IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 1329 (Admin)

No. CO/5944/2017

Royal Courts of Justice

Wednesday, 22 May 2019

Before:

MR JUSTICE HOLMAN

B E T W E E N :

MARCIN SZLACHETKA — Appellant

- and -

CIRCUIT COURT IN KOSZALIN, POLAND — Respondent

MS N. DRAYCOTT appeared on behalf of the appellant.

MS L. COLLINS (instructed by the Crown Prosecution Service) appeared on behalf of the respondent.

J U D G M E N T
(As approved by the Judge)

MR JUSTICE HOLMAN:

1 This is an appeal pursuant to section 26 of the Extradition Act 2003 from a decision and order made in extradition proceedings by Deputy Senior District Judge Tan Ikram on 21 December 2017 in the Westminster Magistrates' Court.

2 The requesting judicial authority is a court in Poland. One ground of appeal that the requested person would like to have developed related to the running issue of the independence of the judiciary in Poland. For that reason, this case awaited the outcome of litigation here in the case of *Lis & others*. The present appellant can no longer pursue that point, but an appreciable part of the period of delay between December 2017 and now is explained in that way.

3 The essential facts of the present case are that the requested person is Polish and was living in Poland at the date of the alleged offence, namely late September 2007. I will return later to a description of the offence alleged. Shortly after that, in 2008, the requested person travelled to live in Wales and has done so ever since.

4 In 2014 an accusation European Arrest Warrant was issued in relation to the same alleged offence of late September 2007. The requested person was arrested and there was a hearing before District Judge Evans in March 2014. At that hearing District Judge Evans dismissed the application for extradition and discharged the requested person for what the district judge described as "very technical reasons". The reason was that the warrant in 2014 stated that the extradition, of the requested person, was sought "for criminal proceedings". Under the law as it was at that time, that was an insufficient description of the reason why extradition was sought, and the warrant should have stated that the extradition of the

requested person was sought "for prosecution". So on that legally correct but very technical ground, the warrant in 2014 was dismissed and extradition did not take place.

5 The requested person continued to live in Wales, where indeed he committed two relatively minor offences, and he formed a relationship with a person whom he now describes as his partner. He is living with her but they do not have any children together. She herself is in employment, so the extent of financial dependency is more limited than it might otherwise have been.

6 On 10 August 2017 the requested person was arrested again pursuant to a further European Arrest Warrant, which was issued on 7 July 2017. It is an accusation warrant which pertains entirely to the same alleged offence in September 2007. There was a full and contested hearing of the extradition application in October 2017 and, as I have said, the district judge delivered his judgment on 21 December 2017.

7 From these facts it is clear, and indeed is not in dispute, that the requested person was a fugitive in the period between the alleged commission of the offence in September 2007 and his arrest and the subsequent extradition proceedings in early 2014. However, at all times since 2014 he has lived at the same known address, and it is not suggested that he remained a fugitive in any part of the period between the discharge of the earlier warrant, in March 2014, and his arrest pursuant to the present warrant in 2017.

8 It is now necessary to describe the offence which the requested person is alleged to have committed. The warrant does not of itself give any generic description of the offence, but recites the conduct and its consequences at paragraph E4 of the warrant in the following terms:

"[The Requested Person] is suspected of committing the following offence:

1. On 26/27 September 2017 in Sarbinowo, acting together and in collaboration with an established person, he took part in the beating up of [the named victim], as a result of which he suffered from bodily injuries in the form of hematopoietic haematoma in the parietal lobe, femur neck fracture of the right leg, haemorrhagic abdominal haemorrhages, an orbital haematoma of the right eye pit, multiple scratches of the facial-skeletal skin, as a result of which [the victim] suffered from severe harm to his health in the form of hard long term illness (fracture of the right femur requiring a few operations, and in consequence an implant of a prothesis of the femur joint) and a severe incurable disease (post-traumatic epilepsy and post-traumatic encephalopathy with limited personality changes), as a result of which [the victim] was put under threat of direct danger of loss of life."

9 In fact, the victim did later die in September 2012. The prosecutors in Poland only learned of that fact several years later, and some part of the delay in issuing the second European Arrest Warrant was referable to the prosecutor needing to determine whether the death of the victim resulted from the beating up. However, in a letter dated 10 October 2017, the prosecutor stated that:

"Owing to the fact that after the victim's death the autopsy did not take place, the doctors indicated that it was not possible to conclusively state that the death of [the victim] remained in a causal connection with the assault and battery. The experts stated, however, that the victim suffered

> a serious injury in the form of severe long-term illness and severe incurable disease."

10 Pausing there, it is important and necessary, in my view, to stress the very serious nature of the alleged attack on the victim and the range and gravity, and lasting effect of both the physical and the psychological injuries that it is alleged that the victim suffered. This is an accusation warrant in relation to a very serious crime which, according to the warrant, carries a maximum sentence of ten years' imprisonment.

11 In the forefront of the submissions made then, as now, by Ms Natasha Draycott for the requested person to the district judge was the issue of delay and its impact upon the Article 8 rights of the requested person, and, in particular, upon the relationship which he had formed with his partner since the first warrant was dismissed in March 2014. It is in relation to the issue of delay that Jay J granted permission to appeal on 28 March 2018. He said in his written reasons:

> "It is arguable that the district judge did not give proper consideration to the issue of delay after 2014, in particular who was responsible for it, why it came about, and the impact this had on the appellant's Article 8 rights."

So it is also upon the impact of delay that Ms Draycott has focused today.

12 The district judge did, of course, deal with it. Delay is relevant, first, to any argument based on section 14 of the Extradition Act 2003. That was quoted by the district judge at internal page 7 of his judgment and provides that:

> "A person's extradition … is barred by reason of the passage of time if (and only if) it appears that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have –
> (a) committed the offence …".

The district judge then cited a well-known passage by Lord Diplock in which Lord Diplock said that "unjust" is primarily directed to the risk of prejudice in the conduct of the trial itself, and "oppressive" is directed to hardship to the accused resulting from changes in his circumstances that have occurred during the period to be taken into consideration.

13 At internal pages 9 and 10 of his judgment, the district judge considered an argument based upon section 14 and, in particular, alleged oppression to the requested person as a result of the delay. He referred to the history and chronology in relation to the earlier warrant and continued:

> "There is now a further delay in excess of three years until this EAW was reissued. It is now, therefore, some ten years after the allegation was made and the requested person only recently questioned."

He noted that the requested person had been in the United Kingdom since 2008 and in a relationship, by then, for five years. He continued:

> "In July 2017, the current EAW was issued and it is not said that the requested person is a fugitive. It is true that there has been delay since 2014 when the previous warrant was discharged but the substantially greater part of delay in this case has been due to the requested person's own conduct in hiding from the authorities …".

Pausing there, that is, of course, a reference to the period of delay while the requested person was a fugitive between the alleged commission of the offence in September 2007 and his first arrest in 2014. The district judge continued:

> "Taking all into account, I am not persuaded that it would be unjust or oppressive to extradite him by reason of the passage of time since he is alleged to have committed the offences."

14 Today, Ms Draycott has not, I think, felt able forcefully to argue that that decision and reasoning of the district judge, in relation to section 14, was erroneous or wrong. She, rather, focuses her argument upon Article 8 and submits, in effect, that the district judge should have attached greater weight to the period of delay in performing the balancing exercise pursuant to the well-known authority of *Celinski*, which the district judge had previously quoted.

15 The overall submission of Ms Draycott is that it should not have taken the Polish prosecuting authorities over three years to issue a fresh, and technically correct, European Arrest Warrant after the earlier one had been dismissed on the "very technical" point. She submits, in effect, that the Polish authorities could, and should, have followed on that first defective warrant by another one quite rapidly, which did not make the same technical error. If they had done so, there would not have been a further period of delay measurable in years. A further warrant might, indeed, have been issued and the requested person arrested before he even formed a relationship with his partner, and certainly before that relationship became so embedded.

16 Further, Ms Draycott points out that the whole history of these proceedings has now already had an onerous effect upon the requested person. He was subject to a curfew for about six months during the proceedings in 2014. He has been subject to a curfew again in the whole period since he was arrested in August 2017 to date, now about one year and nine months. The requirement of that curfew is that he must stay indoors at his home address between the hours of 11pm and 3am daily. It might be thought that a curfew between those hours is somewhat less onerous than some of the curfews that one sees imposed as a bail condition, but, at all events, this requested person has said in a recent statement that:

> "These conditions really affected and still are affecting my life. I am mentally and physically exhausted and I can no longer cope. I am on medication as I can no longer sleep and the bail conditions are making my life unbearable. The electronic tag has meant that for nearly two years I cannot join friends in the pub after 10pm or attend any party, family celebration, or Christmas celebration which is not local. Every single time I want to do something I have to ask for a bail variation and when I visit my close family I have to rush at the end of the evening in order to catch up the train to get home."

So Ms Draycott submits that in that way, too, the long delay has already had a very depressive effect upon this requested person.

17 At paragraph 3.6 on internal page 11 of his judgment, the district judge said:

> "I find that the requested person had been in hiding till 2013. Thus, that delay lies at his door and he evading proceedings. I accept and find that he has not been in hiding or avoiding proceedings since the discharge of

> the EAW in 2014. That said, he did not approach the Polish authorities in an attempt to resolve matters till the issue of this EAW. He has only himself to blame for the delay and matters once again coming to a head."

18 I agree with Ms Draycott that the somewhat uncompromising last sentence of that quotation is not fair to the requested person. To say "he has only himself to blame for the delay and matters once again coming to a head" appears to heap all the responsibility upon him and none upon the prosecuting authorities. Ultimately, the onus was not upon him to bring matters to a head, but upon the prosecuting authorities to do so. The district judge did continue to say, however, at paragraph 3.9 that:

> "I do not accept what the requested person states, in that 'I thought the case is finished with'. It was always open to the judicial authority to reissue a EAW and he would be liable to re-arrest. Any competent solicitor would have advised him of that fact. Whilst finding that he was not a fugitive during the subsequent period, I am satisfied that he knew the matter remained unresolved back in Poland."

19 In relation to factors "balancing against extradition", the district judge said at paragraph 3.10 on internal page 12:

> "The offence dates back to 2007. It is now ten years since the allegation was made. There is no explanation of the delay since the last EAW was discharged in 2014. The requested person has continued to live openly here but knowing that the allegation remained unresolved in Poland …".

He then dealt with the relationship between the requested person and his partner and the fact that there would be an emotional and financial impact upon his partner and indeed, the district judge said, his or her extended family, if he were extradited.

20 In relation to a period of delay after an earlier warrant was dismissed and the requested person discharged, Ms Draycott has drawn my attention to the authority of *Bicioc v Baia Mare Local Court, Romania* [2017] EWHC 3391 (Admin), a decision of Dove J. In that case also, an earlier warrant had been dismissed and then there was delay before a further warrant issued. At paragraph 15 of his judgment, Dove J cited from paragraph 51 of the judgment of a Divisional Court in *Camaras v Baia Mare Local Court, Romania* [2016] EWHC 1766 (Admin). In that judgment the Divisional Court had said:

> "… the consequences of the discharge and re-arrest cannot be treated merely as aspects of delay. The appellant felt a sense of relief that the proceedings were over; he was released from his bail conditions. He was not released on some technicality, in which a further EAW was a real possibility. …".

It is at once apparent that the factual situation in *Camaras* was different from that in the present case, for in the present case the requested person had, indeed, been released "on some technicality" and, as the district judge found, a further EAW was a real possibility, for he said, in a passage I have already quoted, that any competent solicitor would have advised the requested person of that fact. Nevertheless, both the case of *Camaras* and the decision of Dove J are both fact-specific examples in which a period of delay between a first and second warrant has resulted in the second warrant being dismissed and the requested person discharged.

21 As I have already indicated, it does seem to me that in part of his reasoning at paragraph 3.6 the district judge was unfair to this requested person when he stated that "he has only himself to blame for the delay and matters once again coming to a head". However, it is not all errors in the reasoning of a district judge which will lead to an appeal in extradition being allowed. The powers of the court on an appeal under section 26 are clearly set out by section 27 of the Extradition Act 2003. That provides that the court may only allow the appeal if (so far as concerns the present case) the conditions in sub section (3) are satisfied. That provides that:

> "(3) The conditions are that –
>
> (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
>
> (b) if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge."

22 In my view, the district judge in this case ought to have decided the question of responsibility for the delay between 2014 and 2017 differently. He should not have said "He has only himself to blame for the delay …". There was very little explanation for the delay from the prosecuting authorities, save for that period after they learned that the victim had died during which they needed to try to establish whether there was a provable causal connection between the injuries and the death. That apart, the district judge was faced – as, indeed, I am faced – with a situation in which there was a period of delay of over three years which simply is not explained. That undoubtedly weighs quite heavily in the scales against extradition, the more so as it was during that period that this requested person formed and cemented his relationship with his partner.

23 But, in my view, it does not begin to tip the scales in the present case. There is always a weighty and constant public interest in extradition which requires a strong Article 8 case to outweigh. This relationship between the requested person and his partner is still a relatively recent one. They do not have any children. The partner does have her own work and is not, therefore, completely financially dependent upon the requested person. But over and above all those considerations, there is, on the facts and in the circumstances of the present case, the gravity of the alleged offence. I have already quoted in full from the warrant and will not repeat it. In my view, this alleged offence is one of very considerable gravity which resulted in a range of very serious injuries to the victim.

24 In my view, even if the district judge had not fallen into the error of saying that the requested person "has only himself to blame for the delay", and even if he had attached more weight to the undoubted period of delay, he was still bound, at the end of the day, to order extradition. On any possible view, I could not conclude in the present case that "if he had decided the question in the way he ought to have done, he would have been required to order the person's discharge".

25 For these reasons, this appeal must be dismissed.

CERTIFICATE

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