Neutral Citation Number: [2022] EWHC 349 (Admin)

Case No: CO/1105/2021

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:

AURIMAS BAIKA	**Appellant**
- and -	
SIAULIAI REGIONAL COURT (LITHUANIA)	**Respondent**

- -
- -

Rabah Kherbane (instructed by Lansbury Worthington Solicitors) 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

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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 and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

MR JUSTICE FORDHAM:

Introduction

1. This is an in-person hearing of a renewed application for permission to appeal in an extradition case. The Appellant is aged 23 and is wanted for extradition to Lithuania. That is in conjunction with a conviction EAW issued on 27th February 2019 and certified on 8 April 2019. It relates to a three-year custodial sentence which became final on 7 December 2018 relating to 4 offences of theft and 2 of robbery committed earlier that year by the Appellant in Lithuania. His was ordered by DJ Godfrey ("the Judge") on 18 March 2021 after an oral hearing on 4 March 2021. Permission to appeal was refused on the papers by Dove J on 7 October 2021.

Qualifying remand

2. Throughout the proceedings reference has been made to the ongoing position in relation to qualifying remand. Mr Kherbane for the Appellant has told the Court that the position so far as the Appellant is concerned is that there have been a number of reasons for the passage of time in relation to these proceedings, both in the magistrates' court and before this court. He tells me that they included failures to produce the Appellant, and delays in relation to required assurances (received only on 8 February 2021). In the case of Molik v Poland [2020] EWHC 2836 (Admin) I addressed, by reference to previous authorities, a concern which the Court has about proceedings being approached in a way 'to allow a proportionality advantage' or to achieve an outcome through additional time being spent in this country by 'prolonging proceedings so as to raise such a point' and 'opening up arguments based on time left to serve'. There is nothing in the papers before me which suggests that the Respondent is inviting any adverse conclusion in relation to any of that against this Appellant, in the circumstances of the present case. Nothing which I say involves any such adverse conclusion or impression.

3. For the purposes of today's application for permission to appeal, and any other applications arising out of it, Mr Kherbane maintains only the Article 8 ECHR ground previously advanced, together with an alternative abuse of process ground which he seeks permission to introduce. Other points are not pursued. As he put it to me, that is a pragmatic position based on what he submits is the unanswerability of the 'qualifying remand time now served' point. The sole focus of the application rests then on qualifying remand.

The time has been served

4. On the face of the EAW it was clear that the Appellant had 2 years 8 months 11 days to serve. It is also clear, and the Judge recorded, that the Appellant was arrested and remanded in custody on 2 May 2019 in relation to these extradition matters. The Judge set these facts out in paragraph 5 of the judgment. The 'ticking clock', so far as qualifying remand is concerned, is reflected throughout the papers in this case. The Judge referred to 10 months as remaining to be served, and to the 22 months that had been served as the "weightiest factor" in the Article 8 ECHR assessment. The perfected grounds of appeal on 9 April 2021 referred to 23 months as having been served. The Appellant's representatives have calculated (and my maths have come to the same position) that the 2 years 8 months 11 days was served on 13 January 2022. They brought this to the Respondent's attention by email on 25 January 2022 and were told

on 3 February 2022 that the Respondent Lithuanian authorities had been 'alerted' by the CPS who were waiting to hear from them. The Appellant's representatives then filed a Note on 8 February 2022 (9 days ago) which they sent to the CPS. That Note describes the qualifying remand as having extinguished the time left to serve. The Note describes the Appellant as at that date (8.2.22) having served 2 years 9 months 6 days.

5. In Molik at §17, I described the 'line' that is 'crossed' for the purposes of Article 8, or alternatively abuse of process, when the time to serve has been extinguished by qualifying remand. Put colloquially, the requested person has 'done their time'. On the face of it, that is this case. It is, moreover, this case by reference to facts recorded by the Judge in the judgment, and facts which have squarely been relied on in documents served on the Respondent.

Permission to appeal

6. It is clear that it is appropriate for this Court to grant the renewed application for permission to appeal on Article 8 ECHR and to grant permission to amend the grounds of appeal to include the alternative of abuse of process.

What next?

7. The question then is whether the Court should take any further step today. Mr Kherbane invited me to make an order for immediate discharge, today. That is an order which the Appellant's representatives had flagged up in the Note dated 8 February 2022 as one which would be sought today. Moreover, that Note was, I accept from Mr Kherbane, served promptly on the Respondent. I also accept from him that the email of 25 January 2022 had set out the position; and that it had landed and been understood by the CPS from at least 3 February 2022. Other courses which were ventilated today were: a direction for a further on-notice hearing in the next few days with a direction for the Respondent to 'show cause' as to why an order for immediate discharge should not be made; and an application (whether oral or in writing) for bail. Another possibility might have been an application for habeas corpus.

8. This is a case concerning liberty of the individual and where there is on the face of it a legal entitlement to discharge, which entitlement arose more than a month ago. On the other hand, the Court must always be mindful of the fact that it does not know what it does not know. That is one of the reasons why, in principle, arrangements are made to be on notice where there are applications for substantive orders. The only application formally before the Court today is in the notice of renewal which seeks permission to appeal. But Mr Kherbane, in my judgment, is quite right to raise the question of immediate discharge and the other possible avenues. He is also able to rely on the email communication of 25 January 2022, and the Note of 8 February 2022, as having alerted the Respondent. There is no reason to suppose that the facts recorded by the Judge and in the documents are incorrect; that the Appellant's representatives' (and my) maths are incorrect; or that there has been any relevant supervening event which could make a difference to the analysis.

An urgent 'show cause' process

9. I am not prepared to make an order for immediate discharge today. In my judgment it is appropriate for the Court to give the Respondent, through a Court Order, a very short

window of time to be able to put a response before this Court which 'shows cause' as to why this Appellant should not now immediately be released on the basis of withdrawal of the EAW or alternatively discharge by the Court. I will direct a further short hearing, before me, next Tuesday afternoon. It can proceed by Microsoft Teams to ensure that people can access it with a minimum of inconvenience and a maximum of efficiency.

10. This means that if there is some point that the Respondent wishes to bring to the attention of the Court, that can make a difference, it now has a final short period in which to do that, absent which I anticipate that this Court will be ordering the discharge of the appellant, unconditionally.

Hopes and expectations

11. It goes without saying – but I will say it – that once minds have urgently been directed to what is an extremely straightforward point, it is to be hoped and anticipated that no further hearing will be necessary. It may very well be that this case can be resolved later today or tomorrow. One of the reasons for giving this reasoned ruling is to attempt to lay out for the Respondent the position, in clear and digestible terms, and in terms which reflect the importance and urgency which the Court attributes to the speedy resolution of this issue.

Order

12. The Order which I make is as follows. (1) The application for permission to appeal is granted on grounds of Article 8 and abuse of process, with permission to amend the grounds of appeal to include abuse of process. (2) The Respondent shall by 2pm on Monday 21 February 2022 file any response showing cause as to why the Appellant should not immediately be discharged. (3) This case is listed at 4pm on Tuesday 22 February 2022 before Fordham J to deal with the question of immediate discharge, or directions; the hearing may be a remote hearing by MS Teams unless a party or the parties request otherwise. (4) The parties to alert the Clerk to Mr Justice Fordham by 9am and (if not yet agreed) again by 2pm on Tuesday 22 February 2022 as to whether discharge is now agreed. (5) No order as to costs save that there be a detailed assessment of the Appellant's publicly funded costs.

17.2.22