



Neutral Citation Number: [2022] EWHC 1632 (Admin)

Case No: CO/1107/2021

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Thursday 23<sup>rd</sup> June 2022

**Before:**

**MR JUSTICE FORDHAM**

**Between:**

**PATRYK WASIELYSZYN**

**Appellant**

**- and -**

**REGIONAL COURT IN RADOM, POLAND**

**Respondent**

**Hannah Hinton** (instructed by ITN Solicitors) for the **Appellant**  
**Saoirse Townshend** (instructed by CPS) for the **Respondent**

Hearing date: 16.6.22

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 and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

**MR JUSTICE FORDHAM:**

1. This is an extradition appeal case which, ultimately, is about discharge and disclosure. It is a case in which applications for permission to appeal and to adduce fresh evidence came before me on 16 June 2022 and I adjourned the case part-heard for a week. A further regularising application by the Respondent for permission to adduce the entirety of the fresh evidence which had been placed before the Court and which requires permission, and for an extension of time for the skeleton argument which had been filed well outside the extended deadline given by the Court, was filed on 20 June 2022. A witness statement was filed on 17 June 2022.
2. This adjourned hearing has been by Microsoft Teams. I am satisfied that the mode of hearing was appropriate in the circumstances. The case, its start time and the mode of hearing were all published in the Court's cause list together with an email address usable by any person who wished to observe.
3. The Appellant is aged 39 and was wanted for extradition to Poland. Four distinct matters have been the subject of the extradition proceedings at least when they started. (1) The first was the conviction and sentence for robbery of a wallet on 24 September 2003 (reference 991/03) whose limitation period was given as 12 February 2019. (2) The second was the conviction and sentence for passport offending in February and March 2004 (reference 1385/04) whose limitation period was given as 17 February 2015. (3) The third was an accusation of alleged theft of a wallet on 30 December 2005 (reference 958/03). (4) The fourth was the conviction and sentence for theft of a handbag on 19 June 2007 (reference 1059/07) whose limitation period was given as 3 August 2022. All four of these were described in an EAW issued on 28 April 2010 and certified on 24 April 2014.
4. Having been arrested on 30 June 2015 and released on conditional bail, the Appellant's case came on for hearing on 29 October 2015 and was adjourned to 30 October 2015. He did not appear. He had failed to do so at a case management hearing on 1 October 2015 at which point a warrant was issued for his arrest. After the October 2015 hearings, DJ Roscoe decided that it was appropriate to order extradition on three of the four matters, but discharged the Appellant in relation to the passport offending (1385/04), for reasons given in a judgment which was written by her at that stage.
5. The Appellant was eventually re-arrested on 13 March 2020. He was sentenced to 3 months custody for his failure to surrender. DJ Roscoe's extradition judgment was handed down by a colleague. The order for extradition was formally made on the three offences, with the Appellant's discharge in relation to the passport offending (1385/04).
6. A notice of appeal was filed on 19 March 2020. The Respondent's Notice was filed on 15 May 2020. Permission to appeal was refused on the papers on 17 June 2020 by Swift J, and a notice of renewal was filed. Later that month a stay was granted in light of the judicial independence point arising in the Wozniak test case. After the adverse determination of that test case at the end of 2021, the renewed application for permission to appeal came on before Dove J on 8 February 2022. The Respondent did not appear. Dove J adjourned with directions, wanting to know what the Respondent's position was in relation to a second EAW dated 11 February 2019 which had not been certified and on which the Appellant had never been arrested, together with any

response from the Respondent to the proof of evidence put forward by the Appellant as fresh evidence.

7. By the time the case came before me the live grounds of appeal were expiry of the limitation period in relation to 991/03 (the robbery of the wallet) and an Article 8 ECHR ground, together with the possibility of a new abuse of process ground. There had been a late flurry of activity including Further Information from the Respondent dated 10 June 2022 and 14 June 2022 and the disclosure on 13 June 2022 of Further Information dated 28 November 2017. I adjourned the case part-heard to allow Ms Hinton the time which she sought, and allowing the Respondent to put forward a proper and complete application for permission to rely on all of the fresh evidence put forward, and to rely on the skeleton argument filed after the extended deadline ordered by the Court. I also identified a number of question-marks in the chronology in this case, in light of what had subsequently been said and had come to light in the proceedings. When I raised it, Ms Townshend was content that the Respondent should provide a witness statement to assist the Court and I so directed.
8. Yesterday afternoon (22 June 2022), the CPS emailed the Court stating that the Respondent judicial authority was withdrawing the EAW of 28 April 2010 on which extradition had been ordered in this case, asking that the Court urgently issue an order to discharge the Appellant and quashing the order for his extradition under section 42(3)(a) of the Extradition Act 2003. This was said to obviate the need for any hearing today and the Court was invited to take the matter out of the list. In the light of concerns raised on behalf of the Appellant about the sequence of events, and in circumstances where the Order which the Court was being invited to make was not agreed, I have considered it appropriate that the case should stay in the list, giving the parties an opportunity to ventilate any points considered by them to arise.
9. It is common ground that the Court should accede, pursuant to section 42(3)(a), to the request which has been made and should order the discharge of the Appellant and quash the order for extradition. But Ms Hinton invited the Court to record certain matters in recitals to that order, and to make directions which invited, but without mandating it, disclosure on certain matters by the Respondent.
10. There are I think a number of topics on which it is appropriate to record the position, at least in outline. These are also relevant to an understanding of the request made by Ms Hinton. In recording them I am seeking to identify accurately key points relating to the facts of what has happened to date in this extradition case.
  - i) The first relates to the expiry of the limitation period on the passport offending (1385/04). It was clear on the face of the EAW of 28 April 2010 that the limitation period was stated to be 17 February 2015. By the time extradition came to be considered by a Court that limitation period date had expired. I am told by the Respondent in the witness statement and I accept that that issue had promptly been raised on 8 July 2015 by the CPS with the Respondent judicial authority and chaser messages had been sent subsequently. The point was specifically considered by DJ Roscoe at the hearings in October 2015. The chronology has been filled in subsequently as to the non-pursuit of the 1385/04 matter. It was the express subject matter of Further Information dated 28 November 2017 received by the CPS on 15 May 2018, at which point the Appellant was unlawfully at large and unrepresented. That was not provided to

anyone on behalf of the Appellant or to a Court, as I understand it, until 13 June 2022 when it was put forward in the Respondent's bundle for the hearing before me. DJ Roscoe recorded that she had been "told nothing by the Respondent to contradict" the fact that the limitation period had expired.

- ii) The second relates to the limitation period of 12 February 2019 in relation to the robbery of the wallet (991/03). That date also appeared on the face of the EAW of 28 April 2020. It had not passed at the time when the case came before DJ Roscoe in October 2015. It had passed by the time the case came before the Magistrates' Court in March 2020. By that time the EAW dated 11 February 2019 had been issued which referred to an extension of this limitation period from 12 February 2019 to 12 February 2029 relation to 991/03 (as well as an extension in relation to 1059/07 from 3 August 2022 to 3 August 2032). One ground of appeal (in the perfected grounds in May 2020) concerned the expiry of the limitation period in relation to 991/03. Further Information dated 8 June 2020, responding to questions raised on 22 May 2020, was attached to an email together with the EAW of 11 February 2019, sent to the Appellant's legal representatives on 11 June 2020. Swift J on 17 June 2020 relied on the June 2020 Further Information as answering the 991/03 limitation expiry point. What was being said in the Further Information dated 8 June 2020 was that the EAW dated 11 February 2019 "does not replace" the EAW dated 28 April 2010 which had "not been withdrawn". The Further Information of June 2020 was one of the materials which would have needed the Court's permission to be adduced.
- iii) The third relates to an EAW dated 29 April 2015. The Further Information dated 28 November 2017, which was provided to the Appellant's representatives for the first time on 13 June 2022, said "it should be pointed out that an updated European Arrest Warrant was issued on 29 April 2015". The point that was there made was that that April 2015 EAW did not cover the passport offending 1385/04. That was the Further Information that had been received by the CPS on 15 May 2018. No April 2015 EAW has been provided to the Appellant's representatives or to any Court dealing with the extradition.
- iv) The fourth relates to the revocation, and non-pursuit of extradition, as to the alleged theft of the wallet (958/03). What is stated in the Further Information dated 14 June 2022 is that there was a decision on 29 April 2015 of the Polish Court (in Radom) which "revoked" the EAW issued against the Appellant with regards to both (a) 1385/04 (the passport offending) and (b) 958/08 (the alleged theft of the wallet). In light of that "revocation" decision the Further Information stated that the Polish judicial authority "no longer requests extradition" with respect to either of those two matters. At the hearing before me on 16 June 2022 this was confirmed. It was described as a development in the Appellant's favour. This Court was therefore being told that revocation in relation to the accusation matter (958/08) had been the subject of a formal judicial decision on 29 April 2015. This was not the subject of any earlier express communication that I have seen. The Further Information of November 2017 – seen by the CPS in May 2018 and by the Court and Appellant's representatives in June 2022 – referred to a revocation decision on 29 April 2015, but that was in relation to 1385/04 (the passport offending). The email of 11 June 2020 from the CPS Senior Crown Prosecutor to this Court and to the Appellant's representatives records that when

questions were posed on 22 May 2020 the understanding from the CPS end had been communicated that surrender was no longer sought in respect of either the passport offending 1385/04 (in relation to which the Appellant had already been discharged) or “to be prosecuted for an offence under domestic judgment 958/0[3]”. The email made clear that the CPS Senior Crown Prosecutor understood the Further Information in response (8 June 2020) to reflect the position that “surrender is sought for all offences” (presumably meaning the three remaining matters, the passport offending having been the subject of discharge). The EAW of 11 February 2019 and the Further Information of 8 June 2020 were attached to the email and could be seen for themselves. The Further Information of June 2020 was saying that the EAW of 28 April 2020 was “not ... withdrawn”. This was an extradition case where there were hearings in the Magistrates’ Court in October 2015 and again in March 2020. On the face of it, there was an April 2015 discharge decision in relation to one of the matters on which extradition was ordered, unbeknown to the Magistrates’ Court ordering extradition. Again, when the appeal was being considered by this Court in June 2020, and again in February 2022, there had been a formal discharge decision back in April 2015 in relation to one of the matters which had been the subject of an order for extradition, but that was not known to this Court or to the Appellant’s representatives.

- v) The fifth is that the various CPS Requests for Further Information have, at least since May 2020, communicated to the Respondent that there is a duty of candour which the High Court is said to have made clear extends to information held in the requesting state.
  - vi) The sixth relates to the EAWs of 28 April 2010 and 11 February 2019. What is stated in the communication from the NCB in Warsaw dated 20 June 2022 to the NCA is: “we confirm that the warrant issued on 28 April 2010 has been withdrawn by the Court and the warrant issued on 11 February 2019 replaced the one issued on 28 April 2010”. The Further Information dated 8 June 2020 (and again on 10 June 2022) stated that the decision to issue the EAW dated 28 April 2010 “has not been withdrawn”, which the EAW dated 11 February 2019 “does not replace”.
11. In all the circumstances of this case, and in the light of what has now happened, Ms Hinton has invited me, alongside performing my statutory duty to discharge her client pursuant to section 42(3)(a) of the 2003 Act, to ‘urge the Respondent to consider giving voluntary disclosure in light of its duty of candour’, as to (a) the basis for the withdrawal (b) an explanation for the timing of the withdrawal and (c) disclosure of the EAW dated 29 April 2015. She emphasises that the strong suggestion has been made that the intention is now for the appellant to be rearrested in relation to the EAW of 11 February 2019 or in any event to pursue extradition. She emphasises this Court’s duty is to promote the expeditious dealing with extradition proceedings. She points to the inevitability of important candour duties arising. And she emphasises that this Court is seized of the facts and circumstances whereas a judge who may have to deal with the case in the near future will necessarily be coming at it cold.
12. I understand the concerns that have given rise to the invitation. However, I am satisfied that what is appropriate, but also sufficient, is that this Court should explain key circumstances of the present case. That is what I have done. To the extent that I have

jurisdiction to make an order which ‘urges the Respondent to consider giving voluntary disclosure in light of the duty of candour’, I would not exercise it in the present circumstances. Were there to be any action against the Appellant with a view to seeking an order for his extradition, or were there to be any other legal proceeding, it would be in that context that any applicable duty of candour would be triggered and would arise. All of those persons who have responsibilities or the ability to invoke or police any applicable legal standards and safeguards will be in an informed position to be able to do so. I do not, in the circumstances, consider it necessary or appropriate to call upon the Respondent to provide this Court with any further information or explanation at this stage. I can certainly record (as I now do) that the Appellant’s representatives are urging the Respondent to make voluntary disclosure, promptly, now, in the context of what appears to be envisaged as to what happens next. But the Order that I make is to order the discharge of the Appellant and quash the order for his extradition.

23.6.22