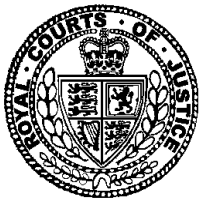

Neutral Citation Number: [2020] EWHC 2076 (Admin)

Case No: CO/2480/2020

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29 July 2020

**Before** :

**MR JUSTICE FORDHAM**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

| | |
|---|---|
| **ARTURS KLISINS** | **Applicant** |
| **- and -** | |
| **REGIONAL COURT OF DOBELE, LATVIA** | **Respondent** |

- - - - - - - - - - - - - - - - - - - - -
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**GEMMA LINDFIELD** (instructed by Gillen De Alwis) for the **Applicant**
**JODIE HITCHCOCK** (instructed by CPS) for the **Respondent**

Hearing date: 29 July 2020

Judgment as delivered 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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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

## MR JUSTICE FORDHAM:

1. This is an application bail in extradition proceedings, brought before this court in circumstances where the magistrates court has refused bail. Such an application is sometimes described as an 'appeal' and in this case there is an 'appellant's notice'. One thing, however, that is clear is that my job involves looking at bail "afresh". Authority for that is the decision of Stewart J in Tighe [2013] EWHC 3313 (Admin) at paragraph 5. I am not, therefore, reviewing in a supervisory way the bail refusals in the magistrates' court.

2. This has been a remote hearing by BT telephone conference. The parties were content with that mode of hearing, and were satisfied that it would not prejudice the interests of either the applicant or the respondent, as am I. I directed that this should be a remote hearing, conducted by way of telephone conference call. I have had regard not only to the interests of the parties but the constitutional 'open justice principle'. I am quite satisfied that principle has been secured in this case. This has been a public hearing. The case was published in the cause list, as was its start time, and an email address which could be used for any person – whether a member of the press or the public – who wished to be able to join this hearing and observe it by listening in. Several such requests were made, and were granted; none were refused. The hearing is tape-recorded and the recording will be saved. It is my intention to issue in a written form this ex tempore ruling into the public domain. In those circumstances, I am satisfied that open justice has been secured. I am also satisfied that, insofar as there has been any restriction of any right interest or principle, it is justified as necessary and proportionate. By proceeding in this way, we have eliminated any risk relating to any person travelling to a court room or being physically present in a court room. There was no need for this hearing to be, physically, in open court.

3. The applicant is now aged 28. He is wanted for extradition to Latvia. The papers describe a hearing before the magistrates as having commenced on 22 January 2020, with a hearing being set to resume on 24 September 2020. The magistrates' court therefore has yet to consider whether it is appropriate to order extradition in this case and has yet to consider any basis on which extradition is resisted.

4. Ms Linfield has assisted me in written and oral submissions in support of bail. The essence of the case for bail, as I saw it, was as follows. The applicant is said not, realistically, to be a flight risk: there is no realistic prospect of his fleeing the jurisdiction if he is granted bail. He has a settled family life in the United Kingdom, with a partner of some 13 years; with stable family relationships both between them and also with their daughter now aged 7; and with the partner's two children (the applicant's stepchildren) aged 20 and 13. Any concerns as to flight risk can be, and are, addressed by conditions which are put forward, including: a curfew with electronic monitoring; reporting requirements; the requirement to have a mobile phone switched on at all times; restrictions as to any application for travel documents or attendance at international travel hubs; together with any other conventional conditions as to bail. Ms Linfield described as the 'driving force' for the application to this court for bail the applicant's current circumstances in Wandsworth prison. He has been diagnosed as suffering from PTSD, arising out of an attempted suicide in his cell, by his then cellmate, in November 2019 where the applicant had to intervene to save his cellmate's life. Subsequently, there was an observed condition and mental health intervention and there is now a psychiatrist's report dated 26 May 2020. Ms Linfield tells me that no

counselling is currently being received and that – alarmingly – the medication which the applicant should have been receiving, and had been receiving, has also stopped. She tells me that he is on 23 hour per day lockdown, with no meaningful role within the prison, and currently no prison visits, and the prospect of what will be incredibly difficult visits were they to resume with social distancing. She emphasises that the underlying offending in the EAW took place while the applicant was a youth aged 16 and 17; and that his United Kingdom offences are traffic offences which could be addressed by a condition ensuring that he is not entitled to drive. Finally, she emphasises – for understandable reasons – that when it came to light, through a telephone conversation, that the applicant was wanted in conjunction with these extradition proceedings, he voluntarily attended the local police station.

5. I have carefully considered all of those matters in the circumstances of this case. I have given particularly anxious consideration to the case in the light of what I have been told about the present position. In the end, though, I am satisfied of two things. The first is that the critical question so far as bail is concerned is whether there are substantial grounds for believing that the applicant would fail to surrender if released and notwithstanding the bail conditions. That is the first point. In my judgment the considerations relating to the applicant's current circumstances, anxious and relevant though they are for consideration, do not alter the fact that the central question for me in this case is the one I have identified. The second point is that, in my assessment of the material, there are substantial grounds for believing that the applicant would fail to surrender were he released on bail and notwithstanding the conditions. In my judgment, the opposition to bail – squarely based, as Ms Hitchcock for the respondent explained, on the flight risk – is a well-founded objection in this case. I will explain the key points that led me to that conclusion.

6. The starting point as both counsel accept is that this is a conviction warrant case where there is no presumption, under the statutory scheme, in favour of the grant of bail. The key features of the case, in my assessment, are these. The starting point is that the applicant faces 4 years 9 months and 23 days to serve, subject to any reduction for a relevant period of remand, under the EAW (which relates to an overall 5-year custodial sentence). So, were he to be unsuccessful in resisting extradition, he will be returned to Latvia to serve that very substantial custodial term. That, as a starting point, gives rise to a strong incentive to avoid that consequence. The next point is that the underlying offending in Latvia – albeit that it was offending when the applicant was aged 16 and 17 – was a sustained and enduring pattern of premeditated and dishonest criminal conduct. There are 22 relevant offences – including thefts, handling, robbery, conspiracy to steal or conspiracy to commit burglary – a pattern of serious, premeditated, dishonest and persistent offending. The next point is that when the applicant came to the United Kingdom, on the evidence, he had sought permission of the authorities to be able to do so; but he had been refused that permission. The papers refer to the seeking of permission in March 2012, when he would have been aged 20. In those circumstances, on the evidence, the applicant crossed the borders and came to the United Kingdom in circumstances where he had ongoing responsibilities arising as conditions in conjunction with the Latvian criminal process, but decided to put those to one side and leave that jurisdiction. That is a feature, in my judgment, which weighs heavily in this case; and it weighs heavily, even when put alongside what I am told about the applicant attending voluntarily at the UK police station. The next point is that in the United Kingdom the applicant does have a series of criminal convictions. They

include driving without insurance, a conviction and sentence in January 2019 which followed on from a conviction and sentence in respect of that very offence a year earlier in February 2018. There is also an offence of failing to stop after an accident and failing to report an accident, that accident having taken place in October 2017 when the applicant was aged 26. Those features of the case are themselves relevant and support the concerns which arise.

7. In my assessment there are, as I have said, substantial grounds for believing that the applicant would – if I gave him bail today – fail to surrender in connection with these extradition proceedings. The conditions that are put forward, and what I have been told about the applicant's settled family life in the United Kingdom, are not sufficient to allay or displace those concerns. It is for all those reasons that I am refusing bail.

8. There are two further points with which I want to deal. The first relates to medication within the prison. I accept the submission of Ms Hitchcock for the respondent that that – anxious - matter is something which needs to be raised with the prison (if necessary the prison Governor) and with healthcare wing of the prison. If there is treatment, or a failure of treatment, of the applicant within the prison environment which violates his rights – including his human rights – then he has legal rights in conjunction with that situation and the prison authorities have clear legal duties and responsibilities. One of the consequences of me giving this ruling in writing, and making it available to the applicant's solicitors and his family, is that the observations I have just made in this judgment can be put to the relevant authorities so that they will consider the position and address it. I need say no more about what remedies would, in principle, be open to the applicant, were there to be an ongoing breach of any legal right or legal obligation. Anxious and important though that matter is it is not a matter, in my judgment, which can support the grant of bail, in the light of the conclusion that I have arrived at in relation to flight risk.

9. Finally, the other point to mention is the fact that bail has been refused by the magistrates on three occasions: the first was 19 September 2019; the second was 23 September 2019; and the third was 8 April 2020. On each occasion, I am told, bail was refused on the basis of concerns relating to failure to surrender. I have well in mind that, in relation to the first two of those bail refusals, the issues arising out of the attempted suicide and the PTSD necessarily would not have been before the magistrates. It is relevant that bail was considered in April of this year though the May 2020 report of the psychiatrist would not have been available on that occasion. As I said at the start of this judgment, it is of the essence of my jurisdiction that I look at bail "afresh", and that I do so on the basis of the materials that are put before me and the submissions that are made before me. In the event, I have come to the same conclusion as did the magistrates' court on those earlier occasions.

10. There is, and remains, in this case a substantial basis for believing that the applicant would, if released and notwithstanding the conditions, fail to surrender. It is on that basis that bail is refused.

29 July 2020