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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 2895 (Admin)

No. CO/766/2019

Royal Courts of Justice

Tuesday, 15 October 2019

Before:

MR JUSTICE HOLMAN

B E T W E E N :

ROBERT HORVATH — Applicant

- and -

MUNICIPAL COURT IN PRAGUE (CZECH REPUBLIC) — Respondent

MR DAVID WILLIAMS (instructed by Wainwright and Cummins) appeared on behalf of the applicant.

MR BEN JOYES (instructed by Crown Prosecution Service) appeared on behalf of the respondent.

J U D G M E N T

(As approved by the judge)

MR JUSTICE HOLMAN:

1 This is a substantive appeal from an extradition order made in the Westminster Magistrates' Court by District Judge Kenneth Grant on 19 February 2019. Permission to appeal was granted on paper on 17 August 2019 by Sir Wyn Williams, who observed that:

> "There is a long delay between the appellant serving the bulk of his sentence and the issue of the EAW and then a very long delay before the EAW was executed. No doubt the appellant has contributed significantly to the delays but in my view it is at least arguable that the ultimate decision of the DJ was wrong given the delays and the family life built up by the appellant now over very many years."

2 The facts and circumstances of this case require close attention to the chronology. The underlying offences were both committed in February 1998, now over 21 years ago. The first offence was committed on 2 February 1998 and involved successfully passing off to a bank in the Czech Republic some forged foreign (in fact, Italian) banknotes and obtaining value for them. It is said that the loss to the victim bank was the equivalent, at the time, of about £650, which it has been calculated is the equivalent of about £1,150 now. The second offence was committed three days later on 5 February 1998. This was an unsuccessful attempt to pass off to a bank in the Czech Republic some forged foreign banknotes.

3 The appellant was prosecuted and convicted on 29 December 1998 when he was sentenced to six years' imprisonment in aggregate for the two offences. On 27 March 2003, he was granted conditional release. It is stated in the EAW that, by that stage, the amount remaining to be served under the original sentence of six years' imprisonment was one year, one month and eight days. I assume, therefore, that he had served part of the sentence by being remanded in custody before the actual sentence of imprisonment was imposed in December 1998.

4 Rounding these figures slightly, but I hope not impermissibly, the overall effect is that the appellant served almost five years of a total sentence of six years, and still is required to serve just over one year. Very unfortunately, during the period of his conditional release, this appellant committed an offence on 14 September 2004 which is described as “disorderly conduct”. The fact that he committed that further offence of disorderly conduct made him liable to recall to serve the balance of the sentence of six years’ imprisonment.

5 The actual recall decision was made at a hearing as relatively long afterwards as 29 May 2007. The appellant appealed from that recall decision and the appeal decision was reached on 8 November 2007. The appellate body confirmed the recall to serve the balance of the sentence and, as I understand it, required the appellant to surrender to the authorities on or before 13 November 2007. It is said in the documents from the Czech judicial authorities that the appellant knew that that was the outcome of his appeal and that he was required to surrender on or before 13 November 2007, and Mr David Williams, who appears on his behalf today, has not submitted that that is mistaken or wrong.

6 The appellant did not surrender to the authorities on 13 November 2007, or indeed at any other later time. However, he very clearly said to the district judge, both in a written statement and in oral evidence (repeated both during cross examination on behalf of the requesting judicial authority and under questioning from the district judge himself), that he remained living in the Czech Republic at the same address of which the authorities were aware until 2010.

7 It was in 2010 (there is no evidence as to the precise date, or even month) that the appellant says that he travelled with his partner and their, then, one child to live here in England. According to the judgment of the district judge (which very regrettably does not have sequential paragraph numbering) at page 6 and the paragraph internally numbered as 2 towards the end of that page, the appellant said in answer to questions from the district judge himself that:

> "He provided the court with his new address in 2007. No-one contacted him. He said, 'When I left in 2010 I knew they would come after me and I wanted to start a new life with [his son] and they have come for me and I am explaining the position right now. I knew the Czech authorities would pursue me.'"

So, it does seem that at any rate since 2010, the appellant, together with his partner of 15 years and their son, now aged 14, have lived here in England.

8 The material from the Czech Republic states that in December 2011 the Czech court received information to the effect that the appellant was here in England. On 15 March 2012, the European Arrest Warrant was issued. For reasons which are unexplained and unclear, that warrant was only first received by the National Crime Agency here in England on 20 March 2015, i.e. some three years after it was issued. There is a statement made today by an officer of the National Crime Agency, Aimee Bellas, which states that:

> "The NCA policy at the time was to not certify any EAWs where there was no link to the UK. On 8 October 2018, a UK link was established with Cleveland Police. The EAW was certified on 21 October 2018 and sent to Cleveland police for execution."

9 So, pausing there, the overall history in relation to these proceedings to extradite the appellant is that the warrant was issued in March 2012. It was received in England in March 2015. It was certified in England in October 2018. The appellant was actually arrested on 11 December 2018 and these proceedings got underway.

10 In his submissions on behalf of the appellant, Mr David Williams has primarily focused on the issue and the impact of delay. On internal page 9 of his judgment (again, in a completely unnumbered paragraph) the district judge said:

> "I asked Ms Downs [the advocate then appearing on behalf of the requested person] whether she was prepared to make any concessions as to whether the requested person is a fugitive. She said that she was not prepared to make any concessions and I do not criticise her for that. I do find however that the requested person became a fugitive on 14 November 2007 as the judicial authority asserts and, as such, is not entitled to formally argue the section 14 passage of time bar."

11 On internal page 13 of his judgment, when identifying "the factors that support extradition", the district judge said at a paragraph numbered 2:

> "The requested person is a fugitive from Czech justice and became so on 14 November 2007 which is the day after a warrant was issued for his arrest in the Czech Republic. He left the Czech Republic knowing that his sentence of imprisonment was outstanding."

12 Mr Williams submits that those passages contain an error by the district judge. He readily accepts that on and after the date (whenever it precisely was) in 2010 that the appellant left the Czech Republic altogether and travelled to England without notifying the Czech authorities, or giving them any address, he clearly became a fugitive. But Mr Williams submits that the appellant cannot properly be characterised as a fugitive in the period between 14 November 2007 and the time when he left the Czech Republic in 2010 if (as the appellant claims) throughout that period he continued to live at the same address of which the Czech authorities had notice.

13 The district judge does not seem to have made an express finding as to whether he accepted or rejected the oral evidence of the appellant, to which I have referred, that, after November 2007 and until 2010, he continued to live at the same address which was known to the Czech authorities. However, on internal page 3 of his judgment, the district judge quoted passages from further information that had been supplied by the Czech authorities, which do

include references to the police repeatedly inspecting previous known whereabouts of the appellant, and repeatedly questioning residents of previously known whereabouts, to get information about his location. It is not entirely clear at what stage the police were making those repeated requests.

14 On behalf of the respondent, Mr Ben Joyes submits that that material tends to contradict the evidence of the appellant to the effect that he continued seamlessly to live at the same address right up to the time that he travelled to England in 2010. It seems to me, on balance, that I should not go behind the finding of the district judge, on internal page 13 of his judgment, that the appellant was "a fugitive" and became so on 14 November 2007. It is not entirely clear what findings, if any, the district judge made as to exactly where the appellant was living in the period November 2007 to 2010, but it seems to me implicit in his overall finding that the appellant was a fugitive that the appellant was not living openly at a known address as he now claims.

15 So, I intend to consider this matter on the basis of the conclusion of the district judge that, from November 2007, the requested person was a fugitive. That, however, is not the end of the matter. The district judge was required to carry out, and did carry out, the well-known balancing exercise based on the authority of *Celinski v Poland* [2015] EWHC 124 (Admin) from which he quoted at considerable length over three pages of his judgment. It seems to me that there are two glaring gaps in the balancing exercise and approach of the district judge.

16 The first gap is that the district judge did not clearly place in the balancing exercise the fact, which he was well aware of, that the appellant had already actually served almost five years of the six-year sentence. The second gap is that although he adverted to delay, and indeed said "there has been very considerable overall delay in this case", the district judge did not remind himself, as I consider the facts and circumstances of this case require, of what was said by Baroness Hale of Richmond in the very well-known authority of *HH v Deputy*

Prosecutor of the Italian Republic, Genoa [2012] UKSC 25 at paragraph 8. She observed there at an internal paragraph (6) that:

> "The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life."

17 The overall factual situation of this case is that this extradition relates to offences that were now committed over 21 years ago. They involved fraud or attempted fraud upon a bank, but the scale of that fraud was of the order (in today's values) of about £1,130. The appellant has already served almost five years actually in prison in relation to those offences. That, of course, under our sentencing regime would be the equivalent of a sentence of almost 10 years' imprisonment. It is in any event almost five-sixths of the sentence that the Czech court thought appropriate, now over 20 years ago in December 1998.

18 Meantime, this appellant has lived in a settled relationship with his partner since about 2003. They now have two children: the son aged 14, but now also a daughter, born here, who is now aged 6. He has worked here. There is no evidence at all that he has not lived a good and industrious life in the nine years or so since he has been living in England with his family.

19 In *Celinski* at paragraphs 21 and 23, the Divisional Court encouraged this court on appeal to use the analysis in the judgment of Lord Neuberger in *Re B (a child) (FC)* [2013] UKSC 33. At paragraph 93 of that authority, Lord Neuberger set out the various views that a court on appeal may take as to proportionality. It is not enough that this court even takes a view that the decision of the district judge was on balance wrong. An appeal can only be allowed if this court on appeal considers that the decision of the district judge was wrong or is "unsupportable".

20 This does no more than reflect the language of section 27 of the Extradition Act 2003 itself. That provides that, in the circumstances of this case (which does not depend on fresh

evidence), the court may only allow the appeal if the following conditions are satisfied, namely that:

> "(a) the appropriate judge ought to have decided the question before him at the extradition hearing differently;
>
> (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge."

21 In my view in the present case, the district judge, with respect to him, clearly ought to have decided the discretionary balancing exercise in a different way. He should have concluded that the factors against extradition outweigh the factors that support extradition in the present case. In my view, he should have attached decisive weight to the combination of the length of time since these offences were committed; the fact that this appellant has already served almost five out of the six years of the term of imprisonment; and the facts and circumstances of the private and family life which he and his partner and children have established and enjoyed together here for 10 years now.

22 In my view, if the district judge had decided that question in that way, he would have been required to order the discharge of this appellant. Accordingly, I will now allow this appeal. I will order the appellant's discharge and quash the order for his extradition.

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 (subject to Judge's approval) **