Neutral Citation Number: [2020] EWHC 1343 (Admin)

Case No: CO/4302/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 May 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

ADRIAN WALDEMAR SZYCHOWSKI **Appellant**

-and-

REGIONAL COURT IN POZNAN (POLAND) **Respondent**

- -
- -

ANIA GRUDZINSKA instructed by Montague Solicitors for the **appellant**
The **respondent** did not appear and was not represented

Hearing date: 6 May 2020
Judgment as delivered in open court at the hearing

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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 for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. This was a telephone conference hearing, with the knowledge and consent of all parties. The hearing proceeded just as it would have done in open court, having been listed in the cause list with contact details available to anyone who wished to dial in. Counsel addressed me in exactly the way as if we were sitting in the court room. I am quite satisfied of the following: that this constituted a hearing in open court, that the open justice principle has been secured, that no party has been prejudiced, and that in so far as there has been any restriction on a right or interest it is justified as necessary and proportionate.

2. This is a renewed application for permission to appeal, permission to appeal having been refused on the papers by Mr Justice Johnson. I am satisfied, having considered the written submissions and having heard the oral submissions of counsel, and having considered all the materials including the further materials, that there is here a reasonably arguable appeal.

3. I do not, in granting permission to appeal, formally rule on the issue of fresh evidence. In my judgment, it is far better for the court considering the substantive appeal to evaluate the fresh evidence, including the extent to which in the event it is regarded as 'decisive'. It is, however, appropriate in my judgment for the material to be before the court so that that consideration can take place. It is possible that, by the time of the substantive appeal, the court will be given a yet further update, possibly on behalf not only of the appellant but also the respondent.

4. There are two specific points that give rise to sufficient concern to warrant the grant of permission, whether viewed individually or in combination.

5. The first point concerns the position of the appellant's partner. That position has been updated so far as the fact that she is again I am told pregnant, although she explained in a witness statement that that was something of an 'accident'. There has been a sad history in this case of miscarriages.

6. With impeccable fairness, the district judge in this case granted time on 10 September 2019 for a psychiatric report which he then received and considered alongside two witness statements. In the event, in his careful judgment, he took the view that there would be 'support' for the partner of extradition were ordered, making reference to a statement he recorded the appellant having made in oral evidence about the partner having 'friends who could probably help her'. In considering the psychiatric report, the district judge clearly placed significant emphasis on the recommended therapy, care and other arrangements as identified by Dr Ornstein, the psychiatrist. On that basis, the judge said he was putting 'less weight' on the partner's 'current mental state', in light of the psychiatric evidence and 'real prospect of improvement'.

7. In my judgment, it is reasonably arguable that an appeal court ought to revisit that material and on doing so could be satisfied that the article 8 balance is to be approached, and ultimately struck, in a different way. The psychiatrist's report explains the very considerable concerns about the partner's mental health. It explains the importance of support and care, and the immediacy of that need. It goes into considerable detail about a package of care and support, of an intensive nature, coordinated, with multiple sessions and weekly visits. Defending the approach of the

district judge in written submissions, the respondent has submitted that the judge was 'correct' in his approach and reasoning; and in particular that 'it must be assumed' that the partner would obtain 'appropriate assistance'. In my judgment, there was a step in between (i) the current and anxious concerns, and (ii) the conclusions as to the position were the care and support to be provided, and which at least arguably needed to be addressed. There was, so far as I can see, no evidence specifically on the question of whether, and when, and to what extent, that support would, urgently, be available.

8. On the issue of vulnerability and isolation, the partner had said in her witness evidence: "I only have him". Counsel, who was present at the hearing, tells me that the partner's evidence was accepted and unchallenged and that therefore there was no cross examination. She also tells me that so far as concerns the evidence of the appellant about friends, recorded by the judge, that was subject to a significant qualification along the lines that the partner had 'no special close friend' (which the judge did not record).

9. It is reasonably arguable, in my judgment, that the important issues relating to the partner of vulnerability isolation and mental health called for a different approach and greater weight in the balance than submits the respondent and than reasoned the judge. These concerns are all the more anxious in the realities of the current circumstances. so far as the corona virus pandemic and its implications are concerned.

10. This court may require a more solid evidential basis, before being satisfied that there is no real human rights problem, at least capable of weighing more heavily in the scales, so far as the partner's position is concerned.

11. All of that will be the subject of evidence and argument.

12. There is a second matter, in my judgment, which also gives rise to a reasonably arguable point. It also, in combination with the first matter, gives rise to an overall reasonably arguable case on article 8, in combination and in the round. The second matter concerns steps which the appellant has been taken taking to pay off a compensation debt.

13. The ordinary starting point is that the courts, dealing with extradition sought by a requesting state, will respect the prosecutorial decisions and penal enforcement decisions made by the authorities of the requesting state. That would include the sentencing, the imposition or activation of a suspended sentence, and questions such as aggregation, or the re-suspension of a previously activated suspended sentence.

14. It is, however, in my judgment reasonably arguable that – for the purposes of the human rights evaluation and article 8 in particular – the court can properly consider the extent, including in the current circumstances, of the steps taken referable to 'compliance'. In the present case, what happened was that the suspended sentence imposed on 26 August 2013 of 18 months custody was conditional in particular on the payment of compensation to the bank. The index offence had been fraudulently obtaining of a bank loan in the equivalent of £48,000. The respondent correctly characterises that offence as a 'high value fraud'. I am told that three defendants bear the responsibility of repaying as compensation that amount. The suspended sentence was activated in November 2016 for non-payment of the compensation to the bank.

The papers describe that the appellant sought but was refused an extension of time to pay. On the face of it, it is a matter for the Polish authorities as to what should happen so far as all of that is concerned and so far as any ongoing payment is concerned.

15. Having said all of that, on the evidence before the court, positive steps were taken from the spring of 2019, through the instruction of a Polish lawyer, to engage with the underlying question of the compensation element and the harm to the bank. The evidence before this court had recorded that the appellant single-handedly had paid £8,669 worth of the compensation. That has been updated today by counsel who tells me the figure is now substantially in excess of £9,000. The appellant has also so secured a letter from the bank which records the banks agreement for its part to the ongoing payment arrangement. The court is told that the appellant has resolved to repay the entirety of the £48,000 equivalent, single-handedly, and is taking every step to do so.

16. The judge did not regard this as being a matter of particular relevance or weight. He referred to the fact that 'the appellant only started paying off the debt about 4 months before the hearing'. As I understand it, the hearing was 10th of September 2019. The respondent has filed submissions in support of the judge, submitting that the judge was 'correct' to treat this matter as 'irrelevant', and 'not to attach weight' to it. That point it is made in the most recent submissions (17 March 2020) for example, in no fewer than three places (paragraphs 16, 18 and 29). On the face of it, the respondent is right to characterise the judge as not having regarded this as being 'relevant'. In my judgment, it is reasonably arguable that this was a matter which was in principle a relevant consideration in favour of the appellant, when considering the article 8 balance. That will be a matter for consideration by the court dealing with the substantive appeal in this case.

17. It may be that further assistance is to be gained by that court and there may be further authorities, beyond the reference in Celinski ([2016] 1 WLR 551 at paragraph 13(ii)) about the respect to be given to the decisions of the requesting state, including as to enforcement of suspended sentences. I asked counsel what the current position was so far as the Polish lawyer's description in a witness statement (August 2019) about pursuing the possibility of applying in Poland to re-suspend the sentence. It may be that all of this is an issue calling for a substantive response on the part of the respondent the judicial authority. On the face of it, there may be a strong case for re-suspension, depending on what view is taken of progress, and depending on what view is taken of the compensatory and punitive elements of the previously activated suspended sentence order.

18. One authority which was cited by the appellant and provided in the bundle was Podolski [2013] EWHC 3593 (Admin). It may be that that case is no more than a working illustration of article 8 in action. It is also possible that, by reference to its age, it has been overtaken by subsequent authority. If so, none has been identified, to my satisfaction, in the respondent's written submissions. One of the features of the Podolski case is that Mr Justice Ouseley did consider the circumstances so far as 'compliance' with the underlying obligation, which was the subject of the suspended sentence, in that case. He did take into account that, in that case, the compensation had already been paid and therefore to that extent there had been achievement of that obligation. That was a case in which what remained was an unpaid work requirement, still unfulfilled. I regard that case as a helpful reference point, in assisting what in any

event would otherwise be my view: namely, that it is reasonably arguable that the judge should not have treated this feature of the case as being irrelevant.

19. If, on this appeal, the court is persuaded that there is reason to 'step back' and look at the article 8 balance in the round, in order to see whether the outcome is 'wrong' in the relevant sense, but giving appropriate respect to the findings and evaluation of the district judge, then all of these considerations and all the other circumstances of the case – into which I will not for the purposes of this judgment delve – will then become relevant in the consideration of that balancing exercise.

20. I have thought it appropriate in the circumstances to explain my own thinking as to why I was satisfied that it was appropriate to grant permission to appeal in this case. Nothing that I have said is intended, in any way, to constrain the approach of the court dealing with the substantive hearing of this appeal; nor for that matter to constrain the parties in the submissions that they are able to make to that court at that hearing. I will grant permission to appeal and I will deal now with case management directions to be embodied in the order that I will subsequently make.