AC-2024-LON-000071

Neutral Citation Number: [2025] EWHC 423 (Admin)

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

The Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 29 January 2025

Before:

MRS JUSTICE HEATHER WILLIAMS DBE

Between:

PATRYK WOZNIAK **Appellant**

- and -

THE CIRCUIT COURT IN WARSAW (POLAND) **Respondent**

Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400 Email: civil@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MS L COLLINS (instructed by HP Gower Solicitors) appeared on behalf of the Appellant.

MR A SQUIBBS (instructed by the CPS) appeared on behalf of the Respondent

Judgment

MRS JUSTICE HEATHER WILLIAMS:

1. This is an appeal pursuant to section 26(4) of the Extradition Act, 2003 ("the 2003 Act"), brought by the appellant, Mr Wozniak, against the judgment of District Judge Sternberg ("the DJ"), given orally on the 2 January 2024, ordering his extradition to Poland. Mr Wozniak is a Polish national, born on 20 February 1990.

2. Mr Wozniak's extradition was ordered in respect of an accusation warrant issued by the Circuit Court in Warsaw, on 13 June 2023 and certified by the National Crime Agency on 25 August 2023. As I detail below, the warrant ("AW") relates to a single offence of insurance fraud.

3. Permission to appeal was refused on the papers by Mould J on 15 April 2024, but granted on renewal at a hearing before Hill J on 23 May 2024.

4. It is necessary to clarify the scope of this appeal. The appellant applied for permission to appeal on what was described as a "sole ground", namely that the judge erred in concluding that the appellant's extradition would be proportionate when balanced against his Article 8 ECHR rights. The perfected grounds of appeal ("PGA"), adopted a similar formulation when encapsulating the "sole ground" of appeal. However, the text of the PGA was not confined to an Article 8 contention; the majority of the document was devoted to an argument that the DJ had erred in concluding for the purposes of section 21A(1)(b) that the appellant's extradition would not be disproportionate. To avoid confusion, I will refer to these two contentions as respectively "the Article 8 Challenge" and "the Proportionality Challenge".

5. Reflecting the contents of the PGA, the respondent's notice dated 1 February 2024, was mainly focussed upon responding to the Proportionality Challenge. Mould J addressed both contentions when refusing permission, as did the appellant's response in their renewal grounds dated 16 April 2024. Hill J's order provided that permission to appeal was granted "on the single ground relating to Article 8/section 21A of the 2003 Act."

6. In the respondent's skeleton argument dated 22 January 2025, Mr Squibbs faintly suggested that the grant of permission was confined to the Article 8 challenge. However, he accepted at the start of today's hearing, that the grant of permission to appeal encapsulated both the Article 8 Challenge and the Proportionality Challenge. I agree that this is plainly the case, when the judge's order is looked at in the context that I have referred to.

THE OFFENCE AND THE EVENTS IN POLAND

7. The AW states that between 3 February and 15 May 2014 in Warsaw, the appellant acted jointly and in concert with a Sylwester Bardygula, and with a premeditated intention, in order to achieve a financial gain from an insurance company, Liberty Direct SA, in the form of compensation under a third party liability insurance policy for a Volkswagen Golf III, registration number WB7445A, in the sum of PLN 12,382.64. It is said that employees of the insurance company were misled as to the circumstances of a road traffic incident, in that on 3 February 2014, Mr Bardygula reported a road traffic claim, in which he provided false information as to the occurrence of a road traffic incident which had not, in fact, taken place. The alleged incident was said to have been a collision which occurred at a junction in the town of Zielonka, on 3 February 2014, between a Renault Laguna driven by Mr Bardygula and a Volkswagen Golf driven by the appellant. The warrant says that a statement from the appellant dated 3 February 2014 in which he described causing the road traffic collision was submitted in support of the false claim. The insurance company declined to pay the compensation sought.

8. Further information from the respondent dated 30 November 2023, states that the evidence collected indicates a high probability that the appellant committed the alleged offence. The material relied upon is said to be documentation from the insurance company, including the appellant's statement, and the opinions of a court expert in road accident reconstruction, which confirmed that the damage done to the vehicle could not have been caused in the circumstances stated by the alleged participants to the collision. The further information also says that the law enforcement authorities had no knowledge of the crime prior to 2022.

9. The AW states that the alleged conduct amounts to an offence under Article 286 of the Police Penal Code, namely fraud, and that it is punishable on conviction with a maximum sentence of eight years' imprisonment.

10. A decision to present charges against the appellant was issued on 24 February 2022. The appellant was not arrested or interviewed in Poland. The Polish authorities explained that this was because he did not appear for the presentation of charges on 18 March 2022, as required by a summons dated 7 March 2022 that was sent to the appellant, and for which an electronic receipt showed he had signed to confirm he had received it. The respondent said the appellant had not contacted the prosecutor's office after failing to attend on this date.

11. The appellant flew back to the United Kingdom on 8 March 2022, that is to say the day after the summons. In his evidence at the extradition hearing, he denied that this was linked to receipt of the summons, which he denied knowledge of. He said this flight had been booked two weeks earlier on 24 February 2022.

THE DOMESTIC PROCEEDINGS

12. Mr Wozniak was arrested on the AW in the United Kingdom on 12 September 2023, following a traffic stop. He appeared before the Westminster Magistrates Court for an initial hearing, where he was remanded on conditional bail. The final hearing took place on 2 January 2024. The appellant was represented by counsel, Ms Crow, and the respondent by Mr Squibbs. Ms Crow contended that extradition was barred by the passage of time pursuant to section 14 of the EA 2003, a contention which is not pursued on this appeal, and that it would amount to a disproportionate interference with Article 8 rights. It was agreed that if the offence had occurred in this jurisdiction, it would amount to an offence of attempted fraud by false representation, contrary to sections 1 and 2 of the Fraud Act, 2006. The appellant gave evidence and was cross-examined. He denied the offence. A witness statement from his partner, Marlena Lungangu was received in evidence.

THE DISTRICT JUDGE'S JUDGMENT

13. The DJ approved a transcript of his oral judgment on 4 January 2024. I will only refer to the aspects which are relevant to this appeal. As the District Judge's finding that the appellant was a fugitive is not challenged on this appeal, I can deal with that aspect quite briefly.

14. The DJ accepted that the Polish authorities only became aware of the allegation against the appellant in or around 7 March 2022. In relation to the summons delivered on 7 March 2022, the District Judge preferred the judicial authorities' account that the appellant had signed the document himself, rejecting his contention that he did not receive it. He pointed to significant inconsistencies between the appellant's proof and his oral evidence, in terms of when he had first learnt of the summons. Furthermore, the appellant has said in his oral evidence that his mother has subsequently told him about the summons, but he could not adequately explain on this scenario, why he had not made contact with the prosecutor's office after being given this information. The DJ thus concluded that the appellant had knowingly and deliberately placed himself beyond the reach of the Polish justice system, knowing when he left Poland on 8 March 2022, that he was not complying with the summons and that the case was not concluded. He had left providing no details of his whereabouts in the United Kingdom, and had made little or no attempt to engage with the Polish authorities. Accordingly, "he is not entitled to any false sense of security in this jurisdiction since he returned here in March 2022."

15. In his finding, the DJ accepted the appellant had lived an open life in the United Kingdom since relocation here in 2020. He had one conviction in 2019 for driving without a license in 2018, for which he was disqualified from driving. He noted that the appellant has settled status in the UK. He accepted the appellant had a partner and that they lived together some of the time, and that she would be deprived of contact with him if he were to be extradited. He also accepted that the appellant had worked at various jobs and had studied in the UK.

16. The appellant's evidence of these matters were as follows. He said he had been studying business management at London Metropolitan University, and that this is where he had met his partner, Ms Lungangu. They planned to live together in the long-

term. The appellant's parents were divorced and both lived in Poland, and his siblings also lived in Poland. He said that he left Poland in 2015 and had lived and worked in a number of European countries before coming to the UK in 2016 to develop a career as a chef. At the time of his arrest in September 2023, he was working as a chef in a private school and also in a warehouse. He had worked in a number of jobs as a chef in the United Kingdom and he had paid his taxes. The appellant said he had no convictions in Poland, although he had been arrested twice for riding a bus without a ticket. He accepted that he and his partner were in good health. They had no children.

17. In light of the DJ's conclusion that he was a fugitive, the appellant was unable to rely upon the passage of time under section 14 of the EA 2003.

18. In relation to the Article 8 issue, the DJ referred briefly to the leading authorities with which he was "very familiar". He then conducted the usual balancing exercise identified in *Polish Judicial Authority v Celinski* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551 ("*Celinski*") .

19. The DJ identified the following factors as in favour of extradition -

1. The public interest in the United Kingdom honouring its international obligations and not becoming a safe haven for fugitives.

2. The offence for which he was sought was "of some seriousness".

3. An explanation had been provided for the delay in this case.

4. The requested person was a fugitive.

5. The private life he had established in the United Kingdom since 2022 had been in the knowledge that he was wanted in Poland and matters were unresolved there.

6. There were no children or vulnerable adults who were dependent on the requested person who would be harmed or who would suffer as a result of his extradition.

20. The DJ identified the following factors against extradition -

1. The requested person had lived a relatively honest life since relocating here.

2. He had settled her and had obtained settled status. He had studied and worked here, and formed a relationship with his partner.

3. There was delay in this matter coming to light in Poland and no suggestion that the requested person was aware of proceedings against him until March 2022.

4. The offence occurred in the period 2014 - 2015, over nine years ago.

21. Taking all these matters into account, the DJ concluded that he was satisfied that extradition was a proportionate interference with the Article 8 rights of the appellant and his partner. He summarised his conclusion as follows,

> "I accept that in this case there are some counterbalancing factors against extradition, in particular, the delay that predates the matters coming to light in Poland. However, I do not consider the factors weighing against extradition to be so powerful as to outweigh the constant strong or weighty public interest in extradition. That is particularly so given that the requested person is, as I have found, a fugitive. Therefore very strong counterbalancing factors will ordinarily be required before extradition would be disproportionate…The requested person is wanted to stand trial for an offence of some seriousness. Even if he were not a fugitive, I would have reached the same conclusion, that his extradition is compatible with his and his partner's Article 8 rights."

22. The DJ then noted that there was "no separate challenge" in relation to section 21A(1)(b) proportionality. He dealt with the question relatively briefly in the circumstances saying,

> "I am satisfied the event on the warrant is serious. There is no information regarding the likely penalty in Poland and there is no indication that less coercive measures than extradition are appropriate in this case. Accordingly, I find the requested person's extradition would be proportionate in the terms set out in section 21A(3) of the Extradition Act 2003. The offence is serious, the Polish authorities may impose a custodial sentence, and there is no information about less coercive measures."

THE LEGAL FRAMEWORK

23. Poland is a designated Category 1 territory, pursuant to section 1 of the EA 2003. Accordingly, Part 1 of the Act is applicable to these proceedings. The request is governed by the Trade and Cooperation Agreement.

24. The appeal is brought pursuant to section 26(1) of the EA 2003 which provides that a person may appeal to the High Court against an order for his extradition made by an appropriate judge. Such an appeal may be brought on a question of law or fact with the leave of the High Court (section 26(3)).

25. The powers of the High Court on an appeal brought under section 26 is set out in section 27, which provides, relevantly, as follows,

> "**27 The courts powers on appeal under section 26**
>
> (1) On an appeal under section 26, the High Court may -
>
> (a) allow the appeal
>
> (b) dismiss the appeal

(2) The court may allow the appeal only if the conditions in (3) or the conditions in (4) are satisfied.

(3) The conditions are that -

(a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;

(b) if he had decided the question in the way that he ought to have done, he would have been required to order the person's discharge.

…..

(5) If the court allows the appeal, it must -

(a) order the person's discharge,

(b) quash the order for his extradition."

26. The effect of section 21A(1) of the EA 2003 is that where extradition is sought by an accusation warrant, rather than a conviction warrant, the judge must decide both of the followign questions in respect of the extradition of the requested person -

"(a) Whether the extradition would be compatible with the Convention rights within the meaning of the Human Rights Act, 1998

(b) Whether the extradition would be disproportionate."

27. Section 21A(4) provides that the judge *must* order the requested person to be extradited to the Category 1 territory in which the warrant was issued if the judge decides: (a) that their extradition would be compatible with the Convention rights; and (b) that the extradition would not be disproportionate

Section 21A(1)(a) of the EA 2003 and Article 8

28. In this instance, it was argued that Article 8 rights would be infringed if the appellant was extradited. The approach to be taken where Article 8 is engaged, was considered

by the House of Lords in *Norris v United States of America* [2010] UKSC 9, [2010] 2 AC 487 ("*Norris*"). In *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25, [2013] 1 AC 338 ("*HH*") at paragraph 8, Baroness Hale (giving the leading judgment) summarised the conclusions to be drawn from *Norris* as follows -

> (1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life.
>
> (2) There is no test of exceptionality in either context.
>
> (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition.
>
> (4) There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no "safe havens" to which either can flee in the belief that they will not be sent back.
>
> (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved.
>
> (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life.
>
> (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe."

29. In *Celinski* (at paragraphs 15 – 17), the Divisional Court commended the balance sheet approach to assessing whether the interference with the private life of the extraditee is outweighed by the public interest and extradition. The Divisional Court also emphasised "the very high public interest" in ensuring that extradition arrangements are honoured and the public interest in discouraging people seeing the United Kingdom as a state willing to accept fugitives from justice (paragraph 9). Furthermore, where a

requested person is a fugitive from justice, very strong counter balancing factors would need to exist before extradition could be regarded as disproportionate (paragraph 39).

30. Long, unexplained delays can weigh heavily in the balance against extradition. I have already referred to Lady Hale's judgment in *HH*. In the case of *FK* (one of the joined appeals before the Supreme Court), she indicated that their fugitive status did not preclude the Justices from relying on the overall length of the delay (paragraph 46), as Lord Mance agreed at paragraph 102.

31. "Fugitive" is a concept developed by the case law rather than the statutory term. It must be established to the criminal standard of proof. In *Wisniewski & Ors v Regional Court of Wroclaw, Poland* [2016] EWHC 386 (Admin) at paragraph 59, Lloyd Jones LJ, as he then was, summarised the concept in the following way,

> "Where a person has knowingly placed himself beyond the reach of a legal process he cannot invoke the passage of time resulting from such conduct on his part to support the existence of a statutory bar to extradition."

32. The question on appeal is whether the District Judge's ultimate decision was wrong. That is a question which considers the overall outcome of the determination arrived at via the balancing exercise, rather than the identification of any individual errors or omissions. In *Love v United States of America* [2018] EWHC 712 (Admin), the Divisional Court summarised the position at paragraph 26 as follows,

> "The appellate court is entitled to stand back and say that a question ought to have been decided differently because the overall evaluation was wrong: crucial factors should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed."

Section 21A(1)(b) of the EA 2003

33. The proportionality exercise referred to at section 21A(1)(b) is further addressed in subsections (2) and (3) as follows,

> "(2) In deciding whether the extradition would be disproportionate, the judge must take into account the specified matters relating to proportionality (so far as the judge thinks it appropriate to do so); but the judge must not take any other matters into account.
>
> (3) These are the specified matters relating to proportionality—
>
> (a) the seriousness of the conduct alleged to constitute the extradition offence;
>
> (b) the likely penalty that would be imposed if D was found guilty of the extradition offence;
>
> (c) the possibility of the relevant foreign authorities taking measures that would be less coercive than the extradition of D."

34. The principle of proportionality is recognised by Article 597, Part III, Title VII of the UK-EU Trade and Cooperation Agreement which provides,

> "Cooperation through the arrest warrant shall be necessary and proportionate, taking into account the rights of the requested person and the interests of the victims, and having regard to the seriousness of the act, the likely penalty that will be imposed and the possibility of the State taking measures less coercive than the surrender of the requested person particularly with a view to avoiding unnecessarily long periods of pre-trial detention."

35. The leading authority in relation to the application of the section 21A(1)(b) approach is *Miraszewski and others v District Court In Torun, Poland and Another* [2014] EWHC 4261 (Admin), [2015] 1 WLR 3929 ("*Miraszewski")*. Having considered the guidance issued by the Lord Chief Justice by means of *Criminal Practice Directions (Amendment No.2)* [2014] EWCA Crim 1569, Pitchford LJ observed that the guidance was aimed at offences at the very bottom end of the scale of seriousness, where the triviality of the conduct alleged, would alone require the judge to discharge the requested person. As such, it identified a floor rather than a ceiling for the assessment of seriousness (paragraphs 28 and 31).

36. In terms of the first two factors listed in sub-section 3, Pitchford LJ gave the following guidance,

"*Subsection (3)(a) – seriousness of the conduct alleged*

36… Section 21A(3)(a) requires consideration of "the seriousness of the conduct alleged to constitute the extradition offence". I agree that, as Mr Fitzgerald QC argued, paragraphs (a), (b) and (c) of subsection (3) all assume an approximate parity between criminal justice regimes in member states that embrace the principles of Articles 3, 5 and 6 of the ECHR and Article 49(3) of the Charter of Fundamental Rights of the European Union. In my view, the seriousness of conduct alleged to constitute the offence is to be judged, in the first instance, against domestic standards although, as in all cases of extradition, the court will respect the views of the requesting state if they are offered. I accept Mr Summers QC's submission that the maximum penalty for the offence is a relevant consideration but it is of limited assistance because it is the seriousness of the requested person's conduct that must be assessed. In my view, the main components of the seriousness of conduct are the nature and quality of the acts alleged, the requested person's culpability for those acts and the harm caused to the victim. I would not expect a judge to adjourn to seek the requesting state's views on the subject.

Section 21A(3)(b) – the likely penalty on conviction

37. Section 21A(3)(b) requires consideration of "the likely penalty that would be imposed if D was found guilty of the extradition offence". Since what is being measured is the proportionality of a decision to extradite the requested person under compulsion of arrest, I consider that the principal focus of subsection (3)(b) is on the question whether it would be proportionate to order the extradition of a person who is not likely to receive a custodial sentence in the requesting state. The foundation stone for the Framework Decision is mutual respect and trust between member states…

38. It would be contrary to the objectives of the Framework Decision to bring mutual respect and reasonable expedition to the extradition process if in every case the judge had to require evidence of the likely penalty from the issuing state. In my judgment, the broad terms of subsection (3)(b) permit the judge to make the assessment on the information provided and, when specific information from the requesting state is absent, he is entitled to draw inferences from the contents of the EAW and to apply domestic sentencing practice as a measure of likelihood. In a case in which the likelihood of a custodial penalty is impossible to predict the judge would be justified in placing weight on other subsection (3) factors. However, I do not exclude the possibility that in particular and unusual circumstances the judge may require further assistance before making the proportionality decision.

39. While the focus of subsection (3)(b) is upon the likelihood of a custodial penalty it does not follow that the likelihood of a non-

> custodial penalty precludes the judge from deciding that extradition would be proportionate. If an offence is serious the court will recognise and give effect to the public interest in prosecution. While, for example, an offence against the environment might be unlikely to attract a sentence of immediate custody the public interest in prosecution and the imposition of a fine may be a weighty consideration. The case of a fugitive with a history of disobeying court orders may require increased weight to be afforded to subsection (3)(c): it would be less likely that the requesting state would take alternative measures to secure the requested person's attendance."

37. It is unnecessary for me to set out the guidance that was provided in relation to the third factor, less coercive measures, as this is, essentially, a neutral factor in the present case.

38. I turn to the current Criminal Practice Direction. Paragraph 12.2.1 of the Practice Direction provides that the judge will determine the sub-section 3(a) issue of seriousness on the facts of each case as set out in the warrant, subject to the guidance in paragraph 12.2.2. Paragraph 12.2.2 states that where the conduct alleged to constitute the offence falls within one of the categories of the table at paragraph 12.2.4 unless there are exceptional circumstances, the judge will generally determine that extradition would be disproportionate. The table at paragraph 12.2.4 includes, “Minor financial offences (forgery, fraud and tax offences)”, which are described as “where the sums involved are small and there is a low impact on the victim and/or low indirect harm to others". A number of examples are then given, including failure to file a tax return or invoices on time; making a false statement in a tax return; dishonestly applying for a tax refund, using a forged or falsified document; and obtaining a bank loan using a forged or falsified document.

39. The parties are agreed that in the absence of information from the Polish authorities and consistent with paragraph 38 of *Miraszewski*, the court should look to domestic sentencing practice in assessing the likely penalty. They are also agreed that the relevant Sentencing Council Guideline for these purposes is the offence-specific guideline, applicable to fraud by false representation. It is accepted that none of the Category A - High Culpability factors apply in this case. The Category C - Lesser Culpability factors include, "Peripheral role in organised fraud", "Opportunistic, one-off offence, very little or no planning" and "Limited awareness or understanding of the extent of fraudulent activity." Category B - Medium Culpability applies in cases where

characteristics for Categories A and C are not present, and/or if the individual had "a significant role where role where offending is part of group activity." Harm A looks to the loss caused or intended. Category 5 harm applies where this is less than £5,000 and it is based on a starting point of £2,500. Where there is a *risk* of Category 5 harm, the guideline says that the sentencer should "move down the range within the category." Harm B looks to victim impact, which is to be taken into account to determine if the level of harm A should move up to a higher category, or to a higher point within the initial category. Where there has been a lesser impact, no adjustment is required.

40. A Category 5B offence has a starting point of a medium level community order, with an offence range of a Band B fine - twenty-six weeks' custody. A Category 5C offence has a starting point of a Band B fine, and an offence range of a discharge to a medium level community order. The listed aggravating factors include failure to comply with current court orders. The listed mitigating factors include no relevant or recent convictions.

THE PARTIES' SUBMISSIONS

41. Ms Collins submits that the DJ fell into error when he described the alleged offending in this case as being "of some seriousness" and when he assessed the events on the warrant as "serious". Primarily, she relies on the proposition that had the appellant been convicted in this jurisdiction, he would have been very unlikely to have received a custodial sentence. She says that under the Sentencing Guidelines that I have just referred to, the appellant's offending would be assessed as within Category 5C or the lower end of 5B. She contends that culpability would be assessed as "lesser" or would just slip into "medium", as the offending was a one-off, there is no suggestion that the appellant was in a significant role, and none of the "high" culpability factors are present. In terms of harm, the potential financial loss was in Category 5, as it equated to £2,412.

42. Accordingly, Ms Collins contends that the starting point would be a non-custodial penalty and that ultimately, the penalty would be reduced from this point, given the lengthy delay in this case. She also submits that the offending comes within the "minor

financial offence" category in the Criminal Practice Direction table which I have referred to. She submits that if the DJ had evaluated the offence correctly, he would have concluded that extradition was disproportionate within the meaning of section 21A(1)(b), and that he would have been bound to discharge the appellant.

43. Further or alternatively, she submits that if the DJ had correctly assessed the alleged offending when undertaking the Article 8 balancing exercise, he would have concluded that extradition would infringe Article 8 rights. As the DJ erred in his assessment, the balancing exercise has to be conducted afresh. In this regard, Ms Collins highlights: the significant delay since the events occurred in 2014; during this time, the appellant has built up a settled and hard-working life in the United Kingdom; there is no suggestion that he knew about the allegation until 2022; he has settled status in the United Kingdom; and he has studied and worked here and has an established relationship with his partner.

44. Mr Squibbs, on the other hand, submits that the appellant's extradition would not be disproportionate within the meaning of section 21A(1)(b) and that the DJ did not err in his assessment.

45. In terms of the section 21A(3)(a) question of seriousness, Mr Squibbs submits that the offence was properly regarded as serious. He disputes that it falls within the examples given in the Criminal Practice Direction table. He points out that the sum involved is in the thousands of pounds, and would be regarded as an even more significant amount in Poland, where wages are lower and the cost of living is cheaper than in the United Kingdom. Further, that the appellant was motivated by personal gain, that the fraud must have involved at least some degree of planning, and as decisions of the Court of Appeal Criminal Division and the High Court show, motor insurance fraud is an offence with a wider community adverse impact.

46. In support of the latter point, Mr Squibbs cites *R v McKenzie* [2013] EWCA Crim 154, *R v Davis* [2015] EWCA Crim 845 and *South Wales Fire and Rescue Services v Smith* [2011] EWHC 1749 (Admin). He draws the following propositions from these authorities: that false claims undermine the insurance claims system, by imposing a

"burden of analysis" on insurance companies, and "a burden on honest claimants and honest claims, when in response to those claims, understandably, those who are liable are required to discern those which are deserving and those which are not" (*South Wales Fire and Rescue Service*); such fraud raises premiums nationally (*McKenzie)*; and the courts have imposed deterrent sentences to combat the prevalent nature of this offending (*McKenzie* and *Davis*).

47. In terms of the likely penalty, Mr Squibbs submits the Polish authorities may impose a custodial sentence. He contends this is a 5B offence under the domestic guidelines, as none of the "Lesser" category factors apply. The offending involved planning and it cannot be described as opportunistic. He accepts that the harm would fall within level 5, but he points out that a sentencing range for 5B offence extends to a custodial sentence of up to twenty-six weeks. He says that the key aggravating feature in this case is the wider community impact of motor insurance fraud, which would increase the likelihood of a custodial sentence.

48. Mr Squibbs also submits that even if the court considers that a custodial sentence would be unlikely, given the seriousness of the offence and the community impact, this is one of the cases that Pitchford LJ had in mind at paragraph 39 of his judgment in *Miraszewski* where extradition may, nonetheless, be proportionate, given the public interest in prosecuting an offence of that nature.

49. Mr Squibbs further submits that regard should be had to the Sentencing Council's Overarching Guideline on the Imposition of Community and Custodial Sentences, which indicate that the court will be unlikely to suspend a term of imprisonment in the appellant's case.

50. As regards Article 8, Mr Squibbs submits that the DJ conducted a lawful and proper balancing exercise, taking into account all relevant factors, weighing them appropriately, and arriving at a reasoned conclusion which involved no error of fact or law. He acknowledges that the delay in this case may have some impact on the public interest in extraditing the appellant, but submits that it does not do so to such an extent that the factors against extradition outweigh what remains a strong public interest in his

extradition. He also points out that in this instance, the appellant met his partner in November 2022, that is to say after he was aware of the criminal process in Poland, and was a fugitive. He also draws attention to the limited impact extradition would have in this case; it is not an instance where the hardship would be particularly severe.

DISCUSSION AND CONCLUSIONS

51. I will first address the Proportionality Challenge, as the seriousness of the offence and the likely penalty if the appellant is convicted have been central to the arguments on this appeal.

52. Ms Collins' written submissions tended to equate the seriousness of the offence with the likely penalty imposed if the appellant was convicted. However, "the seriousness of the conduct", alleged to constitute the offence and "the likely penalty that would imposed", if the requested person is found guilty, are both specified matters in section 21A(3), which are to be considered in making a proportionality assessment. The structure of the section indicates that seriousness is not simply to be judged by reference to the likely penalty, and this is reinforced by the passages from Pitchford LJ's judgment in *Miraszewski* which I have already referred to. Whilst I accept there will be some overlap between the two, they are not coterminous. Seriousness may involve wider considerations than simply the likely penalty. In *Miraszewski*, Pitchford LJ described the main components of the “seriousness of the conduct” element as "the nature and quality of the acts alleged, the requested persons culpability for those acts, and the harm caused to the victim." Indeed, Ms Collins accepted this point when I put it to her during her oral submissions.

53. I consider that the District Judge was entitled to describe the alleged offending in this instance as conduct of “some seriousness” and “serious”. Seen in context, the DJ was plainly not suggesting that the offending was at the more serious end of the scale of possible crimes, but he was indicating it was sufficiently serious to warrant extradition.

54. I note the maximum sentence that could be imposed for this offence is eight years' imprisonment, albeit I attach limited weight to that aspect for the reasons that Pitchford LJ identified.

55. As Mr Squibbs submits, it can readily be inferred that the offending was motivated by personal gain. It must have involved some planning, as it also involved another person, Mr Bardygula, and documentary evidence that was prepared and submitted in respect of the false claim, presumably with some thought and planning, as the intent would have been to make it internally consistent and provide convincing support for the false claim. The evidence included a false witness statement from the appellant as to the circumstances of the fake accident. In this regard, the appellant was playing a significant role. The fact that direct financial harm was avoided was because the insurance company rejected the claim, and not because of any actions on the part of the appellant.

56. In addition, and as Mr Squibb has submitted, motor insurance fraud is not a victimless crime. It has a wider community impact, including the raise of insurance premiums and honest claimants finding that their claims are put under greater scrutiny. Furthermore, it is plain that the courts have endorsed and reflected this in sentences that have been upheld.

57. In *McKenzie*, the CACD upheld the defendant's sentence of fifteen months immediate imprisonment for a single offence of motor insurance fraud. Mr McKenzie claimed to have been a driver in a collision which had never taken place. Giving the judgment of the court, Keith J said,

> "5. Any idea that crash for cash frauds are a victimless crime has to be rebuffed immediately. When sentencing (the defendant) Judge Thorne noticed that the Association of British Insurers had reported that in 2011, false motor claims of £441 million had been made, and it was estimated that at least a further £1 billion claims of bogus claims have gone undetected. Such claims have added £50 or thereabouts nationally to the premiums which drivers had to pay for motor insurance. The problem is compounded by the numerous claims for whiplash injuries which crash for cash frauds invariably include. Such claims are easy to assert and difficult to disprove. If scepticism about the genuineness of

whiplash injuries become widespread as a result of cases like the present one, then it will become more difficult for those who have genuine whiplash injuries to have their injuries accepted…Judge Thorn rightly described crash for cash claims as a blight across the UK.

9…but it is important to remember that whatever the appropriate classification was, and it may be difficult to shoehorn this case into one category rather than another, the judge thought that deterrent sentences were called for, in view of the prevalence of this type of offending, and the need to show that it will not be tolerated. No doubt, he had in mind section 142(1) of the Criminal Justice Act, which required the court to have regard, amongst other things, to the fact that one purpose of sentencing is the reduction of crime, including its reduction by deterrence. We do not believe that the judge's approach in this respect can be faltered. It mirrors the approach of the Court of Appeal in *R v M* [2013] EWCA 206 (Crimm). Another crash for cash fraud. In our judgment, the judge was justified in taking as a starting point a term in excess of fifteen months' imprisonment and discounting it to reflect Mr McKenzie's personal mitigation and the lapse of time in bringing him to justice. In the circumstances, we do not think the ultimate sentence of fifteen months' imprisonment was too long.

10. In coming to that conclusion, we have not overlooked the reliance placed by Mr Walker in his advice on appeal on the case of *R v Liddle* [2013] EWCA 603 (Crim). That was another "crash for cash" fraud, though unlike the present case where there had been no collision at all, the defendant in that case had been the passenger in a car which was involved in a "staged" collision with another car. She had pleaded not guilty to an offence of fraud, but had been convicted and sentenced to 8 months' imprisonment. The Court of Appeal substituted a sentence of 10 weeks' imprisonment, which resulted in her immediate release from prison, although each member of the court would have been inclined to pass a suspended sentence on her had they been sentencing her at first instance themselves. However, we regard that case as very different indeed from the present one. The defendant in that case was only 18 years old at the time of the offence. She had been led on by her partner, who had been the instigator of the offence. She was the sole carer of her young child. She had mental and other health issues, and she had no previous convictions. Her personal circumstances differed so markedly from those of McKenzie that the sentence passed on her could not be said to be a reliable guide at all about the length of sentence to be passed on McKenzie. Indeed, in *Liddle*, the court endorsed the proposition that the prevalence of this kind of fraud justified the sentencing judge starting significantly above the starting point suggested by the guideline."

58. In *Davis*, the defendant was sentenced for a fraud on motor insurance companies effected through dishonest claims. The total loss was a substantial one of over £80,000.

The CACD held that there was nothing wrong with the sentencing judge' starting point of two years' imprisonment. At paragraph 4, Knowles J said,

> "His Honour Judge Williams rightly observed that this type of offending is all too prevalent, that it is not a victimless crime and that in sentencing the courts should have particular regard to deterrence."

59. I am not aware of anything that suggests there has been a significant decline in motor insurance fraud since that time. Regrettably, such cases come before the courts with some frequency. Ms Collins has not pointed to any material to the contrary, or suggested that this material is not relevant. She did point out that the sums involved in these cases were more substantial than in the present instance. That is clearly a relevant feature in determining the particular sentence (as the guidelines confirm), but it does not detract from the overarching point, that this kind of fraud is regarded seriously by the domestic courts and is likely to result in a sentence above that which would otherwise apply under the guidelines. The fact that in this instance the perpetrator was unsuccessful in his execution, does not provide a distinguishing feature, as Ms Collins suggested.

60. *South Wales Fire and Rescue Services* concerned a different context, namely committal proceedings brought in relation to the defendant's dishonest litigation, in which he had claimed damages from his employer on the false basis that he had been unable to work since the accident. Nonetheless, the court's observations on the impact of false claims have some applicability to the present context as well, in terms of the burdens that this gives rise to. The court said as follows,

> "2. For many years the courts have sought to underline how serious false and lying claims are to the administration of justice. False claims undermine a system whereby those who are injured as a result of the fault of their employer or a defendant can receive just compensation.
>
> 3. They undermine that system in a number of serious ways. They impose upon those liable for such claims the burden of analysis, the burden of searching out those claims which are justified and those claims which are unjustified. They impose a burden upon honest claimants and honest claims, when in response to those claims, understandably those who are liable are required to discern those which are deserving and those which are not."

61. In terms of the likely domestic sentence, I am quite satisfied that this is Medium culpability offending. I have already described the appellant's role. It cannot be regarded as "peripheral". The offence was not one involving very little planning, as I have already explained; and the appellant must have been aware of the nature of the fraudulent activity in making a false statement about what he would have known to have been a non-existent accident. Accordingly, the case does not have the characteristics of either High culpability or Lesser culpability. It falls within Medium culpability, as is reinforced by the fact that the appellant played a significant role.

62. In terms of harm, whilst the loss did not eventuate, in practical terms in Poland the sum involved would be significantly more than the £2,500 starting point figure for category 5. In terms of known aggravating and mitigating factors, the appellant has no relevant convictions, and the delay would be a further relevant point in his favour. On the other hand, the wider community impact of motor insurance fraud would be a key aggravating feature, as I have already identified, and a lesser aggravating factor would be his failure to answer the summons.

63. In the circumstances, I conclude that the DJ was right to say that the Polish authorities may impose a custodial sentence. If such a sentence was passed, there is also force in Mr Squibb's contention that it may well be an immediate custodial sentence, given the nature of the offending and the appellant's March 2022 failure to comply with the summons. In terms of the domestic guidelines, this would be balanced against the likelihood of rehabilitation, as shown by the period that has elapsed since that time. For the avoidance of doubt, I do not go so far as to say that a custodial sentence is likely, but I do not accept Ms Collins' submission that it is "very unlikely". I agree with the DJ’s characterisation that a custodial sentence may be imposed.

64. As regards the Criminal Practice Direction table, I do not regard this offence as "minor offending" of the kind there contemplated. I do not consider the sum involved to be "small", for the reasons I have indicated when considering the sentencing guidelines. Further, some context as to what is understood by the use of the word "small" in that context is given by the preceding category in the table, “Minor theft”, which is said to apply where the theft is of “a low monetary value and there is a low impact on the

victim or indirect harm to others". The examples given as to what would amount to a low value are theft of an item of food from a supermarket, theft of a small amount of scrap metal and theft of a very small sum of money. I have also already referred to the guidance provided by Pitchford LJ as to the kind of offending that he understood this table to encompass. In addition, this is a case where there is an indirect harm to others that is more than "low" for the reasons I have already identified in respect of motor insurance fraud offending.

65. In summary, I do not consider that there was any error in the District Judge's approach to the section 21A(1)(b) proportionality issue. In light of all the factors I have identified, he was entitled to view the offending as serious and to determine that the Polish authorities *may* impose a custodial sentence. The section 21A(3)(c) feature was neutral here. Looked at in the round, the DJ was entitled to find that the appellant's extradition would not be disproportionate, having regard to the specified matters. I do not consider that he ought to have decided this issue differently.

66. For the avoidance of doubt, even if I was wrong in considering that the DJ was correct to say that the Polish authorities may impose a custodial sentence, I would still regard the offending as serious, given the nature of that offending and the way that motor insurance fraud has been characterised by our domestic courts, as I have explained.

67. Whilst I accept that there were factors pointing in both directions, I do not consider that the DJ's conclusion on the Article 8 issue was wrong. He reached a careful conclusion, having identified and weighed up all relevant factors. He took into account delay as a factor in the appellant's favour. Whilst this was not a case of culpable delay on the part of the prosecuting authorities, the DJ was right to weigh the period that had elapsed between some point in 2014 and early 2020 in the appellant's favour. However, he was also correct in saying that the period after the summons was served in March 2022 could not avail the appellant, given that from this time he was a fugitive who had deliberately avoided the criminal process in Poland.

68. The DJ also took into account each of the other factors Ms Collins relies upon, including the appellant's steady work record in the UK, his established relationship with

his partner and his relative lack of recent offending. However, as Mr Squibbs submitted, he only met his partner and developed a relationship with her after he had evaded the summons in March 2022 and so there is limited weight to be attached to that aspect.

69. As the appellant is a fugitive, "very strong counter balancing factors" are required to outweigh the clear public interest in his extradition, as the DJ indicated. I do not consider that such factors were present in this case. The appellant has no dependents and he and his partner have no health issues. For reasons I have already addressed, the DJ was entitled to regard the alleged offending as of "some seriousness". The consequences of extradition for the appellant would not be "exceptionally severe" to use Lardy Hale's phrase from *HH*. I also note that there is no reason to believe the appellant's private live in the United Kingdom could not be resumed after he has been tried and he has served his sentence (if convicted).

70. Accordingly, the DJ was right to find that the appellant's extradition would not amount to a disproportionate interference with either his or his partner's rights under Article 8.

71. The appeal is dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400
Email: civil@epiqglobal.co.uk