IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2019] EWHC 161 (Admin)

CO/1717/2018

Royal Courts of Justice

Wednesday, 30 January 2019

Before:

MR JUSTICE HOLMAN

B E T W E E N :

KNORR — Applicant

- and -

REGIONAL COURT IN KRAKOW (POLAND) — Respondent

MR M. HENLEY (instructed by AM International Solicitors) appeared on behalf of the applicant.

THE RESPONDENT did not appear and was not represented.

J U D G M E N T
(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

1 The situation with which I have been faced this afternoon in this case is, quite frankly, remarkable. The context is a renewed oral application for permission to appeal from an order for extradition made by District Judge Branston on 27 April 2018. There was, within time, an application for permission to appeal to this court from that decision and order. At that stage the application raised a number of issues, including the decision of the district judge on Article 8.

2 This all came before Robin Knowles J on paper on 15 August 2018, when he refused permission to appeal. He said that it was not arguable that the district judge reached a wrong decision, and that the district judge carefully and reasonably evaluated the position of the proposed appellant's partner and younger son.

3 Within time, the applicant filed a renewal notice seeking to renew the application for permission to an oral hearing. Defectively, that notice does not itself appear to have explained the grounds upon which the renewal application was based.

4 The next stage in these proceedings was an oral hearing before Whipple J on 26 September 2018, which, in fact, was only about six weeks after the refusal decision of Robin Knowles J. In advance of that hearing, there was lodged – and I assume served upon the prosecutor – a document headed "Renewed application submissions for permission to appeal", dated 21 September 2018, and signed by Mr W M A Zalewski. Mr Zalewski is the barrister who had appeared on behalf of the applicant at the hearing in front of the district judge and who appears to have been retained and engaged at every stage of these proceedings, up to and including the hearing before Whipple J.

5 That document, headed "Renewed application submissions for permission to appeal", says in terms, at paragraph 1:

> "Article 8/section 21 not pursued."

The document then raised and developed a discrete issue with regard to specialty. This arose out of the fact that the applicant had been convicted in Poland of thirty-two offences for which he had been sentenced to an aggregate, or global sentence of three years and six months' imprisonment. The district judge found, after careful analysis, that of those offences number 32 did not satisfy the dual criminality requirement, since the facts underlying offence number 32 would not amount to a criminal offence here in the United Kingdom. Accordingly, the district judge discharged the applicant in relation to offence number 32 but went on to order his extradition in relation to all the remaining offences, namely offences number 1 to 31. The point that appears to have been taken by Mr Zalewski in his document dated 21 September 2018 is that, although the applicant was discharged in relation to offence number 32, he would, if he were extradited to Poland, nevertheless serve some element of the global sentence which actually or notionally applied to offence number 32.

6. This represented a complete change or *volte face* in the way in which Mr Zalewski had been developing the proposed appeal in this case. As a result, Whipple J made an order, dated 26 September 2018, which recites in terms: "On the applicant's confirmation that he now only seeks permission to appeal in relation to the specialty point raised in his renewal notice". She dismissed an application to adduce further evidence in relation to the Article 8 claim, and she gave various further directions aimed at a final hearing of the renewed application for permission to appeal, which was listed for today. Whipple J gave a judgment, a note of

which I have read and which very clearly explains the whole situation as it was up to and including 26 September 2018.

7. Today is about three months on from 26 September 2018. Today, Mr Zalewski has not appeared on behalf of the applicant but, rather, Mr Martin Henley. In answer to some questions from me, Mr Henley has expressly explained that Mr Zalewski is no longer instructed at all in these proceedings and will not again be instructed. In his place, Mr Henley has been instructed. Mr Henley told me that he has already had more than one video-link conference with his client, who is detained in custody. Mr Henley assured me that currently he is the retained counsel who will now remain as counsel in this case in substitution for Mr Zalewski. Of course, I am not entitled to enquire further into what may lie behind these changes, but I have to accept the fact that there has now been what is intended to be a permanent change in counsel.

8. Clearly Mr Henley takes a quite different view of this case from Mr Zalewski. Mr Zalewski had done a *volte face* when he abandoned the Article 8 points and nailed his colours firmly, and exclusively, to the mast of specialty. Mr Henley, with respect to him, has today made another *volte face* or 180 degree turn. Today, he expressly and irrevocably abandons for all time any point that was previously taken on specialty and all the arguments in the renewed application submissions of Mr Zalewski, dated 21 September 2018. But Mr Henley now seeks to renew arguments based on Article 8, which appeared to have been completely abandoned by Mr Zalewski at the hearing on 26 September 2018.

9. In part, those arguments involve some attack on the approach of District Judge Branston to Article 8 and his treatment of delay. But probably more cogently, the argument really turns on alleged changes in circumstances since the hearing before District Judge Branston. There is a statement dated 17 September 2018 by the applicant's partner. In that, she explains that there

was a tragedy in July 2018 when the applicant's adult son in Poland was killed. The partner explains (as of 17 September 2018) that the applicant and she herself had very little information as to the circumstances of the death. The applicant only learnt about it some time later. He had not been able to attend his son's funeral. She says that the applicant was already suffering mental ill health due to these proceedings and his detention, and that the death of his son, whilst the applicant was detained in custody, has markedly impacted upon his mental health. That is all more fully explained in the witness statement of the partner dated 17 September 2018.

10. It seems to me that in these circumstances I should, at any rate, permit the applicant now to adduce any further evidence, whether by himself or others, and, in particular, medical evidence, as to the change in his circumstances since (I stress the word "since") the hearing before the district judge in April 2018. I will permit him to do so by 15 March 2019, allowing a period of time because of the fact that he is in prison and it will be necessary to obtain medical evidence from prison authorities.

11. I will permit Mr Henley, in these unusual circumstances, to file and serve perfected and final grounds of appeal, supported by a skeleton argument by Mr Henley, also by 15 March 2019. I must, of course, grant to the prosecution a reasonable period of time, namely three weeks, in order to file and serve a response to that material.

12. Once all those steps have been taken, the renewed application for permission to appeal must be listed for an oral hearing on the first available date with a time allowed of two hours. At that hearing this whole matter must finally be brought to a head.

CERTIFICATE

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