attend a number of further hearings after the acquittal, which he did attend, although he claimed that he believed these were mere formalities and that his lawyer did not tell him their true purpose.
- The requesting state has challenged the defendant’s assertion that he was told by the judge that “*he was a free man.*” In any event, such an assertion is utterly implausible given the ongoing nature of the criminal process in the requesting state.
- Court summons were collected by three members of his family on three separate occasions. The charges of rape and robbery were clearly serious and the assertion that the defendant was not told of the summons even after his return to Poland in January 2015, a matter of weeks after one of them was collected by his sister lacks any credibility.
- There is no dispute that the defendant was served with a statement outlining his obligations and that he signed that document. If he was under any misapprehension about the continuing nature of those obligations and in particular about the obligation to inform the authorities of any change of address, he had the benefit of a lawyer to deal with any queries.
- In my view, the evidence clearly establishes not only a manifest lack of diligence on his part, but a deliberate decision not to attend his trial. At the very least, he has waived his right to attend the trial.

[39] In view of the factual finding, the court is not required to consider any further matters in section 20.”

[7] We consider that the Judge correctly identified the burden placed on Poland to prove to the criminal standard the appellant’s deliberate absence, and further that a manifest lack of diligence would not be, in itself, sufficient. Judge Smyth then analysed the evidence available and determined that Poland had proved, to the requisite standard, that the appellant had deliberately absented himself from his trial.

[8] The appellant relies on several factors – his living openly in Northern Ireland since 2013, his returning to Poland during the relevant period, and his understanding that he had been acquitted.

[9] Judge Smyth dealt with her consideration of the evidence at [38] and rejected the notion that the appellant would have understood that he had been acquitted. Based on the evidence that was a perfectly rational and understandable finding. Although she failed to mention his open life in Northern Ireland and his return to Poland, these factors are of modest relevance and we entertain no doubt in any event that this highly experienced judge would have taken them into account had she considered them to be materially relevant.

### **Conclusion**

[10] We consider that Judge Smyth's reasoned decision that the appellant deliberately absented himself from Poland is unimpeachable and was plainly a finding properly open to her after a consideration of all the evidence.

[11] Accordingly, we dismiss the appeal.