



Neutral Citation Number: [2022] EWHC 1696 (Admin)

Case No: CO/4466/2020

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Friday 1<sup>st</sup> July 2022

**Before:**

**MR JUSTICE FORDHAM**

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**Between:**

**LUKASZ FRANISZYN**

**- and -**

**DISTRICT COURT IN KRAKOW (POLAND)**

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**Appellant**

**Respondent**

Rebecca Hill (instructed by Hodge Jones & Allen) for the **Appellant**

Stuart Allen (instructed by CPS) for the **Respondent**

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Hearing date: 21.6.22

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**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

**MR JUSTICE FORDHAM:**

Introduction

1. This is a substantive extradition appeal on Article 8 ECHR grounds. The hearing was a remote hearing by MS Teams. Both Counsel had invited the Court to adopt that course because of transport difficulties in people getting to the court building on the day fixed for the hearing. Each Counsel was satisfied, as was I, that the mode of hearing involved no prejudice to the interests of their clients. The open justice principle was secured in all the usual ways: through the publication on the Court's cause list of the case, its mode of hearing and its start time, together with an email address usable by any member of the press or public who wished to observe this public hearing. The Appellant is aged 30 and is wanted for extradition to Poland. That is in conjunction with an EAW (European Arrest Warrant) dated 22 December 2017 and certified on 21 February 2018, on which he was arrested on 23 July 2020. He has been on conditional bail since 24 July 2020. After an oral hearing on 4 November 2020, DJ Goldspring ("the Judge") ordered his extradition. Ms Hill and Mr Allen appeared before the Judge and appear before me. In the circumstances and on the evidence as they were before the Judge, Ms Hill accepted that there was no viable Article 8 ground to resist extradition. The Judge's conclusion – that surrender would not be a disproportionate interference with Convention rights – was unimpeachable. The only issue which was raised before the Judge on the Appellant's behalf as a bar to extradition was the familiar Wozniak ground (Polish judicial independence). The Judge did not accept the Wozniak ground. Nor, in due course, did the Divisional Court in the Wozniak case itself. Meanwhile, this Court in the present case made an order on 24 May 2021 granting a stay of the Appellant's appeal, pending the outcome in Wozniak.
2. Article 8 is the single ground now raised, by reference to section 27(4) of the Extradition Act 2003. The issue is whether extradition would now be a disproportionate interference with the Article 8 private and family rights of the Appellant, his partner ("the Partner") and their young daughter ("the Daughter"), born in August 2021. Permission to amend to advance this ground was granted by Griffiths J on 11 February 2022. Permission to appeal was granted by Jay J on 7 April 2022 so that the Appellant could have the benefit of a 'balancing act' Article 8 assessment in light of the new Article 8 ground and the changed circumstances. It is common ground that, in all the circumstances, the appropriate course is for this Court to consider for itself, and conduct afresh, the Article 8 evaluative balancing exercise in light of the evidence as it now stands. That includes witness statements from the Appellant and the Partner both dated 1 October 2021. The section 27(4) question is whether, on all the material and in all the circumstances, the Article 8 outcome should now be different. Although Parliament in section 27(4) speaks of this Court evaluating what the Judge "would" have done with the new evidence, it is common ground that there are no mental gymnastics and no artificial exercises in reconstruction. At least in the present case, this Court should simply evaluate the outcome which this Court considers to be the correct one. There is no dispute as to the facts. For example, Ms Hill accepts that the Appellant left Poland as a fugitive; and Mr Allen accepts that the birth of the Daughter was not a conscious attempt to avoid extradition. It is also common ground that a person who is very important in this extradition case is the Daughter, now 10 months old, whose Article 8 rights are engaged and whose best interests are a primary consideration in the conduct of the Article 8 evaluative proportionality exercise. That is how I approach the case.

Context

3. The Polish criminal process which is relevant as the subject matter of the EAW in this case really involves four separate strands.
  - i) Stabbing. A first strand is an offence of actual bodily harm by stabbing, which the Appellant committed aged 20 on 1 January 2012. He was convicted in Poland (in his presence) on 6 February 2013, which led to the imposition of a 10 month custodial sentence. That sentence was originally suspended for 4 years but was in due course on 4 December 2014 activated. He has served 6 months of that 10 months custodial sentence and so there is 4 months left to serve.
  - ii) Shoplifting. The second strand is an offence of stealing cosmetics, as a member of a group, to the value of the equivalent of £211 – described by Ms Hill as shoplifting – on 29 August 2012 aged 20. On that matter, the Appellant failed to appear in court in Poland in and after January 2013. In March 2013 he was convicted and sentenced to 4 months, originally suspended for 3 years. That sentence was activated on 20 November 2014. 3 months 21 days are left to be served.
  - iii) Cannabis Possession. The third strand is an offence of possession of cannabis on 21 January 2014 aged 22. The Appellant was convicted (in his presence) on 22 June 2014, leading to a 10 month custodial sentence originally suspended for 3 years. This was activated on 13 January 2015. 9 months 21 days remain to be served.

That means the first three strands, each constituting “conviction” matters, give rise in aggregate to 18 months imprisonment to be served in Poland.

- iv) Alleged Drug Dealing. The fourth strand is a series of “accusation” matters. These are crimes said to have been committed in 2013 when the Appellant was aged 22. What are described are some 13 instances of supplying amphetamines and marijuana – with a total weight of 18g of each of those drugs – to minors, between October and December 2013. What is also described is participating in the supply of drugs – with an aggregate of 30g of each of the same two drugs – in 2013 aged 22. The Appellant was interviewed in relation to these accusation matters on 7 March 2014 and is said to have admitted them. Ms Hill accepts that “minors” means children (under 18s).
4. On the evidence, from May 2014 the Appellant failed to comply with conditions that had been imposed on him in the proceedings in relation to the Alleged Drug Dealing to report to the police. He was present when convicted of the Cannabis Possession offence on 22 June 2014. But he failed to appear at a court hearing on 16 March 2015 in relation to the Alleged Drug Dealing. That led to the issuing of a Polish domestic warrant for his arrest. It was against that background that it was reported in August 2017, by the police to the Polish court dealing with the Alleged Drug Dealing, that the Appellant was understood now to be outside Poland. As I have mentioned, the EAW was then issued at the end of 2017, certified at the beginning of 2018, and within 18 months he had been intercepted and arrested in July 2020. The time which has passed subsequent to the order for extradition on 27 November 2020 was in the first place linked to the ‘test case’ point of principle being ventilated before the High Court in the Wozniak

case. That gave the Appellant, and all other requested persons in Polish extradition cases, a durable basis to remain in the United Kingdom until the end of 2021. Then Article 8 was raised on this appeal, for the first time, by the application for permission to amend which Griffiths J granted on 11 February 2022. The delay following the Article 8 claim being raised is only the few months in 2022 through to the substantive hearing before me.

### Argument

5. The Article 8 argument relating to the Appellant, the Partner and the Daughter was advanced with skill, and realism, by Ms Hill. Its essence, as I saw it, came to this.
  - i) It is right to acknowledge that in the balancing exercise and in favour of extradition there are the three conviction matters: the Stabbing, the Shoplifting and the Cannabis Possession. There are also the accusation matters: the Alleged Drug Dealing. It is right to acknowledge the totality of all of those matters. It is also the case that the Appellant came to the United Kingdom in April 2015 as a fugitive. There are the familiar public interest considerations in favour of extradition. Having said all that, there are important matters which need to be borne in mind when evaluating the weight of the factors in support of extradition. And there are important matters capable of weighing in the balance against extradition.
  - ii) In relation to the Stabbing, the seriousness of that matter is to be viewed from the perspective of the Polish court which considered the appropriate penal response to be a 10 month custodial sentence which it considered it appropriate to suspend. The Appellant was aged 20 at the time. I have seen the content of the December 2012 psychiatric expert report, which informs the appropriate penal response told the sentencing court that the forensic psychiatric expert had diagnosed the Appellant with limited personality and behavioural disorders and epilepsy in his medical history and that the diagnosis of epilepsy and organic lesions in the central nervous system together with the alcohol that he had consumed impaired the Appellant's intellectual control and lowered his moral and ethical inhibitions, triggering an emotional reaction that was inadequately intense and triggering problems with controlling emotions and behaviour which were conducive to impulsive behaviour and active aggression, significantly impairing his ability to exercise control of his behaviour and his ability to appreciate the criminality of his conduct. The Stabbing is, moreover, the sole offence of violence in the Appellants entire history. It is a decade old. And what is more, the Appellant served six months (60%) of the custodial sentence of 10 months, and therefore has not gone unpunished. The Shoplifting offence, although committed as part of a group, related to cosmetics in the equivalent sum of approximately £200. Again, the Polish court has considered the seriousness of the offending in the circumstances and the appropriate sentence was 4 months which was suspended. It should be noted that 4 months is the minimum level of extraditable custody. The Cannabis Possession is an offence of simple possession and the drug in question is cannabis, albeit that the seriousness was reflected from the Polish court's perspective by the 10 month custodial sentence (which again was originally suspended). Once again, the Appellant was a young man (aged 22). The Alleged Drug Dealing can be taken as alleging "street dealing", involving "minors" (ie. children), which is an

accepted aggravating feature. Nevertheless, the amounts of drug and the nature of the drugs in question are relatively modest and the offending was for a limited period. Viewed overall, it is relevant that none of these offences (and alleged offences) are the most serious of offending encountered by the extradition court and all of them are historic matters. They are, moreover, doubtless linked to the lifestyle of the Appellant. He was plainly himself a drug user, as reflected in the Cannabis Possession offence. Looking at each, and all, of them the offences and alleged offences are matters of moderate seriousness and was not of the utmost importance. That position – as to moderate seriousness – is reflected in the fact that the public interest in the pursuit of the Appellant has evidently not been treated by the Polish authorities themselves as being especially high. He has not been pursued with any particular haste.

- iii) The Appellant's life has moved on in a very significant way. Since being in the United Kingdom in April 2015, over the course of the ensuing seven years and two months, the Appellant has no further criminal convictions. He is rehabilitated. The Appellant is a full and involved father of the Daughter and a full and involved partner of the Partner. He is the sole breadwinner for the family. Partner and Daughter are both dependent on him. The passage of time since 2012 to 2014 (ages 20 to 22) through to today (aged 30) serves to diminish the public interest in favour of extradition and has served to deepen the private and family life ties in the United Kingdom. The impact of extradition is serious and significant. In particular, it is serious and significant for two innocent third parties – the Partner and the Daughter – who are, on any view, innocent but seriously impacted. The Partner was employed on a fixed term contract at a warehouse until she needed to take maternity leave. She would not now be able to return to that work, were the Appellant to be extradited. Her earnings had been £1,500 a month. The rent (excluding bills) is £1,000 a month. The Partner would have to find and pay for childcare, as well as all other expenses, if she were to seek to find work. The impacts of extradition are practical, emotional and financial. They include serious and significant difficulties and real hardship. They will also entail significant uncertainty, both in terms of the duration of the separation in light of the Alleged Drug Dealing matters and also in the context of the position post-Brexit. The lives of all three individuals in this young family will be rendered uncertain and unstable. All of this is in a context in which the Appellant has served some of the custody (6 months). It is also in the context where there has been a nightly electronically-monitored curfew (0001 to 0500) to which the Appellant has now been subject for 23 months since his release on conditional bail. That constitutes an impediment and restriction on freedom which is a relevant factor in the Article 8 balancing exercise.
- iv) Having regard to all relevant considerations and in particular viewed from the perspective of the Partner and the Daughter whose Article 8 rights are engaged, this is a case where the Court should conclude that the factors which weigh against extradition outweighed those which weigh in the balance in its favour, and the Appellant's extradition would be a disproportionate interference with Article 8 rights.

## Discussion

6. I am not able to accept the argument. I accept that Ms Hill has correctly identified relevant features and contours of the case and matters which need to be considered and evaluated in the Article 8 balancing exercise. But, in my judgment, this is a case in which the considerations which count in the balance in favour of extradition do decisively outweigh those which count in the balance against extradition.
- i) The four strands of criminal conduct and alleged criminal conduct which constitute the subject matter of the extradition proceedings are – when viewed as they must be together and ‘in the round’ – matters of seriousness and significance. The three conviction matters, leaving aside the Alleged Drug Dealing, involve – in aggregate – 18 months of custody left to be served. Ms Hill is right to remind the Court to consider these sentences from the perspective of seriousness as evaluated by the Polish criminal justice system. But that cuts both ways. It includes respecting the 10 months sentence for the Cannabis Possession just as it does the 10 months for the Stabbing. It also includes the appropriate respect which this Court should and must have for the decisions taken by the Polish courts in 2014 and 2015 to activate the suspended sentences and require the Appellants to face his responsibilities and serve his prison sentences. The Alleged Drug Dealing is plainly a matter of seriousness and significance. It involves some 13 counts of supplying drugs to minors (children). The charge of participating in the supply of drugs is, as Mr Allen pointed out, a charge which related to supplying marijuana and amphetamine on at least three occasions to one of the named minors (children) “for selling it on to unknown individuals”. On the face of it that is a count of supply of drugs to a person aged under-18 for onward supply by them, when the Appellant was 22. Moreover, it would – if there is a conviction – have been drug dealing committed less than a year after the conviction for the Stabbing which had resulted in the 10 month suspended sentence.
- ii) It is significant that the Appellant came to the United Kingdom as a fugitive. He came here in April 2015, the month after he had failed to appear on 16 March 2015 at court, as required, in relation to the Alleged Drug Dealing, about which he had been interviewed a year earlier. He came in the knowledge of the three suspended sentences and their conditions. He had known that they stood to be activated. And in fact, all three of them had been activated, by reason of his breaching the conditions, at the time that he came to the UK. He came here in breach of requirements that had been imposed on him including a reporting requirement with which he had failed to comply from May 2014. His position as a fugitive is a relevant dimension of the passage of time, including when viewed from the perspective of the Polish authorities. It was as a fugitive that he avoided standing trial in 2015 of the Alleged Drug Dealing. The Appellant’s cross-border absconding was why a national search was needed and why it failed to find him. It is why it was reported by the police to the Polish court in August 2017 that he was now outside Poland. The EAW followed four months later and was promptly certified two months after that. The Appellant had, in the meantime, begun his relationship with the Partner in the United Kingdom in around 2016. They then began cohabiting in about 2019. That was under the shadow of his absconding, to his knowledge. The passage of time culminating in his arrest in July 2020 can, as Mr Allen convincingly submitted, be directly linked to his action in evading his responsibilities.

- iii) The birth of the Daughter in August 2021 is highly relevant. The Appellant is the primary financial provider for the Partner and the Daughter. They will suffer if the Appellant is now extradited. These are pressing circumstances. Mr Allen was right to accept all of this. The Daughter is very young and within the bracket described in the case law where separation can be expected to be particularly damaging. On the other hand, this is not a case about extraditing a primary carer. The Daughter will remain with her mother, whether in the United Kingdom where welfare benefit provision can be expected to assist them, or in Poland should they decide they need to relocate there. The electronically-monitored curfew is a relevant factor to be borne in mind, albeit that neither that period nor any quantified proportion of it can be equated with a directly-deductible qualifying curfew which – like a qualifying remand – would serve to reduce the time to be served or treated as to be served. The Appellant has established work in the UK and has a private and family life. He has no convictions in the United Kingdom. But all of these points – and all of the matters relied on which can count in the balance against extradition – are decisively outweighed by the public interest factors in support of extradition. In the circumstances, and for these reasons, the Article 8 appeal cannot succeed. Since the fresh evidence is in the event incapable of being decisive, I will formally refuse permission to adduce it.

#### End-Notes

7. There are two “end-notes” to this judgment. They are not points which are capable of being decisive in the present case, however they are resolved. But they arose at the hearing, and I will record them, making clear what I think in relation to each of them.
- i) First, there is a point about comparison with a domestic criminal process. This point arose in the following way. One of the submissions made by Mr Allen on behalf of the Respondent related to part of the harm and impact for the Partner and the Daughter of losing the Appellant’s bread winning economic support, given the position that the Partner will be in as regards any return to work in light of having to pay the bills and fund childcare. Mr Allen submitted that this aspect of the harm and impact would be suffered were this a domestic criminal process, involving pursuit of a convicted person to serve an activated suspended sentence or to stand trial and serve any consequential sentence. He submitted that it was appropriate for the extradition Court to have that observation in mind. In my judgment, considerable caution is appropriate in relation to any suggested analogy or parallel with purely domestic criminal process. Extradition is a distinct context with very particular implications, as Ms Hill rightly pointed out. The nature of extradition, the intervention, the family rupture and the impact are all likely in principle and in practice to be very different in the context of a cross-border removal and the international travel that would be entailed in order to remain in contact. There is no direct parallel between extradition and a purely domestic criminal process. One familiar reference point is HH v Italy [2012] UKSC 25 at §32 (Lord Judge). However, having said all that, my view on this point is that an extradition Court dealing with an Article 8 proportionality evaluation can properly remind itself of the truth – if it be true – that a distinct element of the harm and impact for a partner and young child is one which would be experienced in a domestic criminal case involving similar responsibilities

regarding custody. Indeed, I understood Ms Hill to accept the point, to that modest and caveated extent.

- ii) Secondly, there is a point about the known circumstances in which a child is conceived. This point arose in the following way. Mr Allen made clear that he was not suggesting, and that he would have had no basis to suggest, that the pregnancy in this case (which must have been in or around November 2020) was in the nature of a deliberate conscious attempt to avoid extradition. Having made that clear, Mr Allen's submission was that the extradition Court in considering the Article 8 proportionality evaluation could properly bear in mind that the pregnancy arose in circumstances where the Appellant had been arrested in conjunction with the extradition proceedings in July 2020 and that the precariousness of his position in the UK – given the shadow of his extradition proceedings – was known to the Appellant and the Partner in the run up to and at the time of the oral hearing on 4 November 2020. In my judgment, this is another point needing to be approached with considerable caution. In particular, it does not in any way qualify or caveat the implications of extradition for the Daughter and the implications for her best interests. Having said that, my view on this point is that the known precariousness point is a relevant part of the contextual setting and circumstances, which the extradition court can properly have in mind. Again, I understood Ms Hill to accept that point, to that modest and caveated extent.