Neutral Citation Number: [2024] EWHC 408 (Admin)

Case No: AC-2023-LON-002344

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Monday, 26th February 2024

Before:
FORDHAM J

- -

Between:

ANTONIO STEFANEL NITA	**Appellant**
- and -	
ROMANIA	**Respondent**

- -
- -

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

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Hearing date: 26.2.24
Judgment as delivered in open court at the hearing

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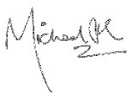
Approved Judgment

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 21 and is wanted for extradition to Romania. That is in conjunction with a conviction Extradition Arrest Warrant issued on 18 October 2022, and certified on 7 November 2022, on which he was arrested on 24 November 2022. His extradition was ordered by District Judge Leake ("the Judge") on 27 July 2023 after an oral hearing that day. The index offending relates to an aggravated non-dwelling burglary committed, as part of a group, when aged 15½ in February 2018. The Extradition Arrest Warrant refers to the custodial sentence, involving 2 years 10 months and 5 days then to serve in, what was originally at least, "an educational centre". Further Information dated 1 February 2023 records that the Appellant, by that time, had 1 year 4 months and 15 days custody to serve.

2. The sole issue raised today is Article 8 ECHR (private and family life), in the light of all the circumstances of the case and in particular: (a) the age of the offending; (b) a period on electronically monitored curfew; and (c) a period of qualifying remand. When the Appellant was arrested on the Extradition Arrest Warrant on 24 November 2022, he was then bailed with conditions which, I am told, included the electronically monitored curfew. I can see from a Police National Computer printout dated 21 November 2022 that, when he was arrested on 28 April 2022 in connection with an earlier June 2020 Extradition Arrest Warrant (which was subsequently withdrawn), there were curfew conditions. These were originally between 8am to 10am every day; but from 18 August 2022 the curfew was between midnight and 2am every day. That is the only information that I have about the nature of the curfew. Mr Clej very fairly accepts: that there is no information about how it would be treated in Romania; and that it would fall far short, on the face of it, from anything that could constitute a "qualifying" curfew in this jurisdiction by way of a comparator. So far as qualifying remand is concerned, what I am told is that on 20 September 2023 the Appellant was remanded in custody in conjunction with these extradition proceedings, so that he has served 5 months of qualifying remand.

3. The Judge's ruling, of which there is an approved note, included an unassailable finding that the Appellant had come to the UK from Romania as a fugitive. Further Information described the position. On 4 July 2019 he was heard by the prosecutor, with a government-appointed defender, and made aware of his obligation to appear when summoned and to notify any change of address. Coming to the UK shortly after that, knowing that he was facing that prosecution, and knowingly breaching that obligation to notify the authorities of any change of address, was an ample basis for a finding of fugitivity. The Appellant and his representatives advanced no case and no evidence to contest that issue.

The Procedural Sequence

4. In procedural terms this case has had its twists and turns.

    i) The Appellant's original Counsel (not Mr Clej) on 15 December 2022 had filed a Statement of Issues which had raised Article 8 ECHR.

ii) At the hearing on 27 July 2023 the Appellant did not appear in person, as he was originally bailed to do. In the event, the Judge had permitted him to appear by video link (CVP). The Appellant's position at that hearing – at which he was represented – was that he was not now opposing extradition, on Article 8 or any other ground. But since he was not physically present, the statutory requirement of consent in writing from him as requested person could not be fulfilled. The Judge dealt with the matter as unopposed, giving a brief but comprehensive reasoned assessment as to why no extradition bar, including Article 8, could succeed.

iii) The Grounds of Appeal that were then initially filed with an Appellant's Notice sought to resurrect Article 8, alongside various other grounds.

iv) In the Perfected Grounds of Appeal on 16 August 2023, written by Mr Clej, Article 8 was abandoned. The sole point that was then taken related to section 2 of the 2003 Act. That was rejected as unarguable on the papers by Heather Williams J refusing permission to appeal on 24 November 2023.

v) Then, on 4 December 2023, there was a Notice of Renewal and Grounds of Renewal, which were accompanied by an application to amend the Perfected Grounds of Appeal. At this point, Mr Clej abandoned the section 2 argument, and the sole point now raised was a re-resurrected Article 8 (private and family life) ground, based on 3 factors I have mentioned: (a) the age of the offending; (b) the electronically monitored curfew; and (c) the qualifying remand.

This Hearing

5. On 7 February 2024, an application was filed with this Court to vacate the hearing of the renewed application for permission to appeal, which had been scheduled for Tuesday 27 February 2024 (tomorrow). Counsel was due to represent a defendant in a criminal trial elsewhere tomorrow. The ground for the application was that it was in the interests of justice that the Appellant should retain the Counsel who had been instructed "since the commencement of the appeal", had "drafted all the pleadings" and "had attended the bail hearing at which the Appellant had been remanded in custody". That does turn out to have been somewhat striking as a set of reasons: as Counsel instructed "since the commencement of the appeal" who had "drafted all the pleadings" had invoked section 2 and not Article 8 as the basis of the appeal, right up until 4 December 2023. Be that as it may, I was being asked to relist this hearing in the interests of justice and the Appellant's interests, to retain his Counsel. The Respondent was not intending to attend this renewal hearing and has been able to file written submissions (by Ms Stevenson) responding to the new Article 8 argument. But the CPS, acting for the Respondent, resisted any adjournment. They pointed out – understandably – that ongoing qualifying remand was being relied on, and the consequence of any deferral would be that further qualifying remand would be 'clocked up'. In the event, I decided to allow the Appellant's representatives to bring this hearing forward by a day, to this afternoon, and to hear it remotely on MS Teams at 4pm today. That course reconciled all the points that were being made by both parties. The case was listed in the published Cause List, together with an email address usable by any member of the press or public who wanted to attend this public hearing. Open justice was thus secured.

Viability

6. Having read and heard submissions, I am entirely satisfied that there is no viability in the Article 8 argument. The index offending goes back to 2018. But the Appellant was being proceeded against as at July 2019 and subsequently then came here as a fugitive. Extradition proceedings have been promptly pursued since then. He has been perfectly well aware of them. There is, in my judgment, no passage of time which materially dilutes the strong public interest in extradition. The Appellant was aged just 15 at the date of the offence. The offence was approximately 5 years ago. He has been in the UK since he was 16 years old. He has attended college here and has worked here. He has no criminal convictions here. His mother lives and works here and she has a pre-settled status of 5 years. There is a witness statement from her which says that she supports him financially here. On the other hand, the Appellant has no partner or children or dependents. He has spent the time on curfew and now the 5 months on qualifying remand. But there are, and remain, strong and legitimate public interest considerations in honouring extradition arrangements, to ensure that those convicted of offences do return to serve their lawful sentences. The Appellant is a fugitive. This is a relatively serious offence of aggravated theft which in this country would be charged as a non-dwelling burglary. That seriousness is reflected in the imposition of the 3 year custodial sentence. There are 11 months currently still left to serve. The Appellant has other convictions in Romania for other similar offending.

7. The 5 months qualifying remand as at today, even when regard is had to the (in UK terms, manifestly non-qualifying) electronically monitored curfew, is quite insufficient – alongside the other features of the case – to give rise to any viable Article 8 argument. I accept the submission of Ms Stevenson, who wrote the Article 8 representations on behalf of the Respondent, that it is not reasonably arguable that the change of circumstances means that extradition would now be a disproportionate interference with anyone's Article 8 rights. For reasons which I explained in Molik v Poland [2020] EWHC 2836 (Admin), it would be wrong in principle to 'project forward', absent some presently existing viable Article 8 ground, or some freestanding anchoring feature, to allow ongoing qualifying remand to continue to increase through to a substantive hearing.

8. The Judge said this about Article 8, in the judgment ordering extradition back in October 2023: that there was an absence of evidence placed before the court by the Appellant; that account been taken of the Article 8 principles and leading authorities; that account had been taken of the Appellant's age at the date of the offending, the time that had passed since then, and the Appellant's fugitivity; but that the balance weighed heavily in favour of extradition. In my judgment, beyond reasonable argument, it remains the position today that the public interest considerations in favour of extradition decisively outweigh those which are capable of counting against it. In these circumstances, and for these reasons, I will refuse permission to appeal. Moreover, since the Article 8 ground has no viability, I will formally refuse permission to amend the Grounds of Appeal to raise it.

26.2.24