



Neutral Citation Number: [2021] EWHC 3337 (Admin)

Case No: CO/767/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

8th December 2021

Before :

MR JUSTICE FORDHAM

Between :

JUSTYNA NIEWITALA

- and -

DISTRICT COURT IN KRAKOW (POLAND)

Ania Grudzinska (instructed by Lawrence & Co Solicitors) for the **Appellant**

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

Hearing date: 8/12/21

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.

.....
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.

MR JUSTICE FORDHAM :

The abandonment of Article 8

1.

This is a renewed application for permission to appeal in an extradition case. The position, as has been explained to me by Ms Grudzinska this morning, is that the ground of appeal on which renewal was being sought, namely Article 8 ECHR, is recognised by the Appellant's representatives and by her as one which cannot be maintained. That is subject to one point which is raised, to which I turn.

The application to vacate this hearing

2.

What is maintained is an application to vacate today's hearing. That would involve an adjournment in circumstances where the matter would come back before this Court. The basis of the application to vacate is that there are steps being taken in Poland by which the Appellant seeks to have the 18 month custodial sentence, which is the subject of the September 2020 conviction European Arrest Warrant in this case, substituted with electronic supervision. There are two possible outcomes of a hearing in Poland which, I am told, is fixed for 10 January 2022. The first is that the Appellant would be in Poland in custody being required to serve the 18 month sentence. The second is that she would have succeeded in persuading the Polish court to substitute a sentence of electronic monitoring, to be served in Poland.

3.

In my judgment, once it is recognised that there is no viable freestanding ground of appeal which can be properly argued at a renewal hearing, it could not be right to vacate the hearing and stand the case out with a view to it coming back before this Court. Once it is recognised that there is no viable ground of appeal, the appropriate course must in my judgment be to refuse permission to appeal. Further, a critical feature of the situation which is put forward is that each of the two scenarios which could arise following a hearing on 10 January 2022 would, as I have explained, necessarily involve the Appellant being in Poland. The only point that I can see as capable of arising in the circumstances would be a narrow argument that extradition to Poland at the present time, and on the eve of that hearing, is itself rendered disproportionate in Article 8 by the circumstances. In my judgment, that is not an arguable proposition. There are other difficulties that, in any event, in my judgment stand in the way of the application to vacate this hearing and stand this case out. Most conspicuously is the fact that the suggestion of taking steps in Poland to have this matter resolved goes back to witness evidence filed on 27 April 2021 and 5 May 2021. There is nothing to explain to me what has happened in the meantime. Moreover, the Respondent squarely raised on 10 May 2021 with the Respondent's notice the concern that there was no independent documentary support for the fact that the matter was under consideration in Poland. There is still no documentary support, as the Respondent pointed out an email of 6 December 2021 which opposed the hearing being vacated and the case being stood out.

The application for a stay

4.

Ms Grudzinska for the Appellant, recognising the difficulties that she faced as regards the suggestion of an adjournment, and the difficulties she faced so far as Article 8 ECHR is concerned, has put the matter in another way. She invites the Court to order that the refusal of permission to appeal, or alternatively any surrender of the Appellant, should not take effect until after 10 January 2022. I am

not prepared to make any order staying the effect of refusal of permission to appeal, or staying the appellant's surrender. In my judgment there is no justification for doing so in the circumstances which I have described.

Section 2 (Wozniak) and Article 3 (prison conditions)

5.

There were in this case further grounds of appeal which were the subject of a stay granted by Lane J on 22 July 2021 on the same occasion on which he refused permission to appeal on article 8. Those matters related to the familiar Wozniak ground involving section 2 of the 2003 Act and an Article 3 ground relating to prison conditions in Poland. Each of those issues has now been definitively, addressed adversely to the relevant requested persons in the lead cases. In those circumstances it is I think appropriate (for the avoidance of doubt) for me formally to refuse permission to amend and permission to appeal and discharge the stay granted in July.

Outcome

6.

The order that I will make is formally to refuse permission to appeal and permission to amend the grounds of appeal so far as concerns the section 2 and Article 3 grounds which were the subject of a stay by order of this Court on 22 July 2021. I will refuse permission to appeal on the Article 8 ECHR ground. I will also record that I refused the applications to stand the case out and adjourn it, and to stay the effect of my order or suspend surrender until after 10 January 2022.

Endnote

7.

I will, in concluding, just give a very brief outline of the circumstances of the case in which these matters had arisen. The Appellant is aged 27 and is wanted for extradition to Poland. That is in conjunction with a conviction European Arrest Warrant (EAW) issued on 24 September 2020 and certified on 19 October 2020. The index offending involves 12 offences of fraud committed between March 2013 and June 2013 aged 19, involving hacking into her mother's bank accounts and deceiving bank employees using telephone banking, so as to obtain amounts totalling in aggregate to the Polish equivalent of £5,500. The sentence imposed was, as I have explained, 18 months - originally by way of a suspended sentence but subsequently activated - the entirety of which remains to be served. That was the context in which the questions for today had arisen. In light of the fact that Article 8 ECHR is not pursued I do not propose to say any more about that, other than to record that in my judgment this is plainly a case in which the strong public interest considerations in support of extradition do decisively outweigh those factors capable of weighing against extradition, and so there was very good reason for the recognition that Article 8 could not be sustained and that the decision of Lane J on the papers, refusing permission to appeal on that issue, was correct.

8.12.21