Neutral Citation Number: [2023] EWHC 2900 (Admin)

Case No: CO/724/2023
AC-2023-LON-000857

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday 16th November 2023

Before:
FORDHAM J

- -

Between:

PRZEMYSLAW DZIADUCH	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co) for the **Appellant**
The **Respondent** did not appear and was not represented

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Hearing date: 16/11/23

Judgment as delivered in open court at the hearing

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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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FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

1. The Appellant is aged 41 and is wanted for extradition to Poland. That is in conjunction with a pair of Extradition Arrest Warrants, each of which was issued on 24 May 2019 and certified on 13 September 2022, and on which the Appellant was arrested following an encounter with the UK authorities on 23 September 2022. He was initially on remand but has been on bail since 14 December 2022. Extradition was ordered by District Judge Rai ("the Judge") on 23 February 2023 after an oral hearing exactly a month earlier. The sole issue is Article 8 ECHR. These are both conviction Extradition Arrest Warrants. The cumulative sentence remaining to be served in Poland is 21 months and 17 days, less any further reduction (if appropriate) for the nearly 3 months qualifying remand which I have mentioned. It is not immediately clear whether that had been taken off the time to be served to which the judge referred but nothing turns on that and any calculation would readily be undertaken.

2. The Judge made an unimpeachable finding of fugitivity, as Mr Hepburne Scott rightly accepts. She also rightly recognised that this is a private life case rather than a family life case, the sole reference to family in the UK having been to a brother but with no evidence of any contact between the brothers. The Appellant had come to the United Kingdom in February 2007 and has been here for the 16½ years since then.

3. The index offending was as follows. For the first Extradition Arrest Warrant there were 3 offences all committed in 1999 when the Appellant was aged 17. There was a commercial burglary in which the equivalent of £2.7k of computer and other equipment was stolen. There was the theft of a mobile phone from a car valued at around £100. There was then another commercial burglary later in 1999 at which an equivalent of £1.1k of computer and other equipment was stolen. In relation to these matters the Appellant had been convicted and sentenced to an aggregate sentence of 21 months as at May 2004. He had been serving his custodial sentence until an early release took place, conditional on probation. (That conditional early release was subsequently revoked in August 2008 and the Polish authorities required the balance of the sentence to be served.) For the second Extradition Arrest Warrant the index offending was at the age of 22. There were 6 separate offences of fraud relating to bank loans. The aggregate amount was equivalent to £4.5k. The Appellant had been convicted and sentenced in relation to these matters in October 2006. The Appellant was well aware of all of this when in February 2007 he came to the UK as a fugitive. There followed a domestic warrant later in 2007 in relation to the frauds, and then in August 2008 (as I have said) the revocation of the conditional early release in relation to the 1999 offences, followed by a further domestic warrant in December 2009. In writing Mr Hepburne Scott, who described the offending as involving a relative lack of seriousness, characterised it as "petty dishonesty". In oral submissions today, he said "relatively petty dishonesty". I cannot accept, even arguably, that "petty dishonesty" is apt. The Respondent's submissions correctly describe the 1999 offences as a series of offences whereby entry was forced in order to steal items of an overall high-value. The overall fraud amounts are also not insubstantial.

4. As I see it, Mr Hepburne Scott really has three key points. The first is that this is a case of a very significant passage of time. In particular, from 2009 to the issuing of the Extradition Arrest Warrants in May 2019 there was a passage of 10 years. The Respondent's Further Information, recognised by the Judge, records that the

Appellant was believed to be in the UK at around the end of 2007 and that the Polish authorities then took steps to oppose, in November 2013, an application which he had made at the Polish embassy in London for a new Polish passport. There is then the further 3 years 3 months between the issue, and the certification, of the Extradition Arrest Warrants. The overall passage of time since the offending is 24 years. The second key point is that at the time of the offending the Appellant was aged 17, and then aged 22. That, says Mr Hepburne Scott, was an important consideration which was unmentioned by the Judge. The third key point is the need to look at the overall outcome in the light of all the facts and circumstances. That includes the long period settled in the UK, during which there have been no criminal convictions here (something which is said to have been given "no weight").

5. In refusing permission to appeal on the papers Kerr J explained that he could see no viable appeal. I have reached the same conclusion, looking at the matters afresh and with Mr Hepburne Scott's assistance.

6. The passage of time in this case is striking on the face of it. Powerful points are made about the Polish authorities' understanding in November 2007 that the Appellant had been in the UK; about the references in 2007 to an EAW and in 2009 to a request for an EAW; and about the opposed passport application in November 2013. But what the Judge importantly recognised was that, on the evidence, the Polish authorities were unable to enforce warrants against the Appellant because he was in hiding. He had come here as a fugitive, evading what he knew were his responsibilities under the Polish criminal process. But in addition, he had worked in the UK doing "cash in hand jobs", in circumstances where he did not have and "could not obtain identity documents". As it was put, he was staying at large and hiding from justice. I cannot accept, even arguably, that the Judge treated fugitivity as displacing the delay and passage of time. She said of the passage of time that the offences went back to 1999 and 2006, but that "this is caveated by his fugitive status". The word "caveated" did not mean that the passage of time was being given no weight. It was a feature in the balance, against extradition, but it was heavily qualified. The Judge specifically referred to the authorities about the passage of time including the well-known passage in HH v Italy about the delay since crimes being committed as being capable both of diminishing the weight to be attached to the public interest and increasing the impact upon private and family life. The Judge also referred to authorities about a requested person supposedly living openly in the UK and the limits of what could be expected of foreign judicial authorities and the National Crime Agency. These considerations relating to the passage of time needed to be put alongside the facts and circumstances of the case. That is what the Judge did. The Judge concluded that the 16 years in the United Kingdom had established a "limited private life". This was not "family life". Third party family members were not impacted. The word "limited" was explained by the absence of any settled status, and by the fact that the Appellant could only work cash in hand jobs as he could not obtain identity documents.

7. The point is well made about the Appellant's age at the time of the 1999 offending. The authorities do recognise that where the requested person was "a minor" at the time of the offence that is a very significant factor. Having said that, the Judge was very well aware of the chronology and made frequent reference to it. True, she did not specifically refer to age at the time of the offending. But she did refer to the Appellant's date of birth. She did refer to the sequence of events and the relevant

dates. She undoubtedly, in my judgment, had well in mind the Appellant's age at the time of the burglary and the theft offences (aged 17); but also the fraud offences (aged 22). This was not a case where all the offending was as an under-18 year old. There is a case in which the series of offences had been committed, aged 17, leading to a sentence which had been served in part, then release on probation and then the series of 6 further offences committed as a 22 year old. Mr Hepburne Scott accepts that that is the sensible reading of the timeline.

8. Finally, stepping back from the case, I am satisfied that there is no realistic prospect that the outcome would be overturned at a substantive hearing in this Court as being wrong. In those circumstances the application for permission to appeal is refused.

16.11.23