



Neutral Citation Number: [2020] EWHC 3061 (Admin)

Case No: CO/2535/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11th November 2020

Before :

MR JUSTICE FORDHAM

Between :

MIŁOSZ PIOTR MACZKOWSKI
- and -
CIRCUIT COURT IN GDANSK POLAND

Appellant

Respondent

Saoirse Townshend (instructed by Oracle Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 11.11.20

Judgment as delivered in open court at the hearing

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. The appellant is 27 and is wanted for extradition to Poland in conjunction with a June 2018 conviction European Arrest Warrant. That EAW relates to a 14 month custodial sentence imposed in Poland in February 2017 of which there are 13 months 29 days left to serve. The offending to which the Polish sentence relates concerns thefts from a courier service company and false testimony in a robbery case, those offences having been committed in April 2016. DJ Branston ordered the appellant's extradition on 13 July 2020 after an oral hearing. On 20 September 2020 Steyn J did two things. First, she stayed the application for permission to appeal in relation to the ground discussed in the case of Wozniak [2020] EWHC 1459 (Admin). That stay is pending resolution of that case in the Divisional Court. She directed that submissions be filed within 14 days of the Divisional Court judgment. The second thing that Steyn J did was to refuse permission to appeal on the article 8 ground now renewed before me.
2. This was a remote hearing by BT conference call. Ms Townshend confirmed that this mode of hearing involved no prejudice to the interests of her client. We were able to wait while people who wished to participate in this hearing joined it. They have been able to do so without leaving their locations by making a telephone call. I am satisfied that this mode of hearing was necessary, appropriate and proportionate. I agree with Ms Townshend that it involved no prejudice from the appellant's perspective. I am satisfied that it promoted the open justice principle. The case and its start time together with an email address for anyone who wished to participate were all published in the cause list.
3. Ms Townshend emphasises, rightly, that all she needs to show today is that the article 8 appeal is reasonably arguable. She identifies what she described as 'one main reason' why she says it is. That reason concerns the time served on remand which qualifies to reduce (and could ultimately discharge) the sentence of 13 months 29 days. The appellant has been on qualifying remand since 19 February 2020. That is 9 months as at today. Ms Townsend's argument is that that important factor, particularly when 'projected forward' to a substantive appeal, together with the other circumstances of this case, reasonably arguably renders the district judge's conclusion 'wrong'.
4. The starting point is as to the correct focus in time. Ms Townshend submits that it is appropriate to 'project forward' to the date on which this Court would be likely to be hearing a substantive appeal. She submits that the earliest that would be January 2021, most likely February 2021 but the appellant's durable presence under the stay could even be March 2021, taking into account the 14 days in Steyn J's order. I proceed on the basis that it is appropriate to 'project forward'. I do so based on the reasoning in Molik [2020] EWHC 2836 (Admin) at paragraph 30i and ii. I will consider the position, projecting forward to February 2020 which is a realistic timeframe. By then the appellant will have served – assuming that he is not released in the meantime and there is no reason to suppose that he would be – 12 months of the 13 months 29 days.
5. That leaves the analysis when viewed on that basis. Ms Townshend submits that the time served on remand is a relevant feature. She accepts that, on the authorities, that is particularly the case if the time left is 'very short'. She also recognises that there remains the various strong public interest considerations in support of extradition. She emphasises that two months left to serve be appropriately seen alongside the four-month statutory minimum (Extradition Act 2003 s.65(3)(c)) that applies in extradition cases. She emphasises that in Poland there is a discretion to release at the half-way mark

(which has already passed) in the context of this kind of sentence. She also relies on a Report which records as likely during the Covid-19 pandemic that this sentence following extradition would be served on tagged-supervision. She relies on the strong ties to the United Kingdom that the appellant has, having been here since the age of 10, and the strong family ties which he has here with the family members described in the district judge's judgment.

6. In my judgment it is not reasonably arguable, having regard to the remand time served and positing the position in February 2021, that the extradition of the appellant is incompatible with the article 8 rights of him or any other person. I do not need to repeat, but will refer to, the relevant line of authorities which I listed in Molik at paragraph 2 and which I discussed in that case at paragraph 11. As I there explained, the position deliberately described in the authorities is where there is "a very short period of time" left to serve. I gave as an example the case of Malar which was a case where at the time of the hearing the appellant had served 4 months, one week and two days of a 5 month term and extradition was held to be article 8 compatible. In this case, the appellant is a fugitive with previous convictions. Indeed he absconded from a robbery trial in Kingston in January 2016. Events caught up with him when he was arrested in September 2017 and he has been detained ever since: the first portion of that custody was to serve (the relevant part of) the 5 year term of imprisonment imposed for that robbery. Subsequently he has been on remand in these extradition proceedings. The offences to which the EAW relates are relatively serious and the strong public interest considerations in support of extradition subsist in this case. The appellant is single and in good health and has no direct dependants. In my judgment, there is no realistic prospect that this Court would uphold an article 8 appeal if it heard this case in February 2021, or for that matter even taking March 2021.
7. In refusing permission to appeal Steyn J did 'project forward' to the possible substantive hearing. She concluded that even doing so it is not reasonably arguable that the time served on remand together with the other circumstances of the case would render extradition article 8 disproportionate. I completely agree. The district judge conducted an impeccable article 8 balancing exercise, with clear and cogent reasons as to article 8 compatibility. There is no realistic prospect, in my judgment, of this Court overturning as wrong the conclusion reached by the district judge. For those reasons I refuse the application for permission to appeal.

11.11.20