Neutral Citation Number: [2024] EWHC 1461 (Admin)

Case No: AC-2023-LON-003628

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN LONDON

Thursday, 13th June 2024

Before:
FORDHAM J

- -

Between:

TOMASZ WISNIEWSKI	**Appellant**
- and -	
REGIONAL COURT OF TORUN, POLAND	**Respondent**

- -

- -

Matei Clej (instructed by AM International Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

- -

Hearing date: 13.6.24

Judgment as delivered in open court at the hearing

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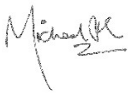
Approved Judgment



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FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

Introduction

1. The Appellant is aged 49 and is wanted for extradition to Poland. That is in conjunction with a 25 March 2019 conviction Extradition Arrest Warrant, which was certified 4 years later on 27 March 2023, and on which he was arrested on 4 July 2023. District Judge Law ("the Judge") ordered his extradition on 1 December 2023 after an oral hearing on 20 October 2023 at which he and his partner both gave oral evidence and were cross-examined. The index offending comprises some 9 offences of overnight burglaries of shops between January 2000 and July 2002 (aged 26-28), committed as part of a group, with an overall value of loss of some £3,000 equivalent in items stolen. The Appellant had 3 previous convictions between 1992 and 1998 in Poland of offences of theft, burglary and criminal damage. He was convicted and sentenced in respect of the index offences, in his presence, in 2002 and 2003. His applications for postponements of the dates for serving the sentences were refused. The sentence for which he is wanted to serve is an overall one of 4 years 33 days.

2. The grounds being advanced on appeal were section 14 (that it would be unjust or oppressive to extradite the Appellant given the passage of time) and Article 8 (that extradition would be a disproportionate interference with rights to respect for private and family life). Article 8 is maintained. The relevant Article 8 rights are those of the Appellant, his partner and their now 19 year old adult son.

The Old Case

3. At the heart of the proposed appeal – including in the Grounds of Renewal dated 6 March 2024 and right up until today – were questions relating to fugitivity, living openly and the passage of time. The Judge had found as a fact that the Appellant had left Poland in 2004 as a fugitive, to avoid serving his custodial sentences. The evidence of the Appellant and the partner was that he had come here later, in 2006 to find work, having lived openly in Poland for the previous 2 years. The Judge's finding on fugitivity was unassailable. The Judge gave a series of reasons for rejecting the evidence of the Appellant and the partner, and for finding the Appellant to be a fugitive. That was fatal to the section 14 arguments. It was also highly material to the Article 8 assessment. It factored into why the lengthy passage of time did not substantially diminish the strength of the public interest considerations in favour of extradition. The Judge had specifically recognised that there was an unexplained passage of time from June 2017 when the Appellant successfully applied for a passport to be issued by the Polish embassy and March 2019; and an unexplained 4 years between the issuing of the ExAW in March 2019 and its certification by the NCA in March 2023. But, said the Judge, the Embassy was not the same arm of the State as the Polish authorities pursuing the Appellant, who had been unable to track him down. And, said the Judge, the passage of time was not significant alongside the overall period of time since the index offending (in 2000 to 2002) and the Appellant's fugitive departure in 2004.

4. Mr Clej has today very belatedly, but rightly, accepted that there is no reasonably arguable basis for appeal in relation to any of the matters which I have so far discussed.

The New Case

5. An application was filed yesterday to adduce putative fresh evidence. There are appointment letters relating to health and capacity to work. Those letters are dated January 2024 to April 2024. There is a proof of evidence describing health matters and current inability to work.

6. The practice of putting in last-moment materials is a bad one. Especially for extradition renewal hearings where it is known that respondents do not attend because they have made their submissions in writing.

7. There was no excuse for the belated filing of materials. But nothing can possibly turn on the substance of these materials, which I have read and considered, and to which – in the event – the Respondent was creditably able speedily to react in writing. Nor can anything turn on the additional points which have been made orally on instructions by Mr Clej today. There is, in my judgment, no realistic prospect that this Court at a substantive hearing would conclude that the Judge's Article 8 evaluative outcome was, or has become, wrong.

8. There are strong public interest considerations in favour of granting extradition. True, the Appellant has been here for 20 years on the Judge's assessment (18 years on his own evidence), and the partner and the son here for the last 14 years. The son is now aged 19 and, as the Judge concluded, the partner and the son will be able to be mutually supportive on the Appellant's extradition. These are multiple offences of a serious nature, committed with others, and the sentence remaining to be served is over 4 years. The Appellant is a fugitive from justice who deliberately absented himself from the jurisdiction where he was due to serve his sentence and who started a new life in the UK, as the Judge put it, no doubt hoping that his past offending would not catch up with him. There is a strong public interest against the UK being seen as a safe haven for fugitives from justice. Nothing turns on the fact that the Judge listed as a factor in favour of extradition that this was a 'conviction' warrant. The point is that the Appellant knew perfectly well about these matters, having been 'convicted' of them at a trial in his presence.

9. On the basis of everything that I have read and everything that I have been told, I agree with McGowan J who – on the papers before her – concluded that there was no reasonably arguable appeal. I will refuse permission to appeal and formally refuse permission to rely on the fresh evidence, since it is incapable of being decisive.