Case Nos: AC-2023-LON-003566

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2024] EWHC 2996 (Admin)

The Royal Courts of Justice,
Strand, London WC2A 2LL
(Judgment given remotely
via Microsoft Teams)

Tuesday, 29 October 2024

BEFORE:

MR JUSTICE KERR

BETWEEN:

SYLWESTER DEBICKI

Appellant

-and-

THE DISTRICT COURT IN GDANSK, POLAND

Respondent

MS KATHRYN HOWARTH (instructed by Lawrence & Co Solicitors) appeared on behalf of the Appellant

MS KIERA OLUWUNMI (instructed by CPS Extradition Unit) appeared on behalf of the Respondent

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APPROVED JUDGMENT

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Lower Ground, 46 Chancery Lane, London WC2A 1JE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

MR JUSTICE KERR:

Introduction

1. The appellant appeals by permission of Hill J against the decision of District Judge Zani at Westminster Magistrates' Court on 27 November 2023 to order his extradition to Poland to serve a sentence of eight months' imprisonment imposed in March 2018 for what we would call perjury; that is, giving false testimony as a witness at a criminal trial in November 2016. The appellant admits having committed the offence. None of the sentence was served in Poland, but the appellant has been in custody in this country since 21 August 2024, just over two months ago. The time he is spending in custody now is likely to count towards his eight month sentence.

2. There are two grounds of appeal. The first concerns the appellant's mental health and suicide risk. The second is that the judge was wrong to find that the article 8 balance came down in favour of extradition; or that the balance is now the other way in the light of further evidence not before him. There has been considerable procedural movement in the case since his decision. Hill J granted the appellant permission to rely on a psychiatric report from Professor Andrew Forrester dated 10 March 2024, postdating the judge's decision.

3. The appellant also wishes to rely on other evidence that was not before the judge. That evidence was before me at the hearing and I considered it *de bene esse* in the usual way. The appellant applied at the hearing to adjourn the appeal because of outstanding ongoing criminal matters in which he is charged before the Hull magistrates' court; and because he wished to obtain a further report from Professor Forrester. It was also suggested that the appeal might await the outcome of a forthcoming Supreme Court appeal in litigation concerning early release provisions in the Polish Penal Code.

4. Bourne J, on 10 October 2024, refused to vacate the hearing of the appeal on 23 October. He pointed out in his written reasons that the criminal proceedings in Hull magistrates' court did not justify making an order under section 36B of the Extradition Act 2003 (**the 2003 Act**) because he was not the "appropriate judge" to make such an order and a judge of this court would only become the "appropriate judge" for that

purpose if and when the appeal were dismissed and the order for the appellant's extradition upheld.

5. I refused to adjourn or stay the appeal and I refused the application for an extension to the representation order to enable a further report to be obtained from Professor Forrester. I indicated at the hearing that I would give my reasons for those decisions in the course of my judgment and I will do so later in this judgment.

6. I was told at the hearing that the Supreme Court granted permission on or about 17 October 2024 to appeal in the case concerning the early release provisions in the Polish Penal Code, *Andrysiewicz v Circuit Court in Lodz, Poland* [2024] EWHC 1399 (Admin); and that the Supreme Court would hear argument in March 2025. It is not known when its judgment will be available. Ms Howarth, nonetheless, relies on the early release issue as relevant to the ground relating to article 8 of the Convention.

Facts

7. The appellant was born in Tczew in December 1990. He acquired three convictions in Poland for theft from 2013 to 2015. For these offences, he was eventually sentenced to two years' imprisonment in Poland in June 2016. While serving that sentence, he gave evidence on 15 November 2016 at another person's trial. He lied to the court, saying untruthfully that he had never purchased marijuana from a Mr Mazurowski; and that his earlier statement to the police (made in 2014) saying he had purchased marijuana from Mr Mazurowski, was untrue and he had made it because police had forced him to do so.

8. The appellant was charged with giving false testimony and was tried for that matter. He was in prison on the other matters and was brought to the hearings from prison. He was then out of prison when, in early 2018 he came to this country. He was sentenced in his absence in March 2018 to the eight month sentence. He unsuccessfully asked the Polish court to allow him to serve that sentence via "electronic supervision". He did not surrender to serve his sentence in Poland. He also acquired further convictions for theft in Poland in October 2018 and January 2019.

9. The appellant obtained work in this country and formed a relationship with a Ms Sylwia Maslyk. They lived in Hull. She has two children in Poland by a previous relationship but is not involved in their upbringing. She works as a delivery driver for Amazon. She has lived in this country since 2016 and has a sister here, in Great Yarmouth. Both have had health difficulties and the appellant has had mental health problems which are documented in Professor Forrester's report. He has, or had until recently, no convictions in this country. He does not have settled status.

10. On 31 July 2023, the appellant was arrested on a conviction warrant founded on the conviction for giving false testimony. He was brought to court the next day, legally represented. He provided information to the court that day about his circumstances and those of his partner, including that Ms Maslyk was pregnant. He was released on conditional bail with a curfew from 11pm to 5am (which was varied in March 2024).

11. The effective hearing was fixed for 20 November 2023. At that hearing, the appellant was unrepresented but was assisted by an interpreter. He produced a short handwritten note in English saying he regretted his crimes and denying that he had come to the UK to evade his sentence. He gave evidence but did not call any witnesses. He explained his background and that he had children by a previous relationship, aged 15, 10 and 5, living in Poland. He does not see them.

12. The judge found that he was a fugitive from Polish justice. He had failed to get the punishment converted to a home detention curfew and thereafter did not keep the Polish authorities informed of his whereabouts. There was no mention of mental health issues or any suicidal intention or any need for psychiatric evidence. In his handwritten note presented to the judge, the appellant said that, if he were returned to Poland, he feared the relationship with Ms Maslyk and his then unborn child might not survive.

13. The judge did not consider section 25 of the 2003 Act. He treated the challenge as raised under section 21 and article 8. He carried out the usual *Celinski* balancing exercise and found in favour of extradition. He took account of the point that there would be hardship to the appellant and Ms Maslyk and "some Brexit uncertainty", but did not find that these features overcame the strong public interest in the UK upholding

and performing its international obligations. The offending was serious and the appellant was a fugitive.

14. After the judge ordered the appellant's extradition, the latter had seven days to appeal. He obtained legal representation and appealed, relying on article 8 only. The notice of appeal is dated 1 December 2023. On 7 December 2023, the appellant attempted suicide by hanging, fortunately unsuccessfully. Detailed written evidence was obtained from him in a statement dated 16 January 2024. His then pregnant partner, Ms Maslyk, was naturally very concerned about him, as she stated in her written statement dated 18 January 2024.

15. In his statement, the appellant gave a history of difficulties as a youngster growing up in Poland and his concern that he may commit suicide. Professor Forrester was instructed. On 10 March 2024, he produced his report and an application was made for permission to rely on it. In the perfected grounds of appeal, dated 19 March 2024, a second ground of appeal based on health and suicide risk, i.e. a section 25 ground, was added.

16. Professor Forrester concluded that the appellant presented with a range of depressive symptoms and suffered from moderate depression. There had been the suicide attempt in December 2023. There was a risk of suicide. It was "not currently high" but might become so if he were extradited. If his depression were to worsen, it is possible, the Professor thought, that "he could lose the capacity or ability to resist an impulsive [sic] to commit suicide". He added: "it is possible that the risk that he would succeed in committing suicide no matter what steps were taken to prevent it could develop".

17. The appellant's daughter was born on 2 May 2024. A few weeks later on 24 May, Hill J granted permission to appeal and to rely on Professor Forrester's report. Unfortunately, the appellant then got into trouble with the law. He was getting on badly with Ms Maslyk, the mother of his new born daughter. On 19 July 2024, it was later alleged that he stalked Ms Maslyk and stole her phone at the address in Hull where she lives, which is not his bail address in these proceedings. On 22 July 2024, it is alleged that he was in possession of a Class B drug at his bail address. The stalking allegation is not being pursued by the prosecution.

18. It appears that he accepts having committed the other two offences. In a recent proof of evidence, he accepted having committed theft. His solicitors in those criminal matters no longer represent him. A court notice dated 21 August 2024, when they acted for him *pro bono*, recorded that his next hearing was to be on 24 September 2024 and his "bail" on the criminal matters continued with conditions to prevent further offending: not to go to the street in Hull where Ms Maslyk lives and not to contact her directly or indirectly.

19. He was said to have been in breach of those conditions but did not lose his bail despite the breach or alleged breach. He was also accused on 21 August 2024 of breaching his curfew, because the previous day he had not been at the bail address in Hull specified in these extradition proceedings, during the hours of curfew. He admitted that breach and was remanded in custody for breaching his extradition bail conditions, not the bail conditions arising from the criminal matters.

20. The appellant was taken into custody on 20 or 21 August 2024 and remanded to HMP Hull on 21 August. I understand that was, as I have said, for breaching his bail conditions in this extradition case. He has been in custody since then at HMP Hull and it is likely, from the evidence I have before me, that his time in custody since 21 August 2024 will count towards the unserved eight month sentence, because he was remanded for breaching his extradition bail conditions and not the bail conditions arising from the criminal charges.

21. The appellant has not applied for bail since 21 August 2024. He is prevented from contacting Ms Maslyk or their new born daughter both because of his bail conditions in the criminal matters and because he is in custody. He is not enjoying any family life with them at present. He accepts that his relations with Ms Maslyk are not good but hopes they will improve.

22. The criminal matters are ongoing but likely to be resolved this week. The latest information from Hull Magistrates' Court is that he is due to be sentenced this Thursday, 31 October 2024, for the theft and possession of a Class B drug matters. This suggests that he has pleaded or will plead guilty to those offences and that no trial will need to take place.

23. At HMP Hull, he is under the care of the Assessment Care Counselling and Teamwork (**ACCT**) staff, who have kept written records of interviews with him and the medication he is taking. On a *de bene esse* basis, I have looked at those records and also handwritten notes made by the appellant while in prison. He is clearly not a happy man, which is not surprising. As well as his mental health concerns, he needed treatment for a bad hand injury arising from a hit and run incident in July 2023, involving a vehicle.

24. The records do not, in my judgment, indicate that the risk of suicide is currently any higher than it was when Professor Forrester took an account from the appellant. He is now on sertraline, 50mg per day. However, he did claim on 27 August 2024 that he would "definitely kill himself if extradited". The ACCT staff are, not surprisingly, concerned about this. He has referred himself to the mental health team several times while in prison mentioning thoughts of killing himself, among other things.

25. A note of 4 October 2024 records that he:

> "denies having any thoughts to harm himself and did not express any intention to harm himself. Sylvester [sic] said he has had thoughts to harm himself in the past however, has no current thoughts. Protective factor is his family, particularly his … daughter".

Issues, reasoning and conclusions

26. I accept the submission of Ms Oluwunmi that the evidence before the judge below, combined with the further evidence, if it were allowed, do not come near to satisfying the high threshold in the words of section 25(2) of the 2003 Act that it must be "unjust or oppressive" to extradite the appellant.

27. Ms Howarth, for the appellant, strode valiantly to present the evidence of Professor Forrester, the further evidence from the health professionals at HMP Hull and the lay evidence of the appellant and Ms Maslyk, as raising what would become a high risk of an impulsive, rather than voluntary and considered, act of suicide. The difficulty is that, as Ms Oluwunmi pointed out, the medical evidence goes no further than showing that in the course of the extradition process that risk may arise.

28. There is nothing in the evidence to meet the point that, as put by Thomas LJ, as he then was, in *Polish Judicial Authority v Wolkowicz and Others* [2013] EWHC 102 (Admin) at [10c]:

> "It will ordinarily be presumed that the receiving state within the European Union will discharge its responsibilities to prevent the requested person committing suicide, in the absence of strong evidence to the contrary".

29. Here, there is no evidence to the contrary, let alone strong evidence. The same considerations apply on the authorities to the process of removal from this county to Poland; and, before that, to the appellant's time in custody in this country. A further report from Professor Forrester would not meet that point. The stated purpose of obtaining one would be to provide an update on the appellant's mental health and any risk of suicide by impulsive act.

30. There is no suggestion that the Professor is in any position to comment on the measures in place in Polish prisons to prevent any impulsive attempt at suicide and there is no other evidence before me, any more than there was before the judge below, on that topic. An adjournment for the purpose of obtaining a further report from Professor Forrester would, therefore, not be justified.

31. The prison medical or ACCT staff records are therefore not decisive and should not be admitted. The lay evidence from the appellant and Ms Maslyk, which has come since the judge's decision, is not decisive or helpful in relation to the section 25 ground of appeal, but also needs to be considered in the context of the article 8 ground of appeal to which I am coming.

32. For completeness, I also do not consider that an adjournment for the purpose of awaiting the final outcome of the current criminal proceedings would be justified, or for the purpose of enduring the much longer wait for the Supreme Court's decision in *Andrysiewicz v Circuit Court in Lodz, Poland*. If I reject the article 8 ground (to which I am coming) and dismiss the appeal, I would become the "appropriate judge" and would be minded to make an order under section 36B of the 2003 Act, subject to any further observations from counsel, until the current criminal proceedings are resolved.

33. Such an order would prevent the appellant's extradition until resolution of those criminal proceedings; but the indications are, as I have said, that resolution is likely to be imminent in view of the prosecution's decision not to pursue the charge of stalking Ms Maslyk. Given the nature of the two remaining charges, a lengthy sentence to custody is not very likely. I say that without any knowledge of the detailed facts of those matters and without any intention of interfering with the jurisdiction of the magistrates' court over them.

34. I accept that, if and when the appellant is extradited, he may be in a position to apply for early release as he may soon reach the half way point in his eight month sentence, counting towards that period the time spent in custody from 21 August 2024 up to the point of extradition; if he remains in custody throughout that period and does not get bail. I see no injustice in leaving any early release issue to the Polish justice system, which has the jurisdiction and expertise to consider and decide whether the appellant should be released early.

35. I come to the article 8 ground of appeal. Ms Howarth did not submit that the judge's article 8 balancing exercise was flawed or wrong at the time, on the evidence that was before him. She submitted that, if the further evidence is taken into account, it is decisive and means the balance is now the other way, such that the court would have decided the article 8 issue differently if that evidence had been before him.

36. While accepting the strong public interest in extraditing a person legitimately sought by a requesting state, she points out that the appellant was not present at the sentencing hearing and that the court would not have heard relevant mitigating factors before sentencing. The mitigating factors which the Polish court did not have before them include, Ms Howarth submits, the evidence of the appellant's poor mental health.

37. There has now been a long delay since the offence was committed in late 2016. This diminishes the public interest in extradition, Ms Howarth argues. She also points to the delay of some four years between sentence in March 2018 and issue of the arrest warrant in 2022, during which no action appears to have been taken by the Polish authorities.

38. Ms Howarth contends that the time spent in custody on remand - approximately a quarter of the sentence or half if he were to be released at the half way point - should be weighed in the balance against extradition. Finally, his daughter has now been born and thereby acquired article 8 rights. There is a risk that, because of uncertainty over whether the appellant could return to this country after serving the sentence, his family life with his partner and daughter could be irretrievably and permanently lost.

39. Eloquently and attractively these submissions were made to me, I am unable to accept that the judge's assessment would or should have been any different if he had seen the further evidence at which I have looked *de bene esse*. First, the reason the appellant was not present at the sentencing hearing was because he was, as the judge found, a fugitive from Polish justice. There is no challenge to that finding. It is, therefore, untenable for him to rely on the sentencing court missing mitigation matters. It is equally untenable to rely on the delay since the offence and in issuing the warrant.

40. As for the time on remand in custody, assuming in the appellant's favour that it does count towards his eight month sentence - which I think likely but do not formally decide - it still leaves nearly three quarters of the sentence. It may be optimistic to suppose that he would have a good prospect of benefiting from the early release provisions of Polish law, having deliberately evaded justice there. But it is for the Polish authorities to determine that matter, not for me.

41. As for the appellant's family life and that of Ms Maslyk and their daughter, now about five months old, the prospect of the appellant enjoying family life with them in future has recently been reduced and, if anything, the article 8 balance on his side of the scales is weaker than it was before the judge below.

42. At the time of the hearing below, he had a family life with Ms Maslyk and the judge was aware that it would soon extend to the child when it was born which, he knew, was to be a few months later. At the moment, the appellant is not able to have any family life with Ms Maslyk because he allegedly stole her phone and is under a bail condition not to contact her directly or indirectly or go to her address: not that he would be able to do so anyway, being in custody which he was not after he had appeared before the judge.

43. Any interruption to family life, if the appellant were otherwise able to resume it, will be the shorter for that if, as I think likely, the time now spent in prison counts towards the eight month sentence. And there is clear evidence of jeopardy to his family life for reasons not necessarily connected with or arising from the prospect of extradition. I accept that there remains "Brexit uncertainty" if he is extradited, but, like the judge belo, I do not find that this factor tips the balance against extradition.

44. For all these reasons, the further evidence is not admitted. The application for an adjournment and for an extension to the representation order are refused. Both grounds of appeal must fail and the appeal must be dismissed. I will hear counsel on the question whether I should make any order under section 36B or, indeed, section 36C of the 2003 Act, having regard to likely imminent developments in the criminal proceedings.
