Neutral Citation Number: [2023] EWHC 2320 (Admin)

Case No: AC-2022-LON-003335
CO/4403/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday 19th September 2023

Before:
MR JUSTICE FORDHAM

- -

Between:

MAREK PAWLOWSKI	**Appellant**
- and -	
REGIONAL COURT IN TARNOW, POLAND	**Respondent**

- -
- -

Ania Grudzinska (instructed by Hollingsworth Edwards Solicitors) for the **Appellant**
Michael McHardy (instructed by Crown Prosecution Service) for the **Respondent**

- -

Hearing date: 19.9.23

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: Note: This judgment was produced and approved by the Judge from the ex tempore judgment delivered in open court.

MR JUSTICE FORDHAM:

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The Appellant is aged 35 and is wanted for extradition to Poland. That is in conjunction with a conviction Extradition Arrest Warrant issued on 14 February 2022 and certified on 29 March 2022, on which he was arrested on 10 May 2022. He has been on extradition remand ever since. He is wanted to serve the entirety of a two-year custodial sentence. It was originally imposed on 26 July 2016 – and became final on 3 August 2016 – as a suspended sentence with a three-year suspension period requiring probation and the payment of 8800PLN (approximately £1600) as what the papers describe as 'punitive damages for a social purpose'. The index offending was two counts of supply of amphetamines between December 2010 and June 2012, together with a count of possession of marijuana. Extradition was ordered by District Judge Tempia (the Judge) on 18 November 2022 after an oral hearing on 20 October 2022. The Judge found that the Appellant had originally come to the United Kingdom back in 2014, after which he had returned to Poland. Then in 2017, a year into the probation and suspension period after being sentenced in 2016 for the 2010-2012 drugs offending, he came back to the United Kingdom. By the end of the 3 years (August 2019), he had paid just over 1000PLN of the required punitive damages. In those circumstances, the Polish probation service had applied for activation of the custodial sentence, which was ordered by the Polish court on 8 October 2019.

2. The sole substantive issue in the appeal is Article 8 ECHR. Viewed in "private and family life" terms, the Article 8 argument as a bar to extradition is based on "private life" and the periods in which the Appellant has been in the United Kingdom, with employment and with no UK convictions. There is no relevant family life. There are, for example, no dependent partner or children. There are the links and roots which the Appellant has made and put down in the UK. Viewed in terms of the Judge's analysis as at the end of 2022, the conclusion that extradition would be compatible with the Appellant's Article 8 rights was unimpeachably correct, as Julian Knowles J recorded in refusing permission to appeal on the papers on 19 July 2023. The Judge had unassailably found that the Appellant's return to the UK in 2017 was as a fugitive, in circumstances where – on the evidence – the Appellant had been notified on 15 December 2016 of requirements imposed on him in Poland, including the need to obtain the Polish court's permission before any relocation. He did relocate and did not obtain that permission. Moreover, as the Judge found, he then relocated within the UK without notifying anyone. The Appellant has a graduate law degree. He was well aware of the obligations which had been imposed on him. Indeed, he made several applications from the UK to have the obligation to pay the punitive damages cancelled. His description of believing that he had paid off the punitive damages was rejected by the Judge having heard oral evidence with cross-examination. There is no prospect that that adverse finding would be overturned on appeal to this Court. Wisely, no challenge is made in the perfected grounds of appeal to the adverse findings on fugitivity and credibility.

Key Features

3. The features which Ms Grudzinska emphasises – in writing and orally – include the following in particular. There are points relating to the passage of time. First, between

June 2012 when the offending last took place and July 2016 when the Appellant was sentenced. Secondly, between October 2019 when the sentence was activated and February 2022 when the Extradition Arrest Warrant was issued. The Judge said that there was no delay, clearly meaning – as Julian Knowles J pointed out – no culpable delay. Then there are points about the relative gravity of the index offending. The Judge rightly recognised that this was not the most serious of offending. But it was the supply of drugs and the starting point was (and remains) to respect the two-year sentence, and its activation in light of the failure to fulfil the payment obligation regarding the punitive damages. Then there are the points relating to the current circumstances. These have become central to the case, whose essence is that it would now be incompatible with Article 8 for the Appellant to be extradited. There is an application dated 26 July 2023 to rely on putative fresh evidence. This includes documents in Polish with English translations which the application said were "to follow once available". Regrettably, the translations came only in the days immediately before today's hearing.

4. In terms of the circumstances as they now are, there are these key interrelated points. First, it is said that the Appellant has paid "almost entirely" the outstanding balance of the punitive damages, by making a payment of 2000PLN (approximately £400) on 14 April 2023. To put "almost entirely" into perspective, the Appellant accepts that there is still a further 2000PLN which is unpaid. Secondly, it is pointed out that what at the time of the Judge's judgment was 5 months qualifying remand is now 16 months, out of the 24 months to be served (as to which cf. Dobrowolski v Poland [2023] EWHC 763 (Admin) at §§7-8). Ms Grudzinska describes 7½ months as left to serve. Thirdly, it is emphasised that, during his time in custody at HMP Wandsworth, the Appellant has made good, documented progress in prison (reflected in the fresh evidence). Fourthly, reliance is placed on the Polish mechanism for early release in appropriate circumstances after serving half (12 months) or two-thirds (16 months) of the 24 months, having regard to applicable criteria discussed in the case law (see Dobrowolski at §§9-15). The Appellant has a Polish lawyer who has described, in a 21 July 2023 statement (within the fresh evidence), having made an application in April 2023 for the Appellant's early release, describing good prospects and an anticipated decision this month or next month. A further statement from the Polish lawyer, dated and provided today, says (with the Appellant apparently identified as the source of this information) that the Polish court has sought information from HMP Wandsworth to confirm what period he has served; that this information is awaited; that until "an official, written appeal is obtained" the application for early release "will not be considered"; and that the lawyer is unable to indicate when the Polish court will consider it.

Whether evidence could have been adduced before the Judge

5. Ms Grudzinska submits that the April 2023 payment, the progress in prison, and the April 2023 early release application could not reasonably have been evidenced before the Judge. In the first place, these are in their nature events which have taken place subsequently. Secondly, in relation to early release, this only comes into play after the relevant period has been served, and the remand served at the time the Judge was dealing with the matter was 5 months. I accept those submissions. The real question is as to the relevance of these new features and circumstances of the case.

Adjournment

6. The hearing of this case was listed for "not before 11:30" today and commenced at around 12:00. As had been clear from the Cause List, that was after my dealing with three other cases which were listed and had begun from 10:30 onwards. At the start of the hearing, Ms Grudzinska told me that she was making an application for an adjournment. She said she had emailed my clerk about this at around 10:30 and that her instructing solicitor had emailed the application and grounds for the adjournment to my clerk at 11:14. In fact, the 10:30 email was sent (at 10:56) to an email address which was wrong. Ms Grudzinska was anxious that I should read the written application and grounds, emailed to my clerk at 11:14. No hard copy was available to be handed up to me at the hearing. Ms Grudzinska explained orally "the essence" of the application. She invited me then to hear submissions on the substance – without prejudice to the application to adjourn – and then to obtain and read the documents at lunchtime, resuming the hearing at 2pm.

7. This was all most unsatisfactory. The Court was being asked to adjourn the renewal hearing because of the position regarding the April 2023 application for early release. The lateness of the application was said orally to be because the Appellant's UK lawyers' "hands were tied" by inactivity and unresponsiveness on the part of the Polish lawyer. The Court was being asked to direct the CPS to communicate to the Polish court the dates on which the Appellant has been detained at HMP Wandsworth so that the ongoing delays arising from that aspect could be brought to a prompt end. It was emphasised that the Appellant's UK lawyers had only discovered yesterday evening that that information had been requested from, and not yet provided by, HMP Wandsworth. The Respondent resisted the adjournment. The written grounds for adjournment, which I read at lunchtime, confirm that what is sought is an adjournment for some 4-6 weeks, to enable the Appellant to progress his case in Poland for early release. It is said that there is a strong possibility that this could lead to the Extradition Arrest Warrant being withdrawn. It is also said that the application had not been progressed because of unresponsiveness on the part of HMP Wandsworth.

8. I indicated at the 2pm resumption that I would not be acceding to the application to adjourn nor to make a direction addressed to the CPS. I now give my reasons. The early release application was made in April 2023. The statement from the Polish lawyer was provided in July 2023 and could be understood by Ms Grudzinska. Criticisms – made orally – of the Polish lawyer are unevidenced. There is no evidence of what attempts were made in and after April – or in and after July – to get further information. If the outstanding request for early release, or the absence of information from Poland, were a basis for an adjournment, then this could and should have been sought in good time. Nobody's "hands were tied". There is moreover no proper evidence to support the criticism made in writing of HMP Wandsworth. There is no evidence as to when it is said that the request was made. Further, the early release application is not a basis for an adjournment. The Appellant is entitled to point to the prospect of early release, and to the fact that an application for early release has been made, just as he is entitled to point to qualifying remand. There is in my judgment no basis for adjourning to see what ensues from the early release application, nor for the purposes of the Court becoming involved or requiring the CPS to become involved in that process.

Viability

9. So, the Court should grapple today with whether there is a viable Article 8 appeal – as things stand – and that is what I am doing. I have considered all of the features which have been emphasised as supporting a viable Article 8 appeal. I record that for the Respondent, Mr McHardy emphasises in a skeleton argument a number of points including: the lack of diligence in the belated steps being taken in and after April 2023; the limited nature of the information adduced; the fact that the even now the payment has not fully been discharged; that whether or not to grant the belated application for early release would be for the Polish authorities to consider; that it cannot be said that the application will be granted; that it is not for this Court to decide early release or say whether the Appellant has been punished enough (Dobrowolski §24); and that what matters is the combination of particular features of the case (Dobrowolski §§4-15).

10. Testing the position as it is today, I can see no realistic prospect that this Court at a substantive hearing would conclude that the outcome recognising the Article 8 compatibility of extradition is wrong in light of the current circumstances and putative fresh evidence. It is right that the Appellant has lived a law-abiding life in the UK since first coming here in 2014 and since returning here in 2017. But he did not pay the punitive damages and so he breached a legal obligation imposed on him during the three-year period, knowing that he had that obligation and knowing that it had not been cancelled. Also, what was required to be paid by August 2019 has only been paid – and only to the further extent which I have identified – on 14 April 2023. The overall payment obligation has not been discharged. The Appellant has subsequent convictions in Poland, for 2016 and 2017 fraud offending. The criteria for early release refer to attitude and behaviour. I accept that there is a real prospect that an application for early release would stand to be granted. But that is properly a matter for the Polish authorities to consider. The Polish authorities are not required to deal with the application now, and from the UK. Moreover, there has in my judgment been a lack of diligence in the pursuit of the April 2023 early release application. In all the circumstances of this case – which include the Appellant's track record of employment and charitable work in the UK, and his private life and friendships here, the passage of time and its implications, the qualifying remand, but also the absence of any family or dependents or affected children – I do not consider there to be a realistic prospect that there are features of this case which would lead this Court to characterise extradition as a disproportionate interference with the Appellant's rights to private life.

Conclusion

11. I will therefore refuse the application for an adjournment and a direction to the CPS, I will refuse permission to appeal, and I will formally refuse permission to adduce the putative fresh evidence on the basis that it is incapable of being decisive.

19.9.23