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IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT  
[2019] EWHC 3236 (Admin)



No. CO/1954/2018

Royal Courts of Justice

Wednesday, 23 October 2019

Before:

MR JUSTICE HOLMAN

B E T W E E N :

NAZARIY HNUS

Applicant

- and -

NYIREGYHAZA DISTRICT COURT (HUNGARY)

Respondent

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MR BENJAMIN SEIFERT (instructed by Sonn Macmillan Walker) appeared on behalf of the applicant.

MISS AMANDA BOSTOCK (instructed by CPS Extradition) appeared on behalf of the respondent.

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

MR JUSTICE HOLMAN:

- 1        There was listed today a so-called rolled-up hearing for permission to appeal, and then the substantive appeal if permission is granted, from an extradition order made by District Coleman as long ago as 11 May 2018. The reason why there has been such a long delay since the making of the extradition order is that a ground or area of appeal relied upon related to prison conditions in Hungary and reliance on assurances given by the Hungarian authorities. Currently, that area of the case has effectively been disposed of by the decision of the Divisional Court in *Oleksandry Zabolotnyi* handed down on 16 April 2019 under [2019] EWHC 934. The issue covered by that case may not finally have been disposed of because very recently the Divisional Court certified a point of law of general public importance. They refused leave to appeal to the Supreme Court but, as I understand it, an application is being made to the Supreme Court for that court to grant permission to appeal.
  
- 2        Meantime, there is a completely separate and discrete issue in this case which is capable of being resolved now. That is an issue of “double jeopardy” or “same acts”, because the applicant has been convicted of an offence and fully served the sentence of 12 months’ imprisonment here in England which, to put it no higher, has a connection with the offence of which he is accused in Hungary. The district judge rejected the bar to extradition on the basis of double jeopardy or same acts, but the applicant renews his application to this court for permission to appeal from her decision.
  
- 3        During the course of the argument this morning, it has become increasingly apparent to me and is, I think, now shared also by both counsel today, that this issue cannot fairly and properly be resolved without having an official transcript of the sentencing hearing before the English Crown Court which was at Isleworth on 6 December 2017.

4 The essential reason for that may be gleaned from paragraph 21 of the judgment of Julian Knowles J in *Heathfield* [2017] EWHC 2602 (Admin), where he said:

“Section 12 is also engaged where the requesting state seeks to prosecute the defendant for an offence, the facts of which are so closely related to an offence for which he has already been prosecuted that it would be an abuse of process to prosecute him a second time.”

It may, indeed, be that the description of the offence for which the applicant’s extradition is sought in Hungary and the offence of which he was convicted here differ in the way clearly identified by District Judge Coleman in her judgment under a heading “Section 12” and, in particular, on internal page 4 of her judgment, now at bundle tab 3, page 18. Nevertheless, if (I stress, if) the sentence which was imposed in Isleworth took account of the facts alleged to have occurred in Hungary, then it may at least be arguable that it would now be an abuse of process for the applicant to be extradited to Hungary and face prosecution in relation to the same facts which were taken into account by the sentencing judge in England when he imposed the sentence of one year’s imprisonment.

5 Mr Seifert has, understandably, wished to place very considerable reliance upon the prosecution case summary prepared by the Department for Work and Pensions which is in the present bundle at tab 9. It seems to me, however, that there may be a world of difference between what is stated in a prosecutor’s case summary and the actual factual basis upon which the judge sentenced.

6 For those reasons, I have concluded that it is now not possible fairly and justly to resolve this issue of “double jeopardy” or “same acts” today. It is first essential to have an official transcript of the whole of the sentencing hearing (which is unlikely to have been very long)

at Isleworth so this court can clearly know the basis upon which the prosecution opened the case, the basis of any submissions made on behalf of the defendant, and, probably most importantly, the sentencing remarks of the sentencing judge himself. For that reason, I propose to adjourn this matter, not part heard, to be reconsidered after an official transcript has been obtained. There will be various consequential directions.

7 There is, however, a further matter which I must flag up in these observations. The note prepared for me today by the staff of the Administrative Court clearly states on the first page: "The applicant is in custody." I had, thus, assumed that he is in custody. His actual term of imprisonment for the offence of which he was convicted is said to have expired in about May 2018, but by then the extradition order had been made and, as I understand it, there was no grant of bail. Towards the end of the hearing today, Mr Benjamin Seifert, who appears today on behalf of the applicant, as, indeed, he did before the district judge, has properly informed me that at some point (the date is not currently known to Mr Seifert) the applicant was wrongly and mistakenly released from prison. It appears that there may have been some confusion between his immigration status and his status as a requested person awaiting extradition pursuant to a subsisting extradition order. However that may be, it currently appears that for an appreciable period of time now this applicant has been, and is, unlawfully at large. There are apparently no communications or lines of communication between him and the solicitors who instruct Mr Seifert. Indeed, it is not even, frankly, known whether he is currently still in the United Kingdom at all. It seems to me that that raises questions as to his status and capacity to pursue an appeal of this kind when he is himself unlawfully at large and has not surrendered either to the Westminster Magistrates' Court or this court. If, on proper application of the law, he does lack capacity to pursue this appeal, then patently Mr Seifert and his instructing solicitors have no capacity to pursue it on his behalf. However, that is a topic which is certainly not at my fingertips and now

requires to be researched and considered by the court at the next hearing if, by that date, the applicant has not surrendered and remains unlawfully at large.

8 I will direct that a transcript of this judgment be made as soon as possible at the expense of public funds.

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**CERTIFICATE**

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This transcript is subject to the Judge's approval.