



Neutral Citation Number: [2022] EWHC 266 (Admin)

Case Nos: CO/545/2020

CO/259/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday 9th February 2022

Before:

MR JUSTICE FORDHAM

Between:

ZBIGNIEW DOMIAN

- and -

CIRCUIT COURT IN GORZOW WIEIKOPOLSKI (POLAND)

ZBIGNIEW DOMIAN

- and -

JUDICIAL AUTHORITY OF POLAND

The **Appellant** appeared in person

Stuart Allen (instructed by CPS) for the **Respondent**

Hearing date: 9.2.22

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 and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM:

1.

This is an in-person extradition hearing involving two linked applications for permission to appeal. Before I explain the context for the case, and the legal framework within which it needs to be addressed, I will explain the position that the Appellant has taken at the hearing today.

i)

The Appellant has asked the Court to appoint him what he calls a “duty barrister”. He wants someone to help him. He emphasises that he is not familiar with English law or the English language. He wants help to find documents and to get proper translations. He has been using computer-based translation facilities and is concerned that those can involve mistakes. But on that matter I am quite satisfied, from emails that I have seen, that the Appellant has had explained to him – and understands – that the Court does not have the function of appointing a lawyer. The Court can deal with the legal aid if he has identified legal representatives who can act under legal aid. That has indeed been his previous position. He has had legal representation in both of the cases.

ii)

The Appellant submits to me that he has been “deprived of fair trial rights”. This deprivation that he describes really extends to every part of this case. He says that there was never any fair trial in Poland, that the Polish sentences in his case were “not correct”, and that they breached what he calls the “loyalty principle”, as well as breaching his Article 6 ECHR rights. He says that the legal representatives who acted for him in Westminster magistrates’ court extradition hearings failed in their duties properly to represent him. He says that: they failed to put forward relevant evidence; they failed to provide the magistrates with translated documents; and evidence relating to Article 8 ECHR private and family life was not properly put before the magistrates’ court. The point about his fair trial rights in Poland appears in the grounds of appeal which legal representatives put before this Court in the context of Article 6. Private and family life of the Appellant is addressed on his behalf in materials before this court in relation to Article 8.

iii)

The Appellant also says that evidence has been hidden from the courts, and ignored by the courts. He explains that he has made complaints about all of his previous legal representatives and he says that the ombudsman is currently dealing with those complaints. He submits that he was “deprived of the right to be represented in the magistrates court”, at both relevant hearings. When I put to him that he had legal representation at those hearings he explained to me that his grievance was that proper evidence was not filed with the magistrates.

iv)

So far as the substance of his human rights-based appeals against the orders extraditing him are concerned, he has told me that he has wanted to prove, still wants to prove, and would be able to prove two things in particular. One is the unfairness and injustice of the Polish sentences “in breach of Article 6” and the “loyalty principle”. The other is the “endangerment of his life” were he extradited.

On the first of those he says he has “two or three pieces of evidence” which would “prove his case”. On the second of those he says he has papers which he would be able to put before the Court.

2.

It is against the backcloth of all of that that I come to consider these cases, through applying the applicable legal principles. The Appellant is aged 54 and is wanted for extradition to Poland, to face two 2-year prison sentences. Permission to appeal was refused on the papers by McGowan J on 7 December 2021. She ordered a stay on the Wozniak section 2 issue, whose viability disappeared when the Divisional Court declined in that test case to certify a point of law for the Supreme Court. I will discharge that stay in those circumstances.

i)

The Appellant’s first case (CO/545/2020) relates to a conviction EAW (EAW1) issued on 1 August 2018 and certified on 17 August 2018, referable to a two-year prison sentence imposed in Poland on 3 October 2016. EAW1 gave rise to an oral hearing on 22 November 2019 before DJ Blake at which the Appellant gave oral evidence. DJ Blake, in a judgment dated 6 February 2020, ordered the Appellant’s extradition on EAW1. Grounds of appeal invoking Articles 5 and 6 ECHR were – as I have indicated – filed by legal representatives who subsequently came off the record by order dated 27 February 2020. That is two years ago.

ii)

The Appellant’s second case (CO/259/2021) relates to a conviction EAW (EAW2) issued on 24 January 2020 and certified on 29 February 2020, referable to a distinct two-year prison sentence. That was imposed for two offences of fraud, committed on 28 July 2000 and 31 May 2001, which were the subject of Polish judgments on 11 April 2019 and 12 November 2019. EAW2 gave rise to an oral hearing on 14 December 2020 before DJ Goldspring at which the Appellant again gave oral evidence. Those proceedings had been adjourned, from an earlier hearing date of 30 July 2020, to allow documents to be translated and filed on the Appellant’s behalf. DJ Goldspring refused any further adjournment for reasons that he gave in his judgment dated 15 January 2021. In that judgment, DJ Goldspring ordered the Appellant’s extradition on EAW2. Grounds of appeal invoking Article 8 ECHR – as I have indicated – and the Wozniak section 2 point were filed by, legal representatives, who subsequently came off the record by order dated 16 March 2021.

3.

For today’s hearing the Appellant was given the opportunity to supply a consolidated bundle. He had himself, on 23 December 2021, asked for a period of 21 days to supply a bundle. He says that, in the event, he was not able to put materials together into a single bundle. None was provided. In those circumstances, the Respondent helpfully filed with the Court, and served on the Appellant, consolidated bundles relating to each of the two cases. The Appellant’s position at this hearing has already been summarised by me at the start of this judgment. Alongside those points, there are the key points made in his many communications with the Court, translated into English to good effect by whatever means was being deployed to that end. Those communications included the following headline points. In addition to the grounds of appeal filed on his behalf – invoking Articles 5 and 6 in the first case, and Article 8 in the second case – he wishes to rely on all those Articles in both cases, and he also wishes to rely on Articles 2, 3, 7 and 10. He has filed requests for extensions of time. He has supplied to the Court documents relating to the complaints which he has made against the previous legal representatives. He repeatedly requested a “court-appointed lawyer”. When asked by the Court, in email exchanges, to identify items which he says are relevant and absent from the two consolidated bundles provided by the Respondent, he supplied a list. The list contains 122 items. They

were all listed in an index which described them in Polish. The Appellant refers to the falsification of judgments in Poland and to the series of ways in which he says his human rights have been or are being violated, both in Poland and here.

4.

One question which I have had to consider is whether I should be adjourning this case. I am quite satisfied that there is no basis for any adjournment. The issues, including those relating to the proceedings in Poland, by reference to which the Appellant stands convicted of the criminal conduct and sentenced, go back a very long way.

i)

More than two years ago, in his oral evidence on 22 November 2019 to DJ Blake, the Appellant was telling the magistrates' court that he had evidence to show that the Polish judgments were falsified and that he had suffered a complete denial of his rights in Poland.

ii)

Eight months later in July 2020 he was afforded the lengthy adjournment, specifically so that documents could be obtained and translated.

iii)

At the subsequent hearing in December 2020, he told DJ Goldspring that a fraud had been done to him in his trial in Poland in relation to the subject-matter of EAW2. He also told DJ Goldspring that there were documents which he had provided to his solicitors, for the purposes of having them translated and placed before the magistrates' court. That, after all, was the whole point of a five-month adjournment which had been sought and secured by them on his behalf.

5.

I am quite satisfied that the Appellant has had ample time, and that it is not in the interests of justice or the public interest, having regard to the overriding objective, to adjourn these cases. I am also quite satisfied that an adjournment would not put this Court in any materially better position. If these materials were not going to be provided by now, then I have no reason to suppose any other Judge is going to be in a more enlightened or different position. The Appellant, through his previous legal representatives and also through his own actions, has been able to put forward a large volume of material. That includes recent notes to the Court that he has himself written. To test the position, I have no doubt at all that if there were any document which began to prove an "endangerment of life", it could and would have been provided for the various judges in these cases to consider, including me. Equally, if it were the case that "two or three" pieces of evidence demonstrated some point relating to a breach of Article 6 rights or some other relevant principle there has been every opportunity to provide those "two or three" documents.

6.

I turn to the substance. Having considered the detailed reasoning of DJ Blake, I agree with McGowan J that there is nothing in the Article 5 or Article 6 grounds of appeal which are before the Court in relation to EAW1. Having regard to the detailed reasoning of DJ Goldspring, I agree with McGowan J that there is nothing in the Article 8 ground of appeal which is before the Court in relation to EAW2. Looking more widely, I am satisfied that there is no viable human rights argument in relation to either of the EAWs, on any of the ECHR Articles to which the Appellant has referred.

7.

One striking feature of the case in relation to EAW2 is the 19 year delay between the fraud offences, committed in July 2000 and May 2001, and the issuing of EAW2 in January 2020, after the Polish judgments on 11 April 2019 and 12 November 2019. That feature of the case was understandably emphasised in grounds that were put forward on the Appellant's behalf by his then legal representative. The Appellant told me that that representative had done no more than "begun work" in relation to his appeal and Article 8. That is clearly wrong because she filed not only his initial grounds of appeal but also, subsequently, very detailed perfected grounds of appeal on 11 February 2021. Returning to the 19 year delay, that striking feature of the case was considered and addressed by DJ Goldspring. In his judgment he discussed several of the authorities on the approach to delay and the passage of time. In my judgment, beyond reasonable argument, DJ Goldspring dealt with that aspect of the case and all the other aspects in a way which cannot be impeached or impugned, whether as to approach, reasoning or outcome. I am satisfied that the passage of time point does not present – whether alone or alongside other matters – a viable basis of appeal. It was a passage of time while the Appellant was in Poland at least through to early 2018. The Appellant had come to the UK, at that stage, with his wife and two young children. DJ Goldspring unassailably found that he had done so as a fugitive. DJ Goldspring was clearly right to regard the public interest considerations in favour of extradition as decisively outweighing those capable of counting against it.

8.

I agree with McGowan J. I can find no reasonably arguable basis on which it can be said, with any realistic prospect of success, that the judgment of DJ Blake on EAW1 or of DJ Goldspring on EAW2 were wrong. I am quite satisfied that what these cases need, above all, in the interests of justice and the public interest, having regard to the overriding objective, is decisive final determination. I provide it, through the refusal today of the renewed applications for permission to appeal. Permission to appeal is refused.

9.2.22