Neutral Citation Number: [2021] EWHC 3427 (Admin)

Case No: CO/1070/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

14th December 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

LESZEK WITOLD DROZD	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 14/12/21

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.

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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.

MR JUSTICE FORDHAM :

Mode of hearing

1. This is a renewed application for permission to appeal in an extradition case. The mode of hearing was by Microsoft Teams. It was already known that the Respondent would not be attending today's hearing. Counsel for the Appellant invited the Court to permit a remote hearing, in light of the recent government guidance on 'work from home where you can' and given the nature of this short hearing. In the circumstances, he said, the Court could conclude that this was an appropriate step so as to avoid any risk of transmission on the part of any person from his travelling to and being present in the court room. He was satisfied, as am I, that a remote hearing involved no risk of prejudice to the interests of his client, the Appellant. I acceded to that request in the particular circumstances of the present case. I am satisfied that it was an appropriate request to have made. It also had the advantage of injecting flexibility so far as the timing of the hearing was concerned. I would not have convened a 9am hearing, involving court staff and the court room. But, through the medium of a remote hearing, I was able to deal with this matter at 9am, promoting the efficient dispatch of judicial business, on a day when I have a very full list. I am satisfied that the open justice principle was secured. The cause list that was published yesterday afternoon identified this case and its start time. There was, as always, the email address of my clerk which any member of the press or public could use if they wished to observe this hearing.

Context

2. The Appellant is aged 46 and is wanted for extradition to Poland. That is in conjunction with an accusation European Arrest Warrant ("EAW") issued on 25 April 2014 and certified on 11 December 2020, on which he was arrested six days later on 17 December 2020. The index offending involves a series of alleged serious offences committed in Poland at the age of 24, all said to have been committed as a member of a group or gang. They comprise: kidnapping; attempted robbery with a firearm; armed robbery of a petrol station; armed robbery to steal a car; armed robbery of a post office; and unlicensed firearms possession. The Appellant denies those offences. Extradition was ordered by DJ Baraitser ("the Judge") on 23 March 2021 after an oral hearing on 9 March 2021. Permission to appeal was refused on the papers by Eady J on 12 October 2021.

Grounds and applications

3. Eady J stayed two grounds of appeal relating to Article 3 (prison conditions) and section 2/Article 6 (Wozniak), with directions. Those stays were pending resolution in lead cases of issues which have subsequently been resolved adversely to the requested persons in those lead cases. Those two grounds of appeal have rightly been abandoned and I will formally refuse permission to appeal on them. Eady J refused permission to appeal on Article 8 ECHR and section 14 (unjust or oppressive to extradite by reason of the passage of time). To those two grounds of appeal is now added a putative third ground, relying on section 25 (unjust or oppressive to extradite by reason of physical health). There is an application (6.12.21) to add that ground, with an application to adduce accompanying putative fresh evidence including medical documents. Those applications are opposed, in written submissions, by the Respondent on the basis that

the section 25 ground is unarguable even with the supporting putative fresh evidence, which is incapable of being decisive.

Passage of time: 1999-2011

4. The context regarding the passage of time is important. There is a 12-year period, between the alleged index offending in the first half of 1999 and the domestic Polish summons issued on 4 October 2011, followed by the EAW issued in April 2014. The evidence is that the Appellant came to be implicated by another gang or group member, or other gang or group members, and that it was that change in circumstances which led promptly to the October 2011 summons. That may well have been because the other individual or individuals were only themselves identified and proceeded against after a substantial period of time. Mr Hepburne Scott fairly says that, alternatively, they may have been identified and proceeded against much earlier and the passage of time could be attributable to their very belated decision to implicate the Appellant. He points out that on the evidence before the Court that level of detail is not given. However, whatever the background position, on the evidence, the Appellant was only implicated shortly before October 2011, and that is why he was only pursued after that.

Passage of time: 2014-2020

5. There is also a 6½ year period between the issuing of the EAW in April 2014 and its certification and his arrest in December 2020. As to that period, the evidence is that, having come to the UK in 2011 in search of work, the Appellant became aware in 2013 that he was wanted in Poland in conjunction with the alleged index offending in 1999. It was in that context that he then deliberately took steps, from 2013 onwards, to conceal his identity. He did that by using the identity and identity documents of another individual, whose appearance he resembled. In 2015 and 2016 when the UK police tried to investigate and trace him in the UK they were unable to find him, in circumstances which the Judge found involved concealment by other members of his family, as well as by himself. When he was arrested at the end of 2020, identification documents in the name of the other individual were found in his possession.

Section 14

6. I turn to the three grounds of appeal which are advanced by Mr Hepburne Scott. Dealing first with section 14, the first question involves identifying the correct period of time. Mr Hepburne Scott submits, and I accept for the purposes of today, that for an accusation warrant it is the passage of time from the time of the alleged offending. That means the relevant passage of time starts in 1999. The next question involves asking whether any of the relevant passage of time is excluded from consideration on grounds of the Appellant having been a fugitive. Mr Hepburne Scott rightly accepts that the Judge unassailably found that, from 2013 onwards, the Appellant was a fugitive. The relevant passage of time for the purposes of section 14 is therefore 1999 to 2013. Taking that passage of time and considering its implications, what, beyond reasonable argument, is fatal in my judgment to the section 14 ground of appeal is that the evidence comes nowhere near the threshold of oppression or injustice by reason of that passage of time.

7. Mr Hepburne Scott submits that it is reasonably arguable that there is injustice or oppression arising out of the prospect that the Appellant could be tried on the basis of

evidence, from those individuals who say they were his accomplices in relation to these crimes, with that evidence being accepted by a Polish court in writing. He points to the further information provided by the Respondent in this case which refers to the prospect of such written evidence and its permissibility under the Polish criminal system and law. He submits that, unless counterbalanced in the way that Article 6 ECHR would require, a conviction on written evidence, not tested by cross-examination, would constitute injustice. He submits that, on the evidence, there is an absence of detail as to whether a conviction could solely and decisively be based on written evidence and without the counterbalances which Article 6 would require.

8. Mr Hepburne Scott accepts that the development which is at the heart of those submissions relates to this prospect: the prospect of the other group or gang members, whose evidence is being relied on to implicate the Appellant, as no longer being available to give oral evidence, by reason of the passage of time since they first implicated him in or around 2011. In my judgment, it is plainly correct that this development (the unavailability of these others to give oral evidence) is linked to the position which will has arisen, and to what will have happened, in the period since 2011. It is the events since 2011 that have, or may have, culminated in their unavailability now to give oral evidence. But, in my judgment, that is plainly fatal to the argument about section 14 injustice. The relevant passage of time which can be relied on for the section 14 argument is, as I have explained, one which ceased when the Appellant became a fugitive in 2013. There is no suggestion at all that the other witnesses became unavailable in the short period between 2011 and 2013. In any event, in light of the circumstances relating to that passage of time 2011-2013 it is quite impossible in my judgment, even arguably, to characterise there as being either injustice or oppression in light of the relevant section 14 thresholds.

9. There is a further fatal point. Mr Hepburne Scott, rightly, accepts that the extradition court will apply the presumption that the Polish authorities would adhere to the well-recognised standards of Article 6 so far as convictions and written untested evidence are concerned. Even if there were otherwise an arguable case relating to the relevant passage of time, and the change of circumstances from there being available witnesses to there being unavailable witnesses and reliance instead on written evidence, the Article 6 presumption would itself in my judgment be fatal to the section 14 argument that is being put forward. Further information explains that written evidence can be accepted in the Polish criminal proceedings in appropriate circumstances. What is said does not on its face displace or rebut the Article 6 presumption; nor does it call for further or fuller explanation.

Section 25

10. I deal next with section 25, the putative new ground. Mr Hepburne Scott accepts that there is a "paucity of evidence", even now, as to the health condition of the Appellant. He submits that, on the evidence that is available, there is a significant health issue involving a heart condition. He submits that the Appellant is on the threshold of "open heart surgery". He submits that it is reasonably arguable that extradition, on the evidence including the fresh evidence, would be unjust or oppressive for section 25 purposes. He accepts that if the threshold is crossed, this would not be a case of discharge pursuant to section 25(3)(a). Rather, it would be a case of adjournment pursuant to section 25(3)(b), until such time – and he suggested a period of a few

months – when the Court could be satisfied that the threshold of injustice or oppression on grounds of physical health was no longer crossed.

11. In my judgment, it is not reasonably arguable, on the material that has been adduced before the Court, that extradition of the Appellant crosses the threshold of injustice or oppression for the purposes of section 25. The evidence reflects the fact that the Appellant has a heart condition. There are documents which reflect the fact that he had surgery in May 2021 and was subsequently discharged. The documents reflect the fact that there was an appointment, scheduled in 2021, to take place in September 2021. There is evidence – which I accept, for the purposes of today, is reliable – from Geoff Smith, director of BEST, the befriending and support team for foreign nationals in HMP Wandsworth. He was able to explain (by an on 19 October 2021) that the Appellant was "due to see cardiology in 2 weeks", the September appointment having been "postponed". There is also a reference in the prison medical records to an appointment letter having been received on 3 November 2021 relating to a future appointment. There is a description, in the written submissions (dated 6 December 2021) on behalf of the Appellant, to his having "provided instructions" that, having seen a cardiologist, he is expecting what is described as "urgent heart surgery to the left side of his heart". In my judgment, putting all of this at its highest and positing it being accepted and relied on by this Court for the purposes of an appeal on a new ground, this evidence is not capable of being decisive in supporting a reasonably arguable section 25 ground of appeal. In my judgment, that is true both in relation to any discharge (s.25(3)(a)), and in relation to the adjournment argument put forward (s.25(3)(b)). It is not reasonably arguable that the relevant threshold which triggers the Court taking either of those courses is crossed by this material, or by inferences which could be drawn from this material. Extradition arrangements involve and must involve suitable and informed handovers of individuals with medical conditions. The Polish authorities are presumed, on a principled basis, to act compatibly with human rights standards applicable to health conditions. There is nothing in this case that begins to rebut or displace the presumption that appropriate action would be secured in transfer, and following surrender; nor that requires any further information of the Respondent in those regards. I refuse permission to rely on the further section 25 ground of appeal. The putative fresh evidence being incapable of being decisive, I formally refuse permission to adduce it.

Article 8

12. The Article 8 ECHR argument is in my judgment not viable either. The passage of time is substantial. But explanation has been given as to why the Polish authorities have sought the Appellant only since the end of 2011. There is no question of any culpable delay. The matters in relation to which he is sought to stand trial are plainly very serious. The public interest considerations in favour of extradition are very strong. They are made the stronger by the fact of his deliberate concealment of his identity, knowing that he was wanted in relation to these matters, from the end of 2013. That fact substantially weakens any point that can be made by reference to his settled position in the United Kingdom since coming here in 2011. His lack of UK convictions, that settled status and employment here, are all matters that need to be seen alongside his ongoing activity in using an assumed identity and identity documents, and doing so in order to try to stay under the radar so far as these extradition matters are concerned. The fact that the Appellant has two sons here (ages 11 and 20) who he saw regularly prior to his arrest, the fact that he was regularly sending their mother (his former partner) money to help

with their upbringing, and the impact on them and him of his extradition, together with the other features capable of weighing in the balance against extradition, are – beyond argument – decisively outweighed by those which weigh in its favour. The Article 8 ground is not reasonably arguable with a realistic prospect of success. In those circumstances and for those reasons permission to appeal is refused.

14.12.21