

Case No: CO/3269/2017

Neutral Citation Number: [2018] EWHC 589 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/03/2018

Before :

MRS JUSTICE MCGOWAN

Between :

DAMIAN SZWARC	<u>Appellant</u>
- and -	
REGIONAL COURT IN GLIWICE (POLAND)	<u>Respondent</u>

Mr David Williams (instructed by **Kaim Todner Solicitors Ltd**) for the **Appellant**
Miss Catherine Brown (instructed by **The Crown Prosecution Extradition Unit**) for the
Respondent

Hearing date: 14th December 2017

Judgment

Mrs Justice McGowan:

1. On 10 July 2017 District Judge McPhee sitting at the City of Westminster Magistrates' Court ordered this appellant's extradition to Poland on two European Arrest Warrants (EAW).
 - i) EAW 1 was issued on 27 February 2017 and was certified on 21 March 2017. It relates to two offences: being concerned in the supply of various drugs between January and May 2005, and trafficking drugs between Poland and Germany between January and July 2005.
 - ii) EAW 2 was issued on 8 May 2017 and certified on 15 May 2017. It also relates to two offences, each of being concerned in the supply of drugs between June and August 2004 and in June 2005.
2. This case is to be dealt with under Part 1 of the Extradition Act 2003.
3. He resisted extradition claiming it would be a disproportionate interference with his family and private life rights under article 8 ECHR.
4. That opposition was based on what was said to be exceptional delay, the fact he had served a significant part of one of the sentences and that he had previously been extradited and released.
5. An aggregate sentence of four years was imposed. He has served the equivalent of two years and the balance of two years remains to be served.
6. Permission to appeal was granted by Supperstone J following an oral hearing on 26 October 2017 on the basis that the following features were arguably not considered, or not sufficiently considered by the District Judge,
 - i) The Appellant's previous extradition,
 - ii) The delay in bringing a prosecution for the offences on EAW 1 and,
 - iii) The delay between indictment and trial for the offences in EAW 2
7. The test to be applied on appeal in an Article 8 case is now well established. The public interest in extradition requests being met is so high that the consequences of interference with Article 8 rights must be "exceptionally serious". **Norris v Government of United States of America** [2010] UKSC 9. The approach to be taken by the court hearing an appeal is to review, not to reach its own decision. **Belbin v Regional Court of Lille, France** [2015] EWHC 149 (Admin).

"a successful challenge can only be mounted if it is demonstrated, on review, that the judge below; (i) misapplied the well-established legal principles, or (ii) made a relevant finding of fact that no reasonable judge could have reached on the evidence, which had a material effect on the value-judgment, or (iii) failed to take into account a relevant fact or factor, or (iv) reached a conclusion that was irrational or perverse"

8. The distilled jurisprudence of the judgments of Lord Neuberger in *In the matter of B(a child)(FC)* [2013] UKSC 33 at paragraph 93 and Lord Thomas CJ in *Polish Judicial Authorities v Celinski* [2015] EWHC 1274 (Admin) reinforces the test, was the court below wrong to reach the decision it did?
9. The appellant submits that the court below was wrong. He argues that the District Judge failed adequately to consider the impact on his private and family life of the overall delay since the commission of the offences in 2004 and 2005.
10. The appellant came to the UK in 2007. In late 2009 he was arrested on an accusation EAW. He consented to extradition and was returned to Poland and served approximately one month. He was released and returned to the UK in 2010. Later that year, 2010, he was convicted in his absence and sentenced to four years' imprisonment. In March 2011 he returned to Poland and was arrested to serve that sentence. In January 2012 he was released having served one year, given time on remand that appears to count as having served two years. The balance appears to have been suspended. He returned to the UK in April or May of 2012.
11. On 28 June 2012 he was convicted of the other matter and sentenced to another term of two years' imprisonment. On 11 September 2013 the two judgments were combined, imposing a total sentence of four years. This was re-calculated to account for his having served two years, this accounts for the outstanding balance of two years to serve.
12. He has an established family life here. His child was born at a time when he knew that proceedings were still outstanding in Poland. He has not been convicted of any offence since he arrived.
13. He argues that in dealing with the delay the District Judge identified the correct principles but erred in their application. It is submitted;
 - i) that there is no consideration given to the fact of the earlier extradition, imprisonment and release by the Polish authorities,
 - ii) that there is failure adequately to analyse certain features of the delay, which in EAW1 is significant and in EAW2 is appalling,
 - iii) that the most recent offending was in 2005 and the delay in prosecuting 10 or 12 accused persons cannot justify such an inordinate passage of time, particularly given the appellants' family life in the UK,
 - iv) that the District Judge conflated the reasons given for the delay in the two warrants in that measures taken by the appellant to challenge EAW1 do not explain or justify the delay in EAW2,
 - v) that 'guess work' was used to explain the inordinate delay,
 - vi) that in combination all the features of this case were wrongly found not to prevent extradition on the grounds it would have a disproportionate effect on his private and family life.

14. On behalf of the Judicial Authority it was fairly conceded that there has been significant delay, that the appellant has already served two years of the four-year sentence and that the District Judge failed to make any reference in his judgment to the previous extradition.
15. It was however submitted that, in the absence of a test of exceptionality, it is necessary to look beyond a simple calculation of time. The importance of extradition is a significant feature, particularly in light of such serious offending. Further that at least in part the delay was caused by the appellant's efforts to appeal and compound his position. It is submitted that delay is only one part of the picture. Delay in the judicial process in Poland means that extradition may often be justified even in offending of some antiquity. The acknowledged disruption to his family life does not outweigh the public interest in complying with treaty requirements.
16. The delay in this case is unusually long. Whether that feature alone should have caused the District Judge to reach a different conclusion does not need to be determined for the purposes of this appeal. The length of the delay in this case would raise concern. However, the District Judge's failure to "take into account a relevant fact or factor" is a determinative ground. The District failed to take into account the fact that the appellant had been extradited, imprisoned and released by the Polish authorities.
17. The appellant consented to be extradited, he was imprisoned by the authorities and released by them of their own volition. Those facts were clearly relevant to an assessment of the propriety of the current requests and the lack of consideration of such a relevant factor renders the decision wrong. Accordingly, this appeal is allowed.