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Neutral Citation Number: [2024] EWHC 366 (Admin)

Case No: AC-2023-LON-000946

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 20th February 2024

Before:
FORDHAM J

- -

Between:

ROBERT CZESLAW KOBIEROWSKI	**Appellant**
- and -	
POLAND	**Respondent**

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- -

Louisa Collins (instructed by Hennessey and Hammudi Solicitors) for the **Appellant**
Tom Davies (instructed by CPS) for the **Respondent**

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Hearing date: 20.2.24

Judgment as delivered in open court at the hearing

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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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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 41 and is wanted for extradition to Poland. That is in conjunction with a conviction Extradition Arrest Warrant dated 8 April 2014, certified on 6 June 2014, on which he was arrested on 29 January 2021. DJ Clews ("the Judge") ordered his extradition, after a hearing on 19 January 2023, at which the Appellant gave oral evidence. Permission to appeal was refused on the papers on 26 September 2023 and the renewed application was adjourned with directions on 25 January 2024 in the light of putative fresh evidence which had been submitted.

2. The index offending is constituted by three offences in Poland between 2005 and 2006 when the Appellant was aged 22 and 23. There is an offence committed between May 2005 and February 2006 of offering to supply class A and class B drugs (cannabis around 2kg and amphetamine/heroin 115g). There is an offence of possession of class A and class B drugs (566g of cannabis, 170g of amphetamine and 41.9g of heroin) committed in February 2006. Finally, there is a February 2006 offence of possessing a firearm and ammunition.

3. The Appellant was ultimately sentenced in November 2011 in Poland to a custodial sentence of 3 years and 2 months. He is wanted on the Extradition Arrest Warrant to serve the entirety of that custodial period. At the time when he was arrested on the Extradition Arrest Warrant, in January 2021, he had been charged with UK offences involving cannabis production and money laundering. He was subsequently convicted of those UK offences and sentenced herein September 2021 to sentences, one of 3 years 9 months (money laundering) and the other of 7 months (the drugs), giving an earliest release date of 30 November 2022. He has subsequently been on extradition remand (now nearly 15 months of qualifying remand).

4. The Appellant had come to the United Kingdom in 2010 and has been here for 14 years since then. He has a partner and young child here. At the time of the oral hearing before the Judge, in January 2023, the child was aged 21 months. As at today, the child is now aged nearly 3 years old. The Judge rightly recognised the Article 8 private and family life rights of all affected members of the family, with whose private life and family life extradition would be an interference.

5. Two key points featured in the grounds of appeal and grounds of renewal. One has been developed orally, and that is where I will start.

Transferring the Sentence

6. This point rests on two tranches of putative fresh evidence: the first, put forward with the grounds of renewal in November 2023; the second, put forward on 6 February 2024, pursuant to the directions on 25 January 2024. The evidence describes a hearing in Poland in a District Court on 21 September 2023, relating to the possible transfer of sentence, to serve it here in the United Kingdom. The argument advanced is that there is a promising application pending before the Polish courts for transfer, which would clearly be a less coercive measure, and which alongside the other facts and circumstances of the case gives rise to a viable Article 8 challenge.

7. I cannot accept that submission. The now-translated September 2023 documents do not, in my judgment, give any concrete indication that there is any objective basis for optimism, so far as any transfer is concerned. As the Respondent pointed out on 13 November 2023, the Convention on the Transfer of Sentenced Persons 1983 ("the Convention") states as a clear precondition that the transferred prisoner would need to be a UK citizen, which the Appellant is not. The Polish Court on 21 September 2023 requested the Polish Ministry to apply pursuant to Article 6 of the Convention, for a declaration by the UK authorities that the Appellant is "a national of this country within the meaning of Article 3(1)(a) of the Convention". Article 6(1)(a) provides for "the administering state, if requested by the sentencing state, to furnish a document or statement indicating that the sentenced person is a national of that State". Article 3(1)(a) states as a precondition to any transfer that the sentenced person must be "a national of the administering State". It is clear what "that State" means in Article 6(1)(a), and what "this country" means in the Polish court order.

8. The precondition is not satisfied. The Appellant is a Polish national. He is not a British national. References in the evidence to 2-3 months, for what would in any event be a first stage in the process – and references to applications to expedite the process – can go nowhere. This point has no traction.

Passage of Time

9. The other key point – not developed orally, but nor formally abandoned – is a claim that the Judge went wrong on the question of the passage of time. At first sight, there are significant periods of passage of time in this case.

10. First there was the passage of time between February 2006 when the last index offending took place and the Extradition Arrest Warrant in April 2014. That is a period of 8 years. But it is necessary to understand what was happening during that period. The Appellant was very well aware of the position throughout, as the Judge unassailably found. He was first questioned as a suspect in February 2006 and informed of the decision to charge him. He was then questioned twice in May 2006 and was informed of amended charges. An indictment was lodged in December 2006. A first 'trial' hearing was in March 2007. There were no fewer than 57 hearings between March 2007 and November 2011. The case was a complex one, which involved 21 defendants and 44 charges. Judgment was delivered in November 2011. Between February 2006 and March 2008 the Appellant had been in custody in Poland in relation to other matters. When he left Poland for the UK in 2010, he did so fully aware of the ongoing proceedings and, as the Judge unimpeachably found, as a fugitive. With the Appellant's knowledge, his lawyer in Poland then sought to appeal the sentence and then made an unsuccessful application for deferral. Following this, the Appellant was in 2013 summonsed to serve the sentence and to surrender, which he failed to do. The Extradition Arrest Warrant followed. There is a lengthy detailed chronology of all of this in the Respondent's submissions accompanying the Respondent's Notice.

11. Secondly, there is the passage of time between April 2014 and the Appellant's arrest in January 2021. That is a further 6½ years. There is evidence about that period too. The Appellant was in the UK, as a fugitive from Polish justice. An Interpol case was created in May 2014. In June 2015, the Metropolitan Police informed the Polish authorities that they had been unable to locate the Appellant in the London area. The UK link to the Appellant was finally established, in the Humberside area, in January 2021. He was

subsequently arrested, while detained on those other drug and money laundering matters.

Passage of Time: Diminishing the Public Interest

12. The Judge considered several of the Article 8 authorities on the question of 'passage of time'. He recorded that the offences were "indeed of some age", but that the Appellant was a fugitive and that he was unable to say that the passage of time made "a meaningful difference". In discussing his Article 8 balancing evaluation, the Judge referred to the "appreciable lapse of time since the offending", but he said there was "no delay I can make any allowance for". That was because "such delay as there has been" had "substantially to be laid at the [Appellant]'s door and the public interest is high, particularly as the [Appellant] is a fugitive".

13. I can see no error of approach here, even arguably. Lady Hale explained in HH v Italy [2012] UKSC 25 at §8(6) "the delay since the crimes were committed may … diminish the weight to be attached to the public interest". That was a reference to the "public interest in extradition" (see §8(4)). It links to the idea of whether the passage of time "does not suggest any urgency about bringing the appellant to justice, which is also some indication of the importance attached to [their] offending" (§46). Lady Hale was careful to use the word "may".

14. In the passages which are criticised, it is clear that the Judge was addressing the question of whether – on the facts and in the circumstances of the present case – the passage of time did serve substantially to "diminish" the public interest in favour of extradition. The Judge concluded, for cogent reasons which he explained, that it did not do so. He had the explanations of the circumstances during the periods in question. He recognised, rightly, that none of the passage of time could properly be laid at the door of the Polish authorities, or the UK authorities. He recognised, given the Appellant's fugitivity, and the fact that the authorities were not aware of his whereabouts, that the passage of time was squarely attributable to the Appellant's own actions. What the Judge was saying, as he expressly articulated, was that "it is impossible to say that any passage of time has diminished the public interest in the [Appellant's] extradition to any degree that is significant". He went on to say: "that is particularly so since the [Appellant] committed similar offences in the UK to those … in Poland once he had arrived here and received a lengthy prison sentence which had to be completed prior to the extradition hearing". In saying that there was no delay for which he could make any allowance, he explained that the public interest was "high", particularly given that the Appellant is a fugitive, and that nothing had occurred "to diminish the public interest in his extradition to any meaningful extent". The Judge was squarely addressing the feature identified by Lady Hale and reaching the unimpeachable assessment, on the facts and in the circumstances, that the weight to be attached to the public interest had not here been significantly "diminished".

Passage of Time: Increasing the Impact

15. That leaves Lady Hale's other observation (HH at §8(6)) that "the delay since the crimes were committed may … increase the impact upon private and family life". This means the passage of time can have the effect of strengthening family life and private life in the UK, making the impacts weightier in the balance against extradition. The Judge plainly considered this second aspect of the passage of time. He gave it full

effect. He took full account of all of the developments in the Appellant's life, during the passage of time. He took careful account of the position relating to the partner and the birth of the young child. In the familiar 'balance sheet' exercise, the Judge specifically recorded that: the Appellant "has now been living in the UK for around 13 years"; that he "has built a life for himself here"; and that he has "a partner and a young child". He gave this separate and distinct consideration in his later discussion when he said: "I have considered both the lapse of time as above and what has happened since the [Appellant] came to the UK, particularly that he has a partner and young child who might face difficulties without him".

16. In my judgment, there was no arguable error of approach by the Judge here either. I add this. I see no realistic prospect that, even conducting the rebalancing afresh, the High Court at a substantive hearing would conclude that the Appellant's extradition to serve this significant custodial sentence for these drugs and firearms offences is a disproportionate interference with the Article 8 rights of the fugitive Appellant, or his partner, or the child, or the three of them collectively.

Conclusion

17. I can see no reasonably arguable basis for an appeal and in those circumstances will refuse the application for permission to appeal. Having considered the putative fresh evidence, in order to test its significance, I will formally refuse permission to rely on it, on the basis that it is incapable of being decisive.

20.2.24