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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2020] EWHC 228 (Admin)



No. CO/5139/2018

Royal Courts of Justice

Tuesday, 4 February 2020

Before:

MR JUSTICE HOLMAN

B E T W E E N :

DAMIAN MORAWSKI

Applicant

- and -

REGIONAL COURT, ELBLAG (POLAND)

Respondent

MR M. HENLEY (instructed by AMI International) appeared on behalf of the applicant.

MR S. ALLEN (instructed by CPS) appeared on behalf of the respondent.

J U D G M E N T

(As approved by the judge)

MR JUSTICE HOLMAN:

- 1 This is an appeal, with permission granted by Edis J, from an order for extradition made as relatively long ago as 17 December 2018 by District Judge Goldspring. I wish to stress and make clear at the outset that I do not allow this appeal on the basis of any criticism of the judgment and reasoning of the district judge or of any error in his judgment. Rather, I do so on the basis of fresh evidence both as to the earlier life history of this appellant and his partner, and also as to the circumstances of their relationship since the hearing in front of the district judge. As will emerge, I also take into account the period now of over 13 months since the hearing in front of the district judge, during which the appellant has been on bail conditions which themselves are restrictive of his liberty.
- 2 The underlying offence was undoubtedly a serious one which was both nasty and brutal, and of considerable gravity. On 22 October 2011, this appellant, acting jointly with others, made a very brutal attack upon a victim whom they had lured to a secluded area. The attack appears to have been for the purposes of theft, and was a robbery. The victim was hit in his face and head with fists, pushed to the ground, and kicked all over his body. Attempts were made to steal money from him, but he had none, and to steal his watch, which the attackers were unable to do because it had some device which made it not possible easily to remove it.
- 3 A second count was that, not content with all that I have so far described, the appellant and the other people further hit the victim with their fists and feet all over his body. The appellant was convicted of these two offences on 23 February 2012 and sentenced to two years of imprisonment suspended for five years on terms that he was subject to probation.
- 4 There is absolutely no evidence that at any time since that conviction, either in Poland or since the appellant came to England, has the appellant committed any further criminal offence or been in trouble in any way with the police or other authorities. After four and a

half years of that period of suspension had elapsed, the appellant made a decision to travel to England in search of work and a new life. He had at that point lost his job in Poland and felt that there were better prospects for him here.

5 There is some confusion within the judgment of the district judge as to exactly what may or may not have passed between the appellant and his probation officer in relation to his coming to England. I do not say that in any way critically of the district judge. The appellant was acting in person and speaking through an interpreter and, indeed, during his own evidence this morning it has taken some time accurately to establish what his account is. In order to try to resolve that confusion, I have most exceptionally heard further oral evidence on oath from the appellant today through an interpreter.

6 The upshot is that the appellant was thinking about possibly coming to England but had not made any decision to do so. He met his probation officer by chance in town. He had a conversation with her in which he asked her whether it was permissible for him to leave Poland and travel to England. She told him that there was no restriction on his leaving Poland and travelling to England, but that if he did decide to go abroad, he must go and see her first. His terrible error was to fail to go again and see the probation officer before leaving for England. As a result, the suspended sentence was activated. As the district judge appears to have considered the appellant to be a truthful and reliable witness, I accept that evidence which he has given to me today.

7 This appellant was born in June 1989. So, at the date when he committed that terrible offence, he was aged 22. He is now aged 30. He travelled to England in 2016. In the summer of 2018, he met for the first time a Polish woman who was already living here. They formed a relationship which was clearly still at a relatively early stage at the time of the hearing in front of the district judge, for he said at paragraph 14:

“He is single but does have a girlfriend in the UK. They do not live together but have been dating for around 7 months and have recently become engaged to be married...”

8 The first strand of the fresh evidence, which is the subject of a proof of evidence signed by the appellant on 27 February 2019 and a witness statement signed by his girlfriend or partner on 7 March 2019, is that, by those dates, they were living together full time in a mutually supportive relationship. They have now been living together for a year. This of itself represents a change of circumstances since the decision and order of the district judge.

9 On the particular facts of this case, however, the life history of both the appellant and his partner are relevant. I stress that this is not out of any consideration of mercy, but because what they say about their mutually supportive relationship does need to be considered in the context of their histories which I will now briefly relate.

10 It is said by Mr Stuart Allen, who appears on behalf of the respondent today but did not appear at the hearing below, that there is a note by the advocate who did appear on behalf of the respondent below to the effect that some of what I am about to describe was referred to at the hearing. It is not, however, referred to at all in the district judge’s reasons.

11 This appellant had experiences during his childhood and upbringing that few people experience outside wartime and similar situations. When he was aged 9, he personally found his father trying to kill himself by hanging with a belt around his neck. He was able to prevent that by running to tell his mother. Not long after, however, his father successfully committed suicide. The result of that appears to have been that his mother turned to alcohol and, whilst in rehabilitation, formed a relationship with another man. That man killed his mother. So, this appellant by then had lost both his parents in appalling circumstances.

12 He began to live with his grandmother and became her carer after she had suffered strokes. His grandfather had already passed away. His grandmother was to die in 2014. So, this man

in that tragic way had then lost both his parents and his grandparents. It seems to me that those facts need to be borne in mind when forming an overall judgment about this case.

13 His partner, too, has had very difficult life circumstances. Her sister was killed in a car crash. Her grandmother, who was living with her and her mother, died soon after. As a result of those terrible shocks, her own mother died from a heart attack. Her father then relapsed into alcoholism. The partner then herself discovered her father hanging dead from a ceiling.

14 So, both this appellant and his partner have been through those appalling circumstances. It is small wonder that the partner describes suffering severe forms of anxiety and panic attacks over several years. Those are more fully described in her witness statement, but I will not elaborate for the purposes of this judgment.

15 The gist of the evidence of both the appellant and his partner is that, perhaps in part because they share those terrible experiences, they have become a strong and mutually supportive relationship. The partner says that in the period when, as I will later mention, the appellant was detained in prison for about six weeks, she again began to withdraw and was unable to work and had to be prescribed anti-depressants. She says at paragraph 16 of her statement:

“If my partner was to be extradited, I would not be able to cope, and my mental health will deteriorate even further. I have no other support network in the United Kingdom or elsewhere. It was thanks to [the appellant] that I began to stand on my own two feet and have a fairly normal existence. Without him, my life and mental health will spiral out of control as I will no longer receive the much-needed support that he offers me.”

16 At the time of the hearing in front of the district judge, this appellant was not represented, and my impression is that the district judge was not given a full account of what I have now

described. In my view, if the district judge had been considering this case on the facts and in the circumstances as they now are, not only would he have been required to dismiss the application for extradition but, indeed, he himself would have decided to do so. It seems to me that the Article 8 balance is rather different when the full facts are now considered than it was at the time of the hearing in front of the district judge.

- 17 He, of course, set out very fully and accurately the relevant legal principles in relation to Article 8. He clearly performed the well-known *Celinski* balance [*Polish Judicial Authorities v Celinski & Ors* [2015] EWHC 1274 (Admin)]. He listed factors in favour of extradition and factors in favour of discharge. I wish to stress very clearly indeed that I do not in any way at all minimise the gravity of the offences in this case which I have described. Further, a starting sentence of two years' imprisonment is a significant sentence, but no less than would be likely to be imposed in respect of the same facts in this country.
- 18 This appellant of course has only himself to blame for not properly seeing his probation officer and getting proper permission to travel here when he did. But it seems to me that, on the other side of the *Celinski* balance, it is necessary to bear in mind, first, that, of the period of suspension of five years, four a half years elapsed during which the appellant was on good behaviour and subject to probation. Second, that he has already spent four months in custody in Poland in relation to this matter and now a further seven weeks in custody here in the period between his arrest and subsequent release.
- 19 So, he has himself spent over six months in custody in relation to this two-year sentence. Additionally, for over a year now, he has been on bail conditions, which include living and sleeping every night at a specified address in Hull, a daily curfew between 11pm and 5am, and a requirement to be electronically monitored. In court today he has shown to me that he does indeed have that tag fitted.
- 20 So, in relation to this very serious offence, this appellant has already in a range of ways undergone significant punishment. There is the over six months' actual imprisonment.

There are the four and a half years on suspension and probation; and there is a further year of deprivation of liberty to the extent of the bail conditions. It seems to me that on the exceptional facts and circumstances of this case, and bearing in mind the life histories of himself and his partner and how highly interdependent they now are on each other, their Article 8 rights outweigh the normal weighty public interest in extradition.

21 As I have said, I am satisfied that District Judge Goldspring himself would not have ordered extradition if he had been hearing this case today and knew everything which I now know. For those reasons, pursuant to the Extradition Act, I formally admit into evidence the fresh evidence of the proof and statement which I have mentioned, and also the oral evidence which I have heard today.

22 That brings the case within section 27(4) of the Extradition Act 2003. Evidence is available today which was not available at the extradition hearing. I am satisfied that that evidence would have resulted in the district judge deciding a question, namely the Article 8 balance, before him at the extradition hearing differently, and I am satisfied that if he had decided the question in that way he would have been required to order the appellant's discharge. I accordingly allow this appeal, order the discharge of the appellant and quash the order for his extradition.

THE JUDGE: Are there any other any other matters, Mr Henley?

MR HENLEY: My Lord, the one thing that I think does arise is his costs and travel from Hull today. He was not released on bail until after the extradition hearing so I think that today is the only time that he's had to travel to London and, of course, he should be compensated for his----

THE JUDGE: Who by?

MR HENLEY: You make the order from central funds.

THE JUDGE: I mean, he's got a legal aid certificate.

MR HENLEY: Yes, he can't claim his----

THE JUDGE: Well, he's attended and given evidence, so he's been a witness.

MR HENLEY: Yes, but he can't get that back off his legal aid certificate, my Lord.

THE JUDGE: Well, I'm not going to say the respondent must pay it.

MR HENLEY: No, no, no.

THE JUDGE: And I'm not going to say the court's going to pay it. So, if he can't get it out of legal aid, he'll just have to bear it.

MR HENLEY: It's central funds, my Lord.

THE JUDGE: Well, Mr Henley, I don't know what his costs of coming here today are. Frankly, for him, even if he has to pay it himself, cheap at the price.

MR HENLEY: I don't doubt that, my Lord.

THE JUDGE: Right. I think he's in work.

MR HENLEY: Yes, he is in work.

THE JUDGE: She's in work?

MR HENLEY: She's in work.

THE JUDGE: So, I don't know what it cost him but, even if it was a small number of hundreds of pounds, it's the best money he has ever spent.

MR HENLEY: I don't think it would be as much as that, my Lord.

THE JUDGE: Well, the less it is the more weight there is in the point I have just made. So, Mr Henley, I'm not going personally to make any special order about that. If he can get it through his legal aid good luck to him.

MR HENLEY: Okay, thank you, my Lord.

THE JUDGE: Will you and Mr Allen be able to draft and agree, and then you type up and lodge with the associate, a suitable order?

MR HENLEY: Yes, my Lord.

THE JUDGE: Thank you very much indeed.

MR HENLEY: Thank you, my Lord.

THE JUDGE: Mr Stuart, I'm very, very grateful to you.

CERTIFICATE

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**** This transcript has been approved by the Judge (subject to Judge's approval) ****