



Neutral Citation Number: [2025] EWHC 152 (Admin)

Case No: AC-2024-LON-001212

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 January 2025

Before :

MR JUSTICE CONSTABLE

Between :

BARTLOMIEJ ROMAN SZYBOWICZ

Appellant

- and -

THE REGIONAL COURT IN KRAKOW

Respondent

Benjamin Seifert (instructed by Stokoe Partnership) for the Appellant
Clare Stevenson (instructed by CPS Extradition) for the Respondent

Hearing date: 23 January 2024

JUDGMENT

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30 on Wednesday 29TH of January 2025.

Mr Justice Constable:

Introduction

1. The Appellant renews his application for permission to appeal the decision of Deputy Chief Magistrate Tanweer Ikram CBE on 4 April 2024 by which he determined that the extradition of the Appellant was proportionate and necessary.
2. The Appellant was convicted of 10 domestic burglaries all of which took place between 2008 and 2009 when he was aged 17.
3. Sheldon J refused permission to appeal on 7 June 2024. The renewed Grounds of Appeal identified two grounds: (1) the District Judge erred in finding that extradition would be in accordance with Article 8 ('the Article 8 point'); (2) the District Judge failed to consider that the statute of limitations was approaching ('the limitation point'). This matter was not considered by Sheldon J.
4. Upon renewal the two grounds upon which it is said that the District Judge erred in respect of the Article 8 point advanced were, as they had been before Sheldon J, (1) the issue of delay was not properly weighed in the balance; and (2) there was not discussion of the fact the Appellant committed the offences as a 17 year old (i.e. a child). No other grounds were advanced in the Perfected Grounds of Appeal, nor in the skeleton for the original renewed application for permission which was heard before Sir Peter Lane in October 2024. This led to an order by which the Respondent was required to provide information in respect of the limitation point. As a result of that information, the limitation point has fallen away, leaving the single ground of appeal relating to the Article 8 point.
5. The Skeleton Argument served for the purposes of the renewal hearing before me replicated that which was before Sir Peter Lane in respect of the Article 8 point.

Stay

6. On the eve of the renewal hearing, the Appellant sought a stay pursuant to Crim PR 50.18(1) to await the decision of the Supreme Court in Andrysiewicz v Circuit Court in Lodz, Poland. The application was made on the basis that this appeal was to be heard on 13 March 2025. In fact, in light of the fact that extradition is no longer being sought in that case, the Supreme Court is currently hearing submissions on whether Andrysiewicz should go ahead. I assume for the purposes of the Application, and in the Appellant's favour, that it will do.
7. Andrysiewicz is a case which concerns early release provisions, on licence, after completing half of a sentence imposed or even immediately after surrender to Poland. On 19 July 2024, in Andrysiewicz, Swift J certified the following as raising points of law of general public importance:

“When the court is considering whether extradition pursuant to a conviction warrant would be a disproportionate interference with Article 8 rights,

(a) what weight can attach to the possibility that, following surrender, pursuant to the warrant, the requesting judicial authority might in exercise of its power under articles 77, 78, 80 and 82 of the Polish Penal Code, permit the requested person's release on licence ("the early release provisions"); and

(b) to what extent (if at all) should the court assess the likely merits of an application under the early release provisions, either that the requested person has made, or that he may make”.

8. The Respondent indicated that it was neutral on the question of stay.
9. The potential impact of possible early release does not, unlike in the case of Marcisz v Poland [2024] EWHC 2441, form part of the grounds of appeal. Indeed, in that case, Hill J said, ‘I note that the early release provisions are the key factor relied on in the application for permission.’
10. At no point has it been suggested throughout the numerous iterations of the grounds of appeal over the preceding 7 months that the District Judge erred by not considering the possibility that, upon surrender, the Appellant would not be required to serve his sentence or would serve a considerably shorter sentence such that this may be relevant to the Article 8 assessment. It was not a ground advanced in front of either Sheldon J or Sir Peter Lane.
11. During the renewal application, I indicated that I was not inclined towards stay and wished to hear argument on the substantive renewal application as it then stood.
12. Having reflected on the matter since submissions, aside from the fact that the point had hitherto not been raised until yesterday, I accept that this case is in effect impossible meaningfully to distinguish from Marcisz. Were the Appellant to be extradited, he may benefit from early release and if he did so would serve between 8 and 9 months, possibly less. This was not in fact taken into account by the District Judge (perhaps understandably in circumstances where the Appellant was unrepresented and would not have appreciated the point). It is at least arguable that this would affect the Article 8 assessment given the other matters relied upon.
13. But for the fact that this point had not been raised before yesterday and there has, even now, been no application to amend the Grounds of Appeal to raise this point, I would therefore have granted a stay. The question arises whether the fact that the point has only just been raised defeats the application. The point of particular significance in the Appellant’s favour is that the Respondent is not objecting to the stay and has not indicated any prejudice caused by the belated (very belated) reliance upon an early release date to justify a stay. In other circumstances, it may be that taking a new point at what can only be said to be well beyond the 11th hour may not have been open to the Appellant.

14. Therefore, I allow the application for stay. Should the Supreme Court indicate that it is not minded to hear Andrysiewicz, the renewal application is to be re-listed. It is a matter for the Appellant what application for permission to amend it will seek to make in the meantime, but without doing so in advance of the (next) renewal hearing, any argument based upon early release will not be open to him.