Neutral Citation Number: [2022] EWHC 336 (Admin)

Case No: CO/1139/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday 17th February 2022

Before:

MR JUSTICE FORDHAM

- -

Between:

ARTHUR DOMASZEWICS	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 17/2/22

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 and approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM:

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The Appellant is aged 50 and is wanted for extradition to Poland. That is in conjunction with a conviction European Arrest Warrant ("EAW") issued on 29 April 2019. It was certified on 28 November 2019, on which date he was arrested.

2. The hearing was a remote hearing by Microsoft Teams. I was satisfied that this mode of hearing was appropriate in the context of the pandemic, in circumstances where the Respondent was known not be attending, where Counsel would otherwise have had a clash and needed to return one of his clients' cases to their detriment of his client so far as continuity of representation was concerned, and where the mode of hearing involved no risk of prejudice to the interests of anybody. The open justice principle was secured in the usual ways: through the publication in the cause list (from yesterday afternoon onwards) of the case and its mode of hearing and its start time, together with an email address usable by any member of the public or press who wished to observe.

3. Extradition was ordered by DJ Branston ("the Judge") on 19 March 2020 after an oral hearing a week earlier. Permission to appeal was refused by Cutts J on 3 June 2021. The passage of time since then is linked to a Wozniak stay, by reference to the section 2 point of principle determined by the Divisional Court in Wozniak, in light of which that point has fallen away.

Putative fresh evidence and the duty of candour

4. There is putative fresh evidence before the Court, permission to adduce which is the subject of an application made on 2 January 2022. That putative fresh evidence comprises a proof of evidence from the Appellant and a proof of evidence from his current partner Natalia. There can be no possible criticism, in my judgment, as to the Appellant's legal team making sure that the Court was provided with that updating evidence. That is because it would have been positively misleading for this Court to approach this case on the basis that the particular 'settled family unit', to which the Judge had referred, remained in place. What has happened is that in June 2021 the 17-year relationship between the Appellant and his former partner, with a 'family unit' including his now 21 year old stepdaughter and his now nearly 14 year old daughter, had ended so far as concerns the relationship between the two partners. The consequence, moreover, is that the Appellant is now 'estranged' from, and has currently 'no contact with', the stepdaughter and daughter. He does, however, have a new relationship with his current partner and her seven-year-old son, which the putative fresh evidence also describes.

5. Whether the fresh evidence is ultimately judged admissible depends on its 'capability to be decisive' in the Appellant's favour. The Respondent resists it being adduced, on the basis that it does not meet that threshold. But I repeat: it was entirely right that this updating evidence has been placed before the Court, so that the case was not approached today on what would otherwise have been a false basis. Putting it shortly, Mr Hepburne Scott and the Appellant's representatives have ensured (a) that they were aware of the up-to-date position and (b) that they have discharged what (as I see it) was their duty of candour.

The conviction and sentence

6. The index offending, to which the conviction EAW relates concerns 'drug trafficking' which took place as a member of an 'organised criminal gang' between 2005 and February 2007, for which the Appellant was sentenced to 2 years custody on 17 December 2014 after a trial, notified to him in June 2014, which he attended.

Article 8

7. The Article 8 ECHR appeal, for which permission is sought, emphasises the following points in particular. This is a case where the requested person can be seen successfully to have 'turned their life around'. The Appellant has a record of criminality and custodial sentences in Poland which harks back to 1999 when, in his late twenties, he was sentenced to 5 years custody for supplying drugs. There followed custodial sentences for possession of drugs (12 months), an unlawful threat (4 months) and then supplying drugs in June 2007 (a 4 year custodial sentence imposed in March 2008). But to his credit, since coming to the United Kingdom in May 2015 – nearly 7 years ago – the Appellant has no further criminal convictions. Indeed, his most recent offence even in Poland appears to have been in 2007, now 15 years ago. Added to this, there is the fact that his trial for the index offending between 2005 and 2007 did not evidently take place until the second half of 2014. Although he was in custody on various other matters, he had been released on parole on 20 September 2011. Had the index offences been more promptly pursued in Poland, any sentence could have been served and would have been in the past when he came to the UK in May 2015. He has lived an industrious life here. Although his previous relationship and family life have broken down, he does have a strong bond with the current partner and her seven-year-old son which involved their cohabiting from last summer and through to the present. The son has, moreover, been diagnosed (in the spring of last year) with a medical condition called Perthes disease.

8. For the purposes of today the threshold is one of reasonable arguability. Mr Hepburne Scott submits that that threshold is crossed: that it is reasonably arguable that the 'outcome' arrived at by the Judge was the 'wrong' one, including when viewed in terms of the current evidenced position; and that the Appellant's extradition would be a disproportionate interference with private or family life of him or his partner or her son or a combination of all of them.

9. I cannot accept that submission. Even on the basis of the 'settled family unit' which the Judge was describing in March 2020, after a conscientious evaluative balancing of the considerations against and for extradition, the Judge convincingly found that the balance came down firmly in favour of extradition. The same in my judgment is clearly true when focusing on the current changed circumstances. The child, the impact on whom is now at the heart of the case, is of a younger age (aged 7), and has a health condition. There is evidence of a bond having developed with the Appellant, who also helps by taking him to his regular hospital appointments. However, as the Respondent points out, there is no evidence that the partner – his mother – is dependent upon the Appellant financially or emotionally for the son's care. Moreover, the fact is that the bonds between the Appellant and the child, and between the Appellant and the partner, developed and deepened – through the beginning of the cohabiting relationship entered into last summer – in the clear "shadow" of extradition proceedings in which this Court had refused permission to appeal against the Judge's order of extradition. It cannot be

taken, and ought not to be taken, that that has relevance to the position of the child. But it does constitute the important backcloth against which the child's mother and the Appellant began that cohabiting relationship, and it is a relevant feature of the factual picture.

10. The impact on the current partner and the son – who are, on any view, blameless – cannot, together with the other features of the case, outweigh the strong public interest considerations in support of extradition. That is notwithstanding the familiar dual effect, recorded by the Judge, that the passage of time can have: in tending to reduce the public interest weight in favour of extradition; and in tending to lead to the deepening (or in the present case a change and then a deepening) in private and family life ties which weigh against extradition. As to impact, I have also had regard to the prospect for 'mending' the estranged relationship with the 21 year old stepdaughter and nearly 14 year old daughter from the previous relationship, which will doubtless be made much harder as a consequence of extradition.

11. The index criminality is serious. The two year custodial sentence is a significant one. Although the Polish authorities might have addressed that in the context of other similar criminal conduct at an earlier stage, this Court needs to respect the way in which the Polish courts have dealt with matters. No doubt the two-year sentence will have been imposed in the light of knowledge of the past criminality and chronology, on the part of the sentencing court. Two years custody constitutes the sentence for which the Appellant is required to face responsibility in Poland notwithstanding the various other sentences that he has served for other criminal conduct, including conduct relating to drugs.

12. The Judge unassailably found that the Appellant came to the United Kingdom, in May 2015, as a fugitive. Having been present when he was sentenced to the two-year custodial sentence for these drug trafficking offences, and in circumstances where he was due to attend prison from 10 February 2015, he had decided to evade his responsibilities, which ultimately have now caught up with him. As the Judge put it when considering the impact on the previously settled four person family unit: "unfortunately the requested person only has himself to blame for the predicament that the family finds itself in. If he had remained in Poland and faced up to his legal responsibilities he would have served his sentence by February 2017. Instead, he fled. He became a fugitive. By doing so, he merely delayed the inevitable."

13. Cases involving young children, and in particular young children with health conditions, always call for careful scrutiny. Cases in which the circumstances have changed since the hearing before the magistrates' court necessarily also call for some scrutiny afresh, in the light of the current factual position. But this is a case, having scrutinised all of the factors and circumstances, in which the 'balance-sheet' exercise comes down decisively in favour of extradition. There is no realistic prospect, in my judgment, that this Court at a substantive hearing would find the 'outcome' arrived at by the Judge to be the 'wrong' one. The putative fresh evidence, properly put before the Court though it was, is 'incapable of being decisive' in the Appellant's favour.

<u>Conclusion</u>

14. I therefore refuse permission to appeal and formally refuse permission to rely on the putative fresh evidence.

17.2.22