Neutral Citation Number: [2021] EWHC 1357 (Admin)

Case No: CO/4517/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20th May 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

MIHAELA VASILICA BUCICA	**Appellant**
- and -	
THE DOLJ COURT CRIMINAL DEPARTMENT, ROMANIA	**Respondent**

- -
- -

David Williams (instructed by McMillan Williams Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 20.5.21

Judgment as delivered in open court 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

MR JUSTICE FORDHAM :

Introduction

1. The Appellant is aged 60 and is wanted for extradition to Romania. That is in conjunction with a conviction European Arrest Warrant (EAW) issued on 18 December 2019 and certified on 16 December 2019. Fourteen offences are referred to. They were the subject of a merged criminal sentence imposed on 5 December 2019. There were originally four sets of criminal proceedings in Romania culminating in four criminal sentences, numbered 311, 2121, 2791 and 58. DJ Branston (the Judge) ordered the Appellant's extradition on 1 December 2020 after an oral hearing on 30 October 2020. Permission to appeal was refused on the papers by Lane J on 22 April 2021 and is renewed orally to me on all three grounds. The mode of hearing was an in-person hearing at the Royal Courts of Justice.

Section 2: Particulars

2. The first ground of appeal is that the particulars of offences in the EAW are "wholly deficient" and the Judge was wrong in law not to recognise that this was the case. Mr Williams emphasises that the context was one which had involved previous warrants where deficiencies had been identified and where the warrants had been withdrawn. The focus of the argument in relation to this first ground was on sentence numbered 311. Mr Williams advanced two separate submissions. The first was that deficiencies can be seen on the face of 3 of the 16 'material acts' which are relied on in the warrant and Further Information as constituting 6 'offences' of swindling. His second and freestanding submission was that, even if that is wrong, the particulars are materially deficient in that they do not explain how at the same time it is said that there are 6 swindling 'offences' and yet 16 'incidents' relied on. Mr William submits that the Judge failed to appreciate these problems, analyse the deficiencies and recognise that the Appellant stood to be discharged in relation to at least these parts of the case.

3. In my judgment, beyond reasonable argument, the first point is decisively answered when the EAW is read in conjunction with the Further Information from the Respondent. The authorities which allow reliance on Further Information in this way were cited extensively by the Judge culminating in Alexander [2017] EWHC 1392 (Admin) paragraphs 73 to 77. Mr Williams accepts that the court is entitled, and is right, to look at the Further Information and not just the EAW. Indeed part of his criticism of the Judge's analysis was that the Judge focused on the question of what document, accepting rightly that the Further Information was a relevant document, but failed to go on to identify the problems that arose from the Further Information document. Mr Williams was able to take me with care, in an exercise possibly enhanced by being able to be together in the court room, through the documents in relation to his 3 examples. The pattern is clear. Criminal conduct is described, in the context of the criminal group whose formation constitutes one of the offences, with the modus operandi of the fraudulent activities being described. Mr Williams realistically accepts that 13 of the 16 instances pose no problem of this kind (though he has his second and freestanding ground in relation to joining the dots between 16 and 6).

i) The first example Mr Williams took is describing a fraud in relation to a victim called BCR. Mr Williams emphasises that in the narrative this is a case in which there was an early stage a legitimate employment relationship, and what happened was that the employee ceased to be employed but that steps were taken subsequently resulting in the obtaining of a credit. The description in the Further Information speaks of the Appellant as issuing documents certifying quality as an employee of the company. Mr Williams's point is that that would not have constituted a fraud or dishonesty if it were merely a testimony to the previous and legitimate employment. But in my judgment, beyond reasonable argument, it is crystal clear that what is described is a false certification of quality of someone who is an ongoing employee. That is the irresistible inference from what is said and, in my judgment, there can be no doubt at all as to the substance of what is there being described and why it constituted the relevant offence within the pattern.

ii) The second example concerned filling in papers, again in relation to the victim BCR. Mr Williams points to the fact that two defendants are described as filling in papers necessary to obtain consumer credit. He says there is a lack of clarity and particularity to link the Appellant to that offending, given the ambiguity as to whether it was she or the named co-defendant who filled out relevant papers. In my judgment, beyond reasonable argument, it is clear that it is being spelled out that they each were involved in filling out papers which then led to the dishonest fraudulent activity. The Further Information speaks explicitly of "the two filling in the papers necessary" and it goes on to speak of documents which were filled in by the defendants who are named "respectively".

In my judgment, there is no point of substance here so far as particularity of the offending is concerned, remembering as I do – always – the criminal standard applicable and the arguable it a threshold which applies today , both of which Mr Williams has rightly emphasised .

iii) The third example was another similar activity relating to the same victim, BCR. Here it is accepted that there was a fake employee or employment relationship. Mr Williams submits that – on the face of the information – there is an inadequacy as to spelling out in substance and with particularity what it is that the defendant is supposed to have done. But again, in my judgment, beyond reasonable argument, it is crystal clear in the face of the document what is being said. The description is that the individual, who was not actually hired by the company is managed by the Appellant, "requested and obtained from her" the papers necessary. The narrative goes on to say that the Appellant "denied committing the acts". In my judgment that is another example which in substance, with clarity and with sufficient particularity, identifies what is being said and why it is said that the defendant committed the culpable criminal act.

Those are the three examples which were the high watermark of the submissions on inadequate particulars indeed Mr Williams with his characteristic realism recognised that they were the only examples.

4. I turn to deal with the second and freestanding way in which Mr Williams put the argument. He submits that there is a disjunct between the 16 'incidents' relied as constituting swindling and the 6 'offences' of swindling which were said to have led to the foreign conviction and sentence. He submits that the Judge needed to grapple with how it was at 16 'incidents' could be relied on as constituting 6 'offences'. He emphasises that the Respondent – the judicial authority – had every opportunity in this case to spell out that straightforward point. He also tells me – and I accept – that at the hearing before the Judge he invited the exercise of joining the dots. He submits that it was not ever undertaken, still less satisfactorily. In my judgment, the answer to this point is clear on the face of the document. There is, and can be, no mistaking why it is that 16 'incidents' are relied on in the context of what were 6 'offences'. Tracing through the materials there were 6 victims and therefore there were – in the pattern of criminal conduct – different 'incidents' of perpetrating fraud on those 6 organisations or persons. The Judge did perform that exercise in that at one point in the judgment, having worked through the allegations, he set out and enumerated the 6 victims. I remember, as I have already said, the criminal standard that is applicable. I remember the primacy of the role that the Respondent has in expressing and the Judge has in evaluating such matters. I remember the arguability threshold applicable today. But, in my judgment, there is a straightforward answer which stares me in the face on the materials and explains beyond any doubt why it is that 16 'incidents' become 6 'offences'. This point, in my judgment, ultimately is void of substance once the three examples are dealt with. I do not and cannot accept that there is any problem with particularity, or of confusion or inadequacy so far as the 6 'offences' of swindling are concerned.

Section 20: Trial in absence

5. The second ground of appeal is that the offences to which sentence 58 applied involved a trial in absence, without a guaranteed right of retrial. The basis for this contention is that the Further Information records that on 26 November 2014 the Appellant was in France at the time of a hearing at which her advocate appeared. The Judge at one point referred to that hearing as one which the Appellant had attended in person.

6. The very reference in the Further Information to the hearing on which reliance is placed refers to that hearing as having been at the appellate level (the Court of Appeal). The same section of the same document makes clear that the sentence had been imposed on 14 September 2011. As the Judge explained, the criminal offending to which that sentence related took place between March 2009 and August 2009. The Judge correctly recorded that the Appellant was "present at all of the individual trials where she was convicted and sentenced". I put to Mr Williams that the reference to the appellate court was fatal to the submission that the Appellant had been absent at a trial. He submitted that there are authorities which support the proposition that any appeal, or for that matter application for permission to appeal, against conviction to an appellate court would constitute part of the "trial" for the purposes of this ground of appeal. He emphasises as a possible qualification to that proposition that it would be true at least in a case where the court has the capacity as an appellant to revisit the merits of the conviction. That proposition is not a self-evident one, at least to me. I am for the purposes of today prepared to proceed on the basis that Mr Williams is right

when he assures me that there is a line of authorities that would support that proposition. Had it mattered I might have needed some further reassurance.

7. Even in relation to the hearing before the Court of Appeal on 26 November 2014, it is clear that the Appellant had appointed a legal representative with whom she was in contact. Instructing a lawyer satisfied Cretu [2016] EWHC 353 (Admin) paragraph 34iii, to which the Judge referred. Mr Williams accepts that appointing a lawyer to be present that a hearing would suffice and submits that the critical question would therefore become whether the Appellant had in fact appointed that lawyer. He emphasises again the criminal standard of proof and the threshold for today of reasonable arguability. What is clear from the same Further Information on which reliance is being placed is that the lawyer who attended on 26 November 2014 was the "chosen defender" who had appeared with the Appellant in other parallel proceedings on 17 October 2014 because the Appellant was going to leave for France where she worked as a nurse or carer. So, that same representative had appeared with her just a few weeks earlier. It is also clear from the Further Information that at the hearing on 26 November 2014 the appointed lawyer confirmed to the appellant court that the Appellant had no evidence to request. Moreover at a subsequent hearing before the appellate court on 3 March 2015 at which the Appellant and the chosen defender were both present it was confirmed by the Appellant that she "wanted to use the right to be silent in this procedural phase".

8. On analysis, I can see no substance at all in this ground. There is in my judgment, beyond argument, no prospect of establishing that any of the convictions were arrived at after a trial in absence falling foul of the legal parameters of section 20 of the Extradition Act 2003 and Article 4a of the Framework Decision, as interpreted in the relevant case law, which again the Judge extensively cited.

Article 8

9. The third ground of appeal concerns Article 8 ECHR. The Appellant came to the United Kingdom in 2013 and her partner joined her here the following year. She has a sister here. The Appellant works here as a carer. She has an established family life and private life. The Judge was not satisfied to the appropriate standard that she came here as a fugitive. The Judge conducted the 'balance sheet' exercise and gave clear reasons why extradition would not, in the circumstances of this case, breach Article 8.

10. Mr Williams maintains the Article 8 ground and emphasises in particular the question of delay and the implications of the passage of time for the Article 8 analysis. He submits, as he put it, that that feature was "poorly weighed" by the Judge in the present case. He emphasised in his submissions on the first ground that one of the questions posed expressly to the Respondent involved giving an opportunity to explain the delay. Mr Williams also emphasises the factual and evidential gaps as to why the suspended sentences were triggered and an amalgamated sentence eventually arrived at. Mr Williams submitted that the Article 8 ground would be reinforced were there arguability as to either of the other two grounds, but I have held that there is none. As I have said, Mr Williams submits that the Judge dealt inadequately with the delay – which he called "astonishing and unexplained delay" – in this case. What the Judge said, as one of the factors in the balance against extradition, was that:

> "A substantial period of time has passed since the earliest (and most serious) offences were committed, namely up to 14 years. This delay may diminish the weight to be attached to the public interest in extradition; it certainly increases the impact upon private and family life".

That observation reflects that what is said in the relevant line of authorities. It also indicates that the Judge was clearly and hotly on the trail of evaluating and taking account of each of those dimensions of delay and the passage of time.

11. One way to test whether this appeal is reasonably arguable is to posit the passage of time being re-evaluated by this Court at a substantive appeal, to posit it being characterised as "unexplained" and "culpable", and then to put it alongside other features of the case including that the Appellant has not been found to be a fugitive. It may not always be necessary or appropriate to adopt that approach, but I have found it a helpful exercise in the present case. I am also satisfied that it is the most favourable way of approaching the issue from the Appellant's perspective.

12. In my judgment there is no realistic prospect that the diminution in the weight to be attached to the public interest and the strength of the factors against extradition which have arisen by reference to and during the relevant passage of time could lead to an 'outcome' in which extradition would be characterised as a disproportionate interference with Article 8 rights to family life or private life. As the Judge rightly explained: there are the added features that the Appellant has no convictions or cautions in this country; there are the impacts of extradition for the Appellant her partner and her sister; and there is the impact in terms of financial assistance which the Appellant provides to her daughter (aged 24 and living in Romania) and her mother (also living in Romania). But, as the Judge also explained, the offences in this case include serious matters. The most serious of the offences involve organised and sophisticated crimes of dishonesty netting substantial sums of money and representing offending over a protracted period of time. The custodial period to be served is 6 years 7 months and 20 days. There are no young children in this case. The Appellant is not a sole carer. There are no direct dependents. The Judge concluded as follows:

> "[The Appellant] faces a very substantial prison sentence for a number of offences committed over a substantial period of time. Some of those offences are serious, sophisticated and organised. [The Appellant] has been aware of her convictions for some time and aware that she has legal obligations back in her homeland. Though some of the offences are quite old, the legal processes in Romania are far more recent and [the Appellant] has engaged with them through her lawyers. She appears to have reached the end of those processes. She still faces a prison sentence to serve. There remains a constant and weighty public interest in extradition. [The Appellant] is not a sole carer for anyone. There is nothing unusual or out of the ordinary in the consequences of extradition for her such that this court should stand in the way of a legitimate request for her surrender. I find that extradition is compatible with her Article 8 rights (and those of her family)".

There is, in my judgment, no realistic prospect of this Court concluding that it was 'wrong' to regard the Article 8 factors in favour of extradition as decisively outweighing those against it.

Conclusion

13. I agree with Lane J that none of the three grounds of appeal are reasonably arguable. The application for permission to appeal is therefore refused.

20.5.21