Neutral Citation Number: [2021] EWHC 3320 (Admin)

Case No: CO/4385/2020

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

Royal Courts of Justice

Strand, London, WC2A 2LL

7th December 2021

Before:

MR JUSTICE FORDHAM

- -

Between:

DARIUSZ JAN SZCZYGIEL **App**

- and -

POLISH JUDICIAL AUTHORITY **Respo**

- -

- -

George Hepburne Scott (instructed by Bark & Co solicitors) for the **Appellant**

The **Respondent** did not appear and was not represented

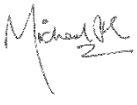
Hearing date: 7/12/21

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 at a remote hearing.

MR JUSTICE FORDHAM:

Mode of hearing

1.
This is a renewed application for permission to appeal in an extradition case. The mode of hearing was by MS Teams. This case was going to be listed for an in-person hearing at the Royal Courts of Justice. I acceded to a request from the Appellant's representatives for a remote hearing, in circumstances where Counsel was due to attend an in-person hearing today at Westminster magistrates' court, a case in which he had previously already been instructed. An in-person hearing of this renewal application today would have placed him in the position of needing to return one of the two cases and leave one of the two clients without their chosen Counsel. The Appellant's representatives were satisfied, as am I, that this mode of hearing involved no prejudice to the Appellant's interests. For the reason that I have given, the mode of hearing was very much in the Appellant's interests. The Respondent had notified the fact that it would not be attending this oral hearing. The open justice principle has been secured in the usual ways, through the publication of this case and its start time in the cause list, together with an email address usable by any member of the press or public who wished to observe the hearing. I am satisfied in all the circumstances that the mode of hearing was appropriate and justified.

Introduction

2.
Sir Ross Cranston refused permission to appeal on the papers on Article 8 ECHR and it is on that ground that permission is renewed. The Appellant is aged 42 and is wanted for extradition to Poland. That is in conjunction with a conviction European Arrest Warrant (EAW) issued on 12 June 2020 and certified on 1 July 2020. The EAW relates to a prison sentence of two years, identifying 21 months and 2 days to serve because of the deduction of a period of remand in Poland between April and July 2019. The index offending relates to the theft of a drill and charger in April 2019 with use of a knife by way of a threat. The Appellant had previously committed offences in Poland, including a 2005 conviction for fraud and a 2014 conviction for theft and burglary. Extradition was ordered by DJ Rimmer (the Judge) on 23 November 2020 after an oral hearing on 26 October 2020. The Appellant had been arrested on 3 July 2020 and has been on qualifying remand ever since. The period of qualifying remand at the time of the Judge's judgment was nearly 5 months; at the time of Sir Ross Cranston's refusal of permission to appeal it was 10½ months. As at today, it is some 17 months.

Wozniak

3.
The Appellant had also raised the Wozniak (section 2) ground of appeal which Sir Ross Cranston stayed on the usual terms on 19 May 2021. Mr Hepburne Scott has recognised that that ground cannot now be advanced, and I will formally refuse permission to appeal on that ground.

Correct focus in time for qualifying remand

4.
The Wozniak point no longer provides a 'durable basis' for the Appellant to be in the UK: see Molik [2020] EWHC 2836 (Admin) at paragraph 30. So far as qualifying remand is concerned, the correct approach is to look at the position as at today, not to "project forward" to a future substantive appeal

hearing: see Molik paragraph 19. Mr Hepburne Scott accepts all of that and has approached the case very properly on that basis.

Article 8 ECHR

5.
Mr Hepburne Scott submits that it is reasonably arguable that extradition of the Appellant would be a disproportionate interference, for the purposes of Article 8 ECHR, with the private and family rights of the Appellant, of his partner, of their young child who is or is approaching two years of age, or of all of them. In his written and admirably succinct oral submissions, he emphasises the following matters in particular. There is the emotional and financial reliance of the partner and child on the Appellant, of whom he is a primary co-carer. Now is the impact of extradition for each of them. There is the very substantial period of qualifying remand which reduces the amount left to serve to some four months, relied on as one of the "constellation of features". There is the Appellant's blameless life here in the United Kingdom. There is also the Appellant's ill health, including a condition of hypertension which Mr Hepburne Scott submits makes the experience of custody more severe and the anxiety of extradition more provoking. These need to be considered alongside all the features of the case. That includes the question of where on the scale the index criminality can properly be put. Mr Hepburne Scott submits that it is not the most severe of offending. He recognises that there is limited force in the point previously made in writing about the relative lack of seriousness of that index offending, having regard to the low value (£60) and what had been referred to as the "possession" of a blade.

6.
In my judgment, it is not reasonably arguable that extradition would in this case be disproportionate. There are strong public interest considerations in support of extradition. These include the familiar "safe haven" considerations, in a context where the Appellant has unassailably been found to have been a fugitive. He was due to attend prison to serve his sentence on 5 July 2019 and, instead of doing so, came back to the United Kingdom. He did so in the full knowledge of the matters which he faced. He did so against the backcloth where he had previously been in the United Kingdom between 2008 and 2012, at the end of which period he had been extradited, on that occasion with his consent, to face an earlier criminal matter in Poland. Mr Hepburne Scott has rightly recognised that the previous suggested characterisation of the index offending, as being a very low value theft with "possession of a bladed article in the context of a shoplifting", would constitute an understatement. The Judge unassailably found, as the EAW expressly records, that this was an offence of shoplifting which involved "threatening with a knife". The EAW states that the Appellant stole a drill, battery and charger and immediately afterwards "was threatening the [two] employees of the store… with the knife, holding [it] in his hand". This is an offence of real seriousness. The Appellant has only been back in the United Kingdom for a relatively short period, since July 2019. The relevant period at liberty here – so far as concerns the point about living here as a person of good character with no convictions – is really one year from July 2019 to July 2020. The fact that the Appellant has, in the short time that he was back here and at liberty, established a family life with his partner, and with their young child, and the impact on the partner and the child of the extradition, do not – together with the other features capable of weighing in the balance against extradition – arguably render extradition disproportionate. As the Judge recorded, the partner works and had apparently coped in the Appellant's absence since his arrest in July 2020. Although there are only the four months left to serve, that does not of itself even arguably render extradition disproportionate having regard to the relevant line of authorities. These are discussed in Molik at paragraph 11 and there are subsequent similar cases. Mr Hepburne Scott rightly recognises that the qualifying remand cannot render

extradition disproportionate as a standalone feature. But nor in my judgment can it, together with the other features capable of counting in the balance against extradition, serve to render extradition disproportionate. That is so, viewed in terms of the Article 8 rights of each of the three individuals impacted. In those circumstances and for those reasons, permission to appeal on the Article 8 ground is refused.

7.12.21