Neutral Citation Number: [2020] EWHC 1592 (Admin)

Case No: CO/136/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 June 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

ARKADIUSZ JAN BIBRO	**Appellant**
- and -	
REGIONAL COURT IN TARNÓW, POLAND	**Respondent**

- -
- -

Richard Barrett for the **appellant**
The **respondent** did not appear and was not represented

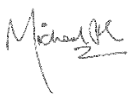
Hearing date: 18 June 2020

Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.



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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Mode of hearing

1. This was a telephone conference hearing. It and its start time were published in the cause list with email contact details, available to anyone who wished to be able to dial in and listen to the hearing. I heard oral submissions just as I would have done had we all been sitting in the court room. I have satisfied myself as to a number of questions about this mode of hearing, in this case. I am satisfied that this constituted a hearing in open court, that the open justice principle has been secured, that no party has been prejudiced, and that in so far as there has been any restriction on a right or interest it is justified as necessary and proportionate.

Introduction

2. This is a renewed application for permission to appeal in an extradition case. The appellant is 28. He is wanted for extradition to Poland. That is in conjunction with a European Arrest Warrant reissued on 5 November 2018, and certified on 22 October 2019. It relates to a seven-month custodial sentence imposed following a conviction in May 2013. The conviction relates to an offence of fraud by false representations committed in May 2012. The appellant had obtained from a bank a loan in the sum of PLN3,483.01 (the equivalent of approximately £700). The sentence was originally suspended, on conditions of payment of compensation to the bank and compliance with supervision requirements. On 4 September 2014 the custodial sentence was activated, a course finalised on 9 December 2014. The appellant was arrested in the UK on 22 October 2019. He had an oral hearing in front of the district judge on 6 January 2020, and the district judge gave a judgment on 9 January 2020 ordering extradition.

Section 14

3. The appellant had raised before the district judge, raised again in the paper application for permission to appeal, and – until this morning – had maintained in the renewal application for permission to appeal, two grounds for resisting extradition. The first related to section 14 and the passage of time. On that, the district judge found against the appellant on the basis of a finding of fact that he left Poland as a fugitive, having failed to comply with both aspects (compensation and supervision) of the suspended sentence, and fully aware of those conditions, of the custodial sentence and of the implications. In the light of the judge's finding of fact on the basis of the evidence, including hearing the appellant's oral evidence, the section 14 argument was fatally undermined and could not succeed. Mr Barrett has accepted this morning that he cannot impugn the judge's finding in relation to section 14, nor the finding of fact which underpins that conclusion. He is plainly right to accept that. The judge was plainly entitled to reach the conclusion that he did.

Article 8

4. The other ground on which extradition had been resisted before the district judge was article 8 of the ECHR. That ground is maintained before me this morning. Mr Barrett does not submit that the district judge went wrong in law or went wrong in his 'balance sheet' approach, by reference to the authorities. Rather, Mr Barrett submits that this is a case where, looking at the various features of the case and looking at the ultimate

outcome, the district judge's conclusions can properly be impugned as being 'wrong'. The article 8 case, as I see it, essentially comes to this. The 2012 offence was a single offence and relatively minor. The seven-month custodial sentence is relatively short, and there is the prospect of parole after 3½ months under the Polish system. The appellant has now paid the compensation to the bank in full. That feature is said to be likely to have the consequence that the Polish authorities will reduce any custodial sentence needing to be served. There is a child in this case, a daughter who lives in Poland, whose interests are significant and who relies on the appellant for financial support. He has been 'settled' in the UK since 2018, and he has employment here, which enables him to provide that support. He is of good character since 2012 and has no subsequent convictions. On the basis of those features in particular, but having regard to all the circumstances of the case and balancing the factors in the two directions – in favour of extradition and counting against extradition – the appellant's case is that it is reasonably arguable that the district judge arrived at the 'wrong' outcome.

5. I cannot accept that submission. I agree with the view expressed on the papers by Mr Justice Johnson on 1 May 2020, refusing permission to appeal. In my judgment, the district judge arrived at a decision on article 8 which was plainly open to him. He did so in the light of careful findings of fact, which he arrived at, having considered all the evidence and having heard the oral evidence. Those findings of fact were plainly open to the district judge. The judge took into account all of the matters to which I have referred, was well aware of them, and considered them within the necessary balancing exercise. The judge found that the appellant had been a fugitive since December 2014, he had left Poland well aware of the conditions, had been non-compliant with both aspects (compensation and supervision) and was uncontactable. The judge explained why he found that there was no culpable delay on the part of the authorities in the pursuit of extradition, in the light of the appellant's actions. The judge found that the appellant was employed in the UK and does have some family here – in particular, a brother – but no dependents in the UK. The judge recognised the daughter in Poland and the money that the appellant says he is able to provide through his work. The judge recognised that the compensation has been paid and paid in full. But the judge found as a fact that the appellant did not come to the United Kingdom in order to be able to work and pay off the compensation. The judge found as a fact that the compensation repayment is a step which the appellant had only taken subsequent to these extradition proceedings, and his October 2019 arrest. He found that the compensation was paid on 12 December 2019. The judge recognised the absence of any subsequent convictions, the lapse of time and the 'settled' nature of the appellant's life in the United Kingdom. The judge concluded that the strong public interest considerations in favour of extradition were not outweighed by the various factors which could be put in the balance as indicating against extradition. In my judgment, not only was that a conclusion to which the district judge was entitled to come, it was an outcome which was plainly correct, and beyond any reasonable argument. I add this. It is not necessary for me to quote chunks from the district judge's careful judgment but, in my judgment, District Judge Sam Goozée undertook a conscientious, full and impeccable article 8 evaluation.

Conclusion

6. For those reasons, neither of the two grounds which have been advanced in this appeal are properly arguable and I refuse permission to appeal on both of them.

Section 2 (Judicial Authority)

7. There is, however, a remaining issue. In the case of Wozniak CO/4299/2019 [2020] EWHC 1459 (Admin), this court has given permission to appeal on a section 2 issue relating to whether the Polish authorities can now be regarded as satisfying the test of 'judicial authority'. That judgment is published on bailii. Mr Barrett, frankly and commendably, told me this morning that he was aware that there had been a case raising an issue of that kind, but that he did not have the detail and was not aware of the case name. Wozniak is a case which, on its face, is capable of affecting even conviction warrant cases in the context of Poland. It is a 'pipeline' case of which the respondent would be well aware. I thought it appropriate this morning, by email, to alert the parties to the Wozniak case. I was aware that the respondent was not intending to attend this oral renewed permission hearing. That is entirely understandable: it is not the practice of respondents routinely to attend oral renewal hearings. Moreover, it is for appellants and those who represent them to put forward the points which they wish to raise in extradition proceedings. It is also appropriate for them to take steps, if they become aware that other issues are in the pipeline.

8. Commendably, Counsel (Ms Rebecca Hill), who in this case had submitted the respondent's submissions attached to a respondent's notice on 5 February 2020, was able to respond by email. She confirmed that she was aware of the Wozniak case. She made clear that she was without instructions. But she was able to indicate that one possibility was that the appellant in this case might seek to amend the grounds of appeal to include a Wozniak section 2 ground of appeal. She was also able to indicate that, were that course to be taken, it may be the position that the respondent would be inviting a deferred decision following an opportunity to make submissions. She emphasised that that was by way of an indication from her to assist the court, but it was not one based on instructions.

9. If there were before the court today a written application to amend the grounds of appeal and add a section 2 Wozniak ground, the first thing I would have done would have been to ensure that the respondent had an opportunity to respond to that document. That has not happened; and it has not been possible. One option, if I were persuaded that it was appropriate to allow this appellant to take the Wozniak point, would have involved a possible stay of an application for permission to appeal on this new ground. I would, in any event, have been refusing permission to appeal on the two grounds previously advanced. One possibility would have been to focus not so much on the stay of an application for permission to appeal, on an amended ground, but to focus rather on a stay of the extradition. I say that, because I am aware of other circumstances in other cases in the extradition context in which a point of law has arisen before an individual has come to be surrendered. Even where an appeal has been dismissed, Criminal Procedure Rules rule 50.27 contain the safeguard by which an appeal can be reopened. One option, in the context of that, is to stay extradition until further order.

10. What I propose to do in the present case is as follows. I will make an order today dismissing the application for permission to appeal on the two grounds which had been advanced. I will, however, stay the effect of that order. I will allow a timetable, with liberty to apply to vary it if necessary. The timetable will be 4 o'clock next Monday, 22 June 2024 for the appellant to file and serve any written submissions on what course the court should take and on what basis. If the court is being asked to act on amended grounds of appeal, those will need to be provided. There should also be a draft order.

All of that needs to be served on the respondent. I will say 4 o'clock Wednesday 24 June 2024 for any submissions from the respondent in response and 4 o'clock Thursday 25 June 2024 for any submissions from the appellant's representatives in reply. I will then deal with the matter myself, on the papers in the first instance, and make such order as I consider appropriate in the light of what has been said at that stage by the parties. It is possible that what the parties will be asking or inviting me to order will itself involve a timetable. For example, it may be that the respondent's observations by next Wednesday will be observations relating to a timetable. That is a matter for the respondent, as is the question of whether they wish to use the liberty to apply, to vary the order that I am making.

11. I have taken this course as being a wholly exceptional one. I am satisfied in this case that it would not be in the interests of justice for the appellant to face surrender by way of extradition, in circumstances where the Wozniak issue is known to be pending, without making this provision. The course is wholly exceptional because the point had not been raised on behalf of the appellant, notwithstanding the broad awareness of the issue. I thought it appropriate to raise with the parties my own awareness of the pipeline issue. I repeat that I am particularly grateful that Ms Rebecca Hill who acts for the respondent was in a position to provide the court with the email response to which I have referred. I have no doubt that the brief period of staying the effect of my order, dismissing the application for permission to appeal in this case, and the provision allowing for brief written submissions from the parties, will not constitute or cause any injustice or prejudice to any party. It is, moreover, appropriate for me to have dealt with the two issues originally raised before this court. As to those, I repeat, permission to appeal is refused. I will discuss now with Mr Barrett the precise design of the order, intending that the final terms will be repeated here at the end of this written judgment.

Order

12. The order I am making is:

1. Permission to appeal is refused, on the two grounds advanced in writing, namely: (1) section 14; and (2) Article 8.

2. No order as to costs.

3. This order shall not take effect for 14 days from the date of this order, or further order, to allow the parties to make submissions relating to the issue in Wozniak CO/4299/2019 [2020] EWHC 1459 (Admin), and what course should be taken in this case in relation to that issue, as to which:

   (1) The appellant shall have until 4pm Monday 22 June 2020 to file and serve submissions, including any application for permission to rely on amended grounds of appeal, those amended grounds of appeal, and a draft order.

   (2) The respondent shall have until 4pm Wednesday 24 June 2020 to respond, as it thinks appropriate.

   (3) The appellant shall have until 4pm Thursday 25 June 2020 to reply.

   (4) All such communications and documentation to be copied to Fordham J's clerk.

   (5) What, if any, further order to make will be considered on the papers by Fordham J.

4. Liberty to apply in writing on notice to vary paragraph 3.

18 June 2020