



Neutral Citation Number: [2024] EWHC 232 (Admin)

Case No: AC-2023-LON-002499

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday 6th February 2024

Before:
FORDHAM J

Between:
LESZEK BIALY **Appellant**
- and -
REGIONAL COURT OF OSTROLEKA, POLAND **Respondent**

The Appellant in person
The **Respondent** did not appear and was not represented

Hearing date: 6.2.24

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.

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's extradition to Poland was ordered by DJ Tempia on 23 August 2023. That was after an oral hearing on 18 August 2023. The Appellant was represented by Counsel. He and his partner gave oral evidence. In an 18-page and 102-paragraph judgment, the Judge dealt with all grounds which had been raised to resist extradition. The accusation Extradition Arrest Warrant in this case was dated 14 March 2022 and certified on 19 December 2022. The Appellant was arrested on 8 January 2023. As he has emphasised in his oral submissions today, made through the interpreter, he has been on conditional bail.
2. The Appellant faces extradition for alleged drug trafficking offences between 2012 and 2016 involving an aggregate of no less than 3kg (valued in the equivalent of no less than £6,000) of amphetamines. The Appellant criticises the adequacy of the Polish prosecuting authorities' evidence, and what he says is the absence of a proper source for the knowledge professed by a witness. He also says that the volume of drugs can be spread out, over the entirety of the period of the alleged crimes, so as to constitute an innocent daily amount of amphetamine consistent with personal use. It is not the function of the extradition proceedings to decide the question of guilt or innocence. The extradition courts have to apply legal tests and established principles to see whether there is any bar to extradition. That is what the Judge did, and it is what I am also now doing.
3. There is putative fresh evidence which are new documents relating to a November 2023 refusal in Poland of an application to revoke the Polish preventive measure, and an appeal against that refusal. The Appellant has emphasised today that the Polish preventive measure was what triggered the Polish proceedings against him; that he has a Polish lawyer who is acting on his behalf; and that there are grounds, he says, for optimism. If there were some step, which is able to succeed in Poland, to knock out the prosecution or bring it to an end, that course will remain open. The Appellant relies on these new documents and these attempts (the application and appeal). He refers to his "double jeopardy" in the light of an earlier Polish conviction. He also refers to the prospect of a "less coercive measure". As to that, he says that there was no good reason for the refusal of his request to proceed by way of interview, and that bail conditions could have been varied to require him to attend such an interview.
4. The Appellant has had ample time and opportunity to marshal his case against extradition. For the hearing before the Judge he was assisted by a legal team. He was able to adduce documents. The Judge recorded that an earlier April 2023 hearing was adjourned, in the light of new documents which the Appellant had produced. These were previous Polish judgments. Those materials were then addressed by the Polish Judicial Authority, in its June 2023 Further Information, which explained that the Polish judgments had related to other matters. So, there was no "double jeopardy". The February 2023 s.21B request, to use "less coercive measures", had been refused on 20 April 2023. It was a matter for the Polish Judicial Authority to decide whether it was prepared to entertain interview as a way forward. Its refusal did not give rise to any bar on extradition. The Judge considered all of this and referred to it.
5. At the hearing before the Judge, the Appellant's Counsel advanced an argument about "dual criminality" based on toxicology and raising the question whether the drugs were amphetamine. The same point has been raised again, by the Appellant, today.

But this was decisively and properly disposed of by the Judge, on the basis that the Extradition Arrest Warrant expressly identifies the drugs to which the allegations relate as amphetamine. The Judge also, clearly and emphatically, dealt with a statutory proportionality issue (s.21A) relating to the seriousness of the allegations; in the context of which the absence of any prospect of “less coercive measures” also featured.

6. That leaves the linked issues of section 14 (passage of time) and Article 8 (private and family life). The Appellant has emphasised today that it is untrue to say that he “ran away” from the Polish proceedings. He says that the Polish authorities should have been aware of his whereabouts as a result of pre-existing probation contact requirements. The Judge recorded that as his oral evidence. She addressed the evidenced chronology and sequence of events, including as to why matters came to light in 2017 in Poland, and as to the various steps taken by the Polish authorities in and after 2017. She did not find that the Appellant had evaded proceedings or “ran away” from them. She addressed the question of whether he had left Poland as a fugitive and recorded, in his favour, that he was not proved to be a fugitive. But she also unassailably found an absence of any culpable delay; and she unassailably found that extradition was not rendered unjust or oppressive by reason of the passage of time.
7. The Judge also ‘factored in’ the passage of time into the Article 8 ‘balance sheet’ exercise, together with other factors. There was the fact that the Appellant had been in the UK since 2017; that he did not come here as a fugitive; that he is of good character here; that he has a close and cohabiting relationship with his partner of 5 years; and that he financially supports his 3 children who live with their mothers in Poland. The Appellant submitted today that the Judge’s weighing of the factors was incorrect. He says that extradition is unnecessary. He expresses a concern that the Polish proceedings may not conclude. And he says he will not or may not be able to return to the UK. I have considered all these and the other factors in the case. The Judge unimpeachably concluded that the strong public interest factors in support of extradition, in the context of these serious alleged offences, outweigh the factors against extradition. Beyond reasonable argument, that remains the case today.
8. I have taken into account all of the points made orally and also in writing. In the written submissions the Appellant emphasises that his brother, two of his sisters and his mother live in the UK. He emphasises what he says were visits by the 3 children to visit him and the family in the UK. He emphasises his wish to support his children financially and to support them in coming to the UK to study in the future. He emphasises the position of his partner. He says this: that the interference with Article 8 is so exceptionally serious that it outweighs the importance of extradition. But I cannot accept that that is, even arguably, the case. The Judge was right to have in mind that the children (aged 14, 12 and 9) live in Poland with their mothers. The Judge was also right to have in mind that the partner has been in the UK since 2017, that she has fully settled status, and that she gave evidence that she would return to Poland if the Appellant were extradited.
9. I agree with Farbey J on the papers, that there is no realistic prospect that this appeal could succeed. I refuse the renewed application for permission to appeal and, since it is incapable of being decisive, I refuse permission to adduce the fresh evidence. There will be no costs order and that concludes this hearing.

6.2.24