IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2020] EWHC 249 (Admin)

No. CO/3751/2018

Royal Courts of Justice

Thursday, 23 January 2020

Before:

MRS JUSTICE FARBEY

B E T W E E N :

LUCAS MARCIN GUMIENICZECK — Applicant

- and -

POLISH JUDICIAL AUTHORITY — Respondent

MR G. HEPBURNE SCOTT (instructed by Bark & Co) appeared on behalf of the Applicant.

MR S. GLEDHILL (instructed by CPS) appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE FARBEY:

1 This is an appeal under s.26 of the Extradition Act 2003 ("the 2003 Act") against the decision of Deputy Senior District Judge Ikram on 19 September 2019 to order the appellant's extradition to Poland pursuant to an "accusation" European Arrest Warrant ("EAW") issued on 15 May 2018 and certified on 8 June 2018.

2 Permission to appeal was granted by Sir Duncan Ouseley, sitting as a Judge of the High Court, limited to whether the Judge erred when he concluded that the appellant's extradition would not be unjust and/or oppressive under s.14 of the 2003 Act. A renewed application for permission to appeal on human rights grounds (Art.8 of the European Convention on Human Rights) was refused by Sir Ross Cranston on 28 August 2019. I have therefore heard submissions limited to s.14.

3 The EAW seeks the surrender of the appellant for the purpose of prosecution for assaulting a man with a blunt tool on 4 April 2007. The EAW states that the appellant struck the man on his head with the tool, beat him and kicked him all over his body. As a result of the assault, the appellant fractured the man's skull causing him to suffer brain contusions and other injury. The maximum sentence for the offence would be five years' detention.

4 On 14 August 2018, the requesting Judicial Authority provided further information. The appellant has been neither arrested nor questioned in connection with the assault. An order to search for the appellant was made on 10 July 2007. A decision to detain the appellant was issued on 7 March 2011 because the police search for him seemed by that date to be ineffective. There is no information as to whether the appellant was aware that the police were searching for him. He did not confirm the receipt of correspondence sent by law enforcement agencies nor did he remain at his place of residence.

5 The Judicial Authority did not suggest, and the Judge did not proceed on the basis, that the appellant is a fugitive as defined by Lord Diplock in the well-known authority of *Kakis v Government of the Republic of Cyprus and Ors* [1978] 1 W.L.R. 779. The Judge dealt with a number of issues in the written reasons for his decision. In relation to s.14, the Judge reminded himself of *Kakis* and also *Gomes v Government of Trinidad and Tobago* [2009] UKHL 21, [2009] 1 W.L.R. 1038.

6 The Judge took into consideration that the allegation is a serious one which would attract a prison sentence. He concluded that the reason for any delay is that the appellant's whereabouts were unknown. The appellant came to the United Kingdom in 2006. The Judge noted the age of the case but held that the delay had been substantially explained. It had been suggested on an unrelated EAW that the appellant was at some stage in Italy and then located in the United Kingdom. This would, in the Judge's view, have made his apprehension difficult. The Judge also noted that the appellant's children (dates of birth: 21/09/04 and 07/03/07) were born in Poland, the younger being born after the appellant says he came to the UK. The Judge noted that the appellant has raised his family here, arriving for better financial prospects. The Judge went on to balance the various factors in favour of extradition and those factors against extradition before reaching his decision. For the purposes of my judgment, it is not necessary to set out those factors here.

7 In granting permission to appeal, Sir Duncan Ouseley observed:

> "It is just about arguable that, as the applicant is not a fugitive in relation to this EAW, and that as it is an accusation warrant relating to an offence over 11 years ago, …it would be unjust to extradite him. I find it very

> difficult to see how this could arguably be oppressive, but I shall not prevent the two parts being run here."

8 Despite these observations, Mr Hepburne Scott, on behalf of the appellant, accepted in his skeleton argument that he could not argue that the Polish judicial system would not contain adequate safeguards for a fair trial. However, he submitted in writing and orally that extradition would be oppressive. The respondent submits in writing and orally that there is nothing in the evidence to show that the high test of oppression is met in this case. The District Judge took into consideration all relevant factors.

9 Section 11 of the 2003 Act requires the court to consider whether extradition is barred by one of certain specified statutory provisions. Those provisions include s.14 which provides that:

> "A person's extradition to a category 1 territory 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 extradition offence (where he is accused of its commission), or
>
> (b) become unlawfully at large (where he is alleged to have been convicted of it)".

It was not in dispute that "unjust" in s.14 refers to the risk of prejudice to the accused in the conduct of the trial. "Oppressive" refers to hardship resulting from changes in the requested person's circumstances: see *Kakis* at 782H.

10 As I have said, Mr Hepburne Scott made no submissions about unjustness and so the appeal gets nowhere under that limb of s.14. He accepted, too, that the test of oppression will not easily be satisfied. Hardship, which is a commonplace consequence of an extradition order, will not be enough: *Gomes*, para 31. The offence for which the appellant's extradition is sought under this EAW took place over 11 years before his extradition hearing. This lengthy period is a powerful factor against extradition, but it cannot be a determinative answer to the question of oppression: *Brzeksi v Regional Court in Gdansk, Poland* [2012] EWHC 1138 (Admin), para 18.

11 The appellant submits that the Judicial Authority misled the Judge by indicating in Box F of the EAW that the appellant's whereabouts (his current Bradford address) were known in 2011 while indicating in the further information that his whereabouts were unknown between 2011 and 2018. I reject that submission. Box F does not say or imply that the Polish authorities knew the appellant's address in the United Kingdom in 2011. It says that the "suspect stays" in Bradford, which is correct, but which does not cast light on the Judicial Authority's knowledge of where he lived in earlier years.

12 The court has not been provided with information from the appellant about when he moved to Bradford and another earlier EAW, which was before the District Judge and which was attached to Mr Gledhill's skeleton argument, indicates that the appellant may have been living in Italy in 2009 or at least the Judicial Authority reasonably held that view. The suggestion that the Polish authorities have misled the court goes nowhere.

13 In my judgment, there has been no unexplained, still less culpable, delay on the part of the Judicial Authority, nor is this a marginal case in which such delay would be decisive. Since

leaving Poland the appellant has been both in the UK and in Italy, which the Judge reasonably found would have made apprehension difficult.

14 Mr Hepburne Scott highlights in his skeleton argument that the Judicial Authority would have known the appellant's whereabouts in relation to proceedings concerning the first EAW in September 2017. However, no conceivable prejudice arises from any delay between September 2017 and May 2018. The submission that extradition became oppressive because the new warrant was issued in May 2018 rather than September 2017 lacks merit.

15 The Judge took into consideration and made proper allowance for the Judicial Authority's concession that the appellant is not a fugitive. As I have said, he balanced the factors for and against extradition including the appellant's family situation. He considered the impact of extradition on the family including the appellant's two young children. He gave proper consideration to the evidence about the children before him. The gravity of the offence in respect of which extradition is sought is relevant. In this case, the offence is serious involving violence against a person, use of a weapon and apparently serious injury.

16 Under s.27 of the 2003 Act, this court will allow an appeal only if the Judge ought to have decided the relevant question differently. In my judgment, the Judge reached the correct conclusion on oppression and on s.14 as a whole. I agree with Sir Duncan Ouseley's reservations about whether oppression is even arguable. For these reasons this appeal is dismissed.

17 I was told today that the appellant is currently in custody having been arrested for breach of bail in relation to (according to Mr Hepburne Scott's instructions) his failure for at least one night to reside at his bail address. That matter is not before me and I make it plain that my decision would have been the same in any event.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge