



Neutral Citation Number: [2020] EWHC 3401 (Admin)

Case No: CO/476/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10th December

Before :

MR JUSTICE FORDHAM

Between :

PAWAL KRZYZANOWSKI
- and -
REGIONAL COURT OF KRAKOW

Appellant

Respondent

The **Appellant** in person (by video link with an interpreter)
Hannah Burton (instructed by the Crown Prosecution Service) for the **Respondent**

Hearing date: 10.12.20

Judgment as delivered in open court at the hearing

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.

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 Court 75 at a hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is a case that came before me in August. I gave a judgment on 20 August 2020 [2020] EWHC 2351 (Admin). I am not going to repeat in this second judgment the background and circumstances of this case. Subsequent to that judgment I ordered an adjournment on 1 October 2020 and there was a hearing in front of May J who ordered a further adjournment on 4 November 2020.

The ‘remand time served’ issue

2. The central issue before the Court today concerns the remand time which the Appellant has served. It is to the great credit of the Respondent (the Polish authorities), and in particular its Counsel Hannah Burton, that in submissions dated 6 October 2020 – recognising that the Appellant was acting in person in this case – the Court’s attention was drawn to the implications of the ongoing ‘qualifying remand’ which he has been serving. Those submissions stated:

“the sentence for which the [Appellant] is wanted will have been served in full by 17 December 2020”.

Ms Burton tells me that that was based on her calculation. The Appellant had been arrested and appeared in the magistrates’ court on 3 February 2020, having failed to surrender for his extradition hearing following his release on bail on 18 January 2019. He was sentenced to serve 4 weeks custody for his failure to surrender to his bail. Ms Burton’s calculation took account of that sentence calculating him to have served the custodial element of half prior to qualifying remand commencing on 17 February 2020. Again to her great credit, Ms Burton has raised with me today the fact that it is possible that the Appellant had in fact been arrested a day or a few days prior to 3 February 2020. If that is right the date of 17 December 2020, which in the Respondent’s written submissions was recognised as the date on which he would have served qualifying remand constituting the 10 months custody in respect of which extradition can be and is still pursued, may in fact be a date needing to be adjusted and brought forward.

The procedural position

3. The position before me today, formally, is that this is still an extant application for permission to appeal. It was renewed 10 days out of time following refusal on the papers. Entirely understandably, and remembering that the Appellant is acting in person, the qualifying ‘remand time served’ point raised by Ms Burton has never formally been taken by the Appellant in any document before the Court. I am quite satisfied, and Ms Burton fairly and properly does not resist, that I should give permission to appeal on the qualifying ‘remand time served’ point, with an extension of time for the notice of renewal, with permission to amend the grounds and with an extension of time for that; and that I should direct that today’s hearing is to be treated as the substantive appeal in relation to that ‘remand time served’ ground of appeal. I will return to say more about that issue and the order that is appropriate in the light of. But first I want to deal with the other matters.

The ‘enforcement expiry’ issue

4. In my earlier judgment in this case I raised a concern arising out of the fact that the Polish judgment in relation to the 10 months custody had been described as one whose enforceability had expired on 20 March 2019. That expiry date appeared on the face of the EAW and was specifically recorded in the judgment of the District Judge. As I explained, I wanted an enquiry to be undertaken as to whether extradition could properly be maintained, if that Polish judgment and its enforceability had expired. Ms Burton's industry has uncovered the case of Grazulis [2015] EWHC 707 (Admin) at paragraph 3 to 5. Paragraph 3 of that judgment records the need, in a situation where such a concern arises, for the Court to "embark on a procedure for establishing" whether enforcement has expired, since it would be an abuse of process to extradite an individual if it was clear that the requesting state's judgment could and would not be executed. Happily, that enquiry is the one which had struck me as appropriate. However, now that it has been undertaken and completed I am quite satisfied that the Appellant does stand to be extradited in relation to the Polish court judgment giving rise to the 10 months custodial sentence, subject only to the question of 'remand time served'. The Respondent has placed information before the court which demonstrates that on 16 June 2011 the enforcement in respect of the relevant Polish judgment was suspended, meaning in Polish law that its enforceability was extended to 20.3.2029. In the light of that information, to the extent that there is any remaining doubt or some question for resolution, those would be matters for the Polish authorities to address: see paragraph 5 of Grazulis. This point has therefore fallen away, albeit that it was right that the appropriate enquiry should have been undertaken and it is regrettable that the mistake about expiry of enforceability stood on the EAW and persisted through to being recorded in the judgment of the District Judge. The position has been clarified now I accept the submission that there has at all times during these proceedings in fact been an enforceable sentence of 10 months custody.

The Wozniak point

5. I raised in my earlier judgment the point of principle arising in Wozniak [2020] EWHC 1459 (Admin). So far as that point is concerned the Respondent in its submissions properly recognises: that it would not be appropriate to oppose an application to raise that new issue; and that in other cases stays on extradition removal have been granted pending the awaited decision of the Divisional Court. The significance of that for today is that the Wozniak point has given, and would still give, a 'durable basis' for the Appellant to remain in the United Kingdom while that point of principle stands resolved. Having said that, in the circumstances to which I now come it is not necessary now to make any order allowing the Wozniak point formally to be raised as a ground of appeal or of staying these extradition proceedings further on that footing. Rather, there is now a short and compelling point relating to the 'remand time served'.

Disposal of this case

6. In my judgment in the case of Molik [2020] EWHC 2836 (Admin) I described at paragraph 2 a line of authorities relating to 'remand time served' which had been placed before me at that hearing. I explained at paragraph 17 of that judgment that once 'the line is crossed', and the time served on remand exceeds the time to serve in respect of which extradition is being pursued, extradition is at that point necessarily inappropriate. I explained that that can either be put as an Article 8 ECHR point or an abuse of process point. I went on to explain at paragraph 18 of that judgment that, where the Court is 'on the very threshold' of remand time served exceeding time to serve, it can be appropriate

to make an order for discharge but to defer its coming into effect so as to match the ‘crossing of the line’, and in that regard I referred to the judgment of the then Dingemans J in Beczer [2019] EWHC 1016 (Admin). That is this case. I also explained in Molik at paragraph 30(i) and (ii) that where the appellant has a ‘freestanding durable basis’ to stay within the United Kingdom, a Court considering permission to appeal in an extradition case could ‘project forward’ in considering the ‘remand time served’ to consider the remand time which it was envisaged would be served at a relevant future stage. That is also this case in the light of the Wozniak point. The order I am going to make today is an order that, providing that the Appellant remains in custody in the meantime, his appeal on the ‘remand time served’ point is allowed and the EAW discharged and he is to be released next Thursday, 17 December 2020.

The EAW has not been withdrawn

7. There are two further matters that I need to explain. The first is that the Respondent in two communications has confirmed that the Polish authorities are not prepared to withdraw the EAW in this case, on the basis of the 10 months period of custody having been served through qualifying remand time served in the United Kingdom. That position has been taken because of a custodial period of 3 years which was within the same EAW. That 3 year custodial sentence relates to a consolidated judgment in Poland dated 17 September 2003 which became final on 25 September 2005. However, I am quite satisfied, and Ms Burton accepts, that the EAW in these extradition proceedings – so far as it relates to those matters – already stands discharged. That is because the District Judge in the judgment of 25 February 2019 recorded the Respondent’s Counsel as having accepted that the 3 offences to which the 3 years custody related are not ‘extradition offences’. In the conclusions in her judgment the District Judge specifically recorded that, in respect of those 3 offences, she was not satisfied that “they are extradition offences” and she ordered their discharge under section 10(3) of the Extradition Act 2003. Although the Respondent has twice communicated that the Polish authorities maintain their position and have not withdrawn the EAW, I am quite satisfied that those matters do not and cannot stand as a proper basis to resist any order other than release and discharge once the 10 month period has been served through qualifying remand in the United Kingdom. I am not prepared to order any discharge or release prior to the serving in full of the 10 months. I am quite satisfied in this case that the proportionality under Article 8, and alternatively abuse of process, analysis is satisfied once the 10 months ‘line is crossed’, but not before.

Earlier release?

8. That leaves the final point with which I need to deal. It has not been possible at the hearing today to ascertain whether the Appellant was arrested on 3 February 2020 or a day or a few days prior to that. Ms Burton was already hot on the trail of that issue having herself spotted the point and raised it with the Court. She has told me this morning that those enquiries are already urgently being undertaken. I have made clear at the hearing today, and do so in this judgment (and will do so in my Order), that I have accepted and find that the 10 months will have been served at the latest on 17 December 2020. That was the calculation put forward in the representations on behalf of the Respondent before this Court. It would not, in my judgment, be fair or appropriate in the circumstances of this particular case to allow that to be reopened and a later date relied on when one has never been identified. What, however, I am satisfied does need to happen is for the Respondent’s enquiries urgently to ascertain whether in fact the

date on which the 10 months will have been served may be a day or a few days prior to next Thursday, 17 December 2020.

Order

9. I am setting out at the end of this judgment the Order that I am making which reflects the fact that that enquiry is in hand and allows a mechanism for me speedily to vary the contingent future discharge and release, should it be discovered that the correct date is one at that should be earlier than 17 December 2020. I made this Order:

UPON HEARING the Appellant in person by video link with an interpreter

AND UPON HEARING Ms Hannah Burton representing the Respondent

AND UPON the Respondent having set out its position, by reference to Further Information, in written submissions dated 6.10.20 (Respondent's Submissions Document "RSD") with further clarification today

AND UPON May J having made an order on 4.11.20

AND UPON the Court being satisfied:

- (1) that the enquiry regarding expiry of the Polish judgment, referred to in §6 of the judgment in this case at [2020] EWHC 2351 (Admin) ("First Judgment") has appropriately been answered by RSD §§9, 19-23;
- (2) that a stay would be appropriate in light of the Wozniak point (Judgment §7, RSD §16-18), giving a freestanding durable basis to stay (Molik [2020] EWHC 2836 (Admin) at §30i and ii);
- (3) that the 10 months qualifying remand which will have been served at the latest in a week's time on 17.12.20 (RSD §§24-25) means the position in this case is materially identical to Molik §§17-18, Beczer [2019] EWHC 1016 (Admin) and Newman [2012] EWHC 2931 (Admin) at §20;
- (4) it is appropriate for the Respondent to check, urgently, whether the Appellant was arrested prior to 3.2.20 and served any additional days prior to that date, in which case the date of 17.12.20 in paragraphs 3 and 4 of this order should be brought forward using the mechanism in paragraph 7;
- (5) that, although the EAW has been maintained by the Respondent in relation to a further 3 years imprisonment arising out of a judgment 17.9.03 which became final on 25.9.05, those matters stand discharged on the basis that it was accepted and the District Judge found that they were not extradition offences (judgment of DJ Boucher 25.2.19 §§4-5, 28, 35);
- (6) that it is not necessary or proportionate for any further enquiry or hearing to be undertaken and that this Court should treat today's hearing as the substantive appeal and make an order for discharge, deferred to take place on 17.12.20 provided that the Appellant remains in custody in the meantime

AND UPON the Respondent, save for the maintenance of the EAW referred to above, not resisting the terms of this Order

IT IS ORDERED that:

1. Permission to appeal is granted, with an extension of time for the renewal application (17.7.20) and permission (with an extension of time) to rely as a ground of appeal on the Article 8 and abuse of process remand time served point identified in Molik at §§17-18

with those paragraphs standing as the amended grounds of appeal. Permission to appeal is refused on all other grounds.

2. It is directed that the hearing today stands as the substantive hearing of the appeal on the ground of appeal referred to in paragraph 1 above.
3. Paragraph 4 of this Order will take effect on Thursday 17th December 2020 provided that the Appellant has remained in custody from today until that date.
4. On Thursday 17th December 2020, provided that the Appellant has remained in custody from today until that date:
 - (1) The appeal is allowed pursuant to section 27(2) and (4) of the Extradition Act 2003, on the ground of appeal referred to in paragraph 1 above.
 - (2) The order for extradition shall be quashed.
 - (3) The Appellant shall be discharged and released in relation to these extradition proceedings.
5. No order as to costs.
6. Liberty to apply in writing on notice to Fordham J for further directions should the proviso in paragraphs 3 and 4 of this Order not be satisfied.
7. The Respondent shall promptly inform the Court and the clerk to Fordham J, should its urgent enquiries elicit information indicating that the 10 months will have been served prior to 17.12.20, with liberty to apply by that means to vary the date of 17.12.20 in paragraphs 3 and 4 of this Order should that be the position, so as to identify an earlier date for release and discharge.

10.12.20