



Neutral Citation Number: [2022] EWHC 1764 (Admin)

Case No: CO/1611/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday 7th July 2022

Before :

MR JUSTICE FORDHAM

Between :

POREBSKI WOJCIECH
- and -
DISTRICT COURT IN BIELSKO- BIALA

Appellant

Respondent

The **Appellant** appeared in person
The **respondent** did not appear and was not represented

Hearing date: 7.7.22
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.

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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 oral hearing of a renewed application for permission to appeal. It is an extradition case. The Appellant is aged 42. He is wanted for extradition to Poland. There is a conviction European Arrest Warrant (EAW) issued in February 2015 and certified in July 2020. He was arrested in October 2020. He has been on remand in custody since then. He has address me this morning using a video link from prison. And he has told me a number of things to which I will need to come back.
2. The offending dates back to the period between 2004 and 2011. It includes a number of offences including more than 20 domestic burglaries. 7 years 3 months and 23 days remained to be served (subject to reduction for qualifying remand in these extradition proceedings). The appellant has emphasised to me this morning that he has served nearly 2 years. He has referred to the time that has been taken in these proceedings being resolved. But the reason why time has been taken is because he has been exercising his procedural rights in the extradition proceedings. He will have credit for the time that he has spent on remand.
3. District Judge Clews (the Judge) ordered extradition in April 2021 after an oral hearing at which the Appellant gave evidence and was cross-examined. The perfected grounds of appeal raised three points: Article 3 ECHR; Article 8 ECHR; and the familiar Wozniak (section 2) ground. Thornton J refused permission to appeal on 9 November 2021, subject to a stay in relation to the Wozniak point. That point was disposed of by Wozniak [2021] EWHC 2557 (Admin). The Article 3 point was disposed of by Litwinczuk [2021] EWHC 2735 (Admin).
4. The notice of renewal on 15 December 2021 raised a single point which was a new development. It was that the Appellant was seeking in Poland to challenge the validity of the EAW and a hearing was imminent on 28 December 2021. On 27 January 2022 an application was made to amend the grounds of appeal, to take a point arising out of what had happened at that hearing. A judgment of the Polish court was provided which described an aggregate sentence of 6 years custody. The Appellant has confirmed this morning his understanding that the court in Poland has adopted a new six-year sentence. He has also confirmed to me that that was the December judgment. The Appellant's representatives submitted, by reference to Zakrzewski [2013] UKSC 2 at §10 that the new aggregate 6 year sentence called for an explanation, by way of "Further Information". That was because – if it constituted a sentence in place of the previous aggregate sentence which was the subject of the EAW – that could support an "abuse of process" ground of appeal. By a consent order on 2 February 2022 I made directions adjourning the oral hearing of the renewed application, and giving a timeframe for Further Information to be provided by the Respondent. The Further Information was duly filed on 9 February 2022.
5. By an Order dated 27 April 2022 the Appellant's previous solicitors request to come "off the record" was granted. By further Order dated 26 May 2022 Griffiths J regularised the position. He formally extending time for the January 2022 Amended Grounds. He directed the listing of this oral hearing which the Appellant could attend from prison by video link, as he has.
6. The Appellant has told me this morning that the position is unclear to him in Poland. He says that the very least that he and his family want to know how long he would have

to serve before he would be able to try to rejoin them. The Further Information dated 9 February 2022 is clear. It makes clear that the judgment of 28 December 2021 is not yet “final”, in circumstances where both parties had communicated that they were intending to appeal. The appellant has told me this morning that he understands that there is indeed an appeal. The Further Information makes clear that if that new judgment became “final”, there would then be the 6 years to serve, but subject to any deduction for qualifying remand served in these extradition proceedings. If that happened at a time before the Appellant had been extradited, the Respondent court would then revoke the EAW (of 27 April 2015) and issue a new EAW. But that situation had not arisen. All of this was formally recorded in these extradition proceedings, by means of that further information document. I am quite satisfied that there is no viable abuse of process argument. That is the sole point identified in the notice of renewal and the January 2022 application and Amended Grounds which are formally before me today.

7. I also record that I am satisfied that the Article 3 and Wozniak points have no viability. Finally, I also record that there is no realistic prospect that the Article 8 arguments could succeed. The Appellant has emphasised to me today the position of his family. The position of his wife who works in this country. And the position of their son who is here and go to school here. He emphasises that they been here nearly 10 years having come in 2013. He explained that the family are happy year. He emphasises that the partner and son are both blameless. He emphasises their wish to continue their family life here. And he tells me that the extradition is a horrible punishment for the family. He accepts that they knew that one day the day would come when he would face accountability. He accepted everything changed for them two years ago when these extradition proceedings began. And he told me that the sun doesn't understand what is happening or why it is happening.
8. I have to apply the law that applies to extradition proceedings. The appellant has asked me today whether he can stay in this country and serve his punishment here. I do not have the function of the extradition judge of making a decision about where he should serve his sentence. The relevant question for the extradition judge would be whether extradition was disproportionate as an interference with private and family life. And that involves considering the rights of the appellant but also of his wife and their son. But I have carefully considered the papers and I have carefully listened to what has been said to me. There is no realistic prospect that this court were to decide that extradition was disproportionate. There is no basis on which this court would decide to discharge the Appellant. That means the process in Poland must now take place, and the relevant sentence must be served but with the remand credit. The assessment of proportionality arises in the following context. The Appellant is wanted for serious matters, to face a substantial custodial term, having been convicted, and having come to the UK as a fugitive. The Judge's approach and conclusions are correct. Notwithstanding the family life and impact on the family members, including the son (now aged around 12), and notwithstanding the passage of time and its implications, the public interest considerations weighing in favour of extradition decisively outweigh all factors capable of weighing against it. The Article 8 ground is not reasonably arguable. I will therefore refuse the application for permission to appeal but with no order as to costs.