



Neutral Citation Number: [2023] EWHC 951 (Admin)

Case No: CO/1840/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/04/2023

Before :

MR JUSTICE JULIAN KNOWLES

Between :

JUSTYNA WYREBEK	<u>Appellant</u>
- and -	
CIRCUIT COURT, GLIWICE, POLAND	<u>Respondent</u>

Malcolm Hawkes (instructed by **Hodge Jones and Allen Solicitors**) for the **Appellant**
Georgia Beatty (instructed by the **CPS Extradition Unit**) for the **Respondent**

Hearing dates: **3 November 2022**

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. This is an appeal with the permission of Jay J against the extradition order made by a district judge on 19 May 2021.
2. The Appellant's extradition has been requested by the Respondent pursuant to a European arrest warrant (EAW) issued by it on 29 March 2016 and certified by the NCA in the UK on 14 April 2016. She was arrested in the UK on 27 November 2020.
3. The EAW is a conviction warrant relating to eight offences of fraud, each described in Box (e) of the EAW. In summary, on eight separate occasions between May 2009 and July 2009, together with another, the Appellant entered into credit agreements with various Polish banks. The agreements were made on the basis of a deception regarding their intention and ability to meet their financial liabilities. They subsequently failed to repay the loans they had secured, causing a total loss to the banks of 45,661.66 zloty (approximately £9,000 at 2009 exchange rates). Seven of the offences were committed in Rybnik, and one was committed in Wodzisław Śląski.
4. According to Box (e), the Appellant pleaded guilty to the offences. The sentence of imprisonment, which had been suspended for a period of four years, was activated on 24 February 2014. The reasons for activation are stated in the following terms: 'Due to the negative course of the probation, ie, not meeting the obligation to redress the damage and evading the contact with the probation officer 24 February 2014 by the decisions of the District Court of Rybnik, case file reference III I Ko 4913/13 the custodial sentence of 1 year and 6 months of deprivation of liberty of Justyna Wyrębek imposed by the judgment iii K 1229/10 was activated'.
5. The Appellant was summonsed to attend prison to serve her sentence, but failed to appear and a domestic arrest warrant was issued on 21 November 2014.
6. According to Box (b) the enforceable decisions were made on 22 June 2011 (when the suspended sentence was imposed) and 24 February 2014 (when it was activated).
7. According to Box (c), the Appellant was sentenced to one year and six months imprisonment, all of which remains to be served.
8. The European framework list is ticked for 'fraud'.

Decision of the district judge

9. Before the district judge, extradition was resisted on the following grounds: (a) that the EAW was not issued by a judicial authority within the meaning of s 2 of the Extradition Act 2003 (EA 2003); and (b) that extradition would be a disproportionate interference with her rights under Article 8 of the European Convention of Human Rights (the ECHR) and so barred by s 21 of the EA 2003.
10. The judge ruled against the Appellant on both issues. The first issue has now fallen away following the judgment in *Wozniak v The Circuit Court in Gniezno, Poland* [2021] EWHC 2557 (Admin).
11. The judge set out the evidence, including that relating to the Appellant's psychiatric problems and mental health.

12. At [23] she set out the evidence of Dr Mala Singh, a consultant psychiatrist approved under s 12 of the Mental Health Act 1983.
13. At [25]-[27] the judge set out Dr Singh's conclusions:

“25. Dr. Singh set out her diagnoses at §12. She considered that Ms. Wyrębek suffered from a depressive episode, with symptoms which included a loss of capacity for enjoyment, interest and concentration, anhedonia, anergia, amotivation, sleep disturbance characteristic of depression, and changes in her attention and concentration. She stated her opinion that the severity of Ms. Wyrębek's depression fluctuated between moderate and severe and that it had been 'on the severe side' since November 2020 (when she was arrested in extradition proceedings). She noted that severe depression often requires in-patient treatment. At §7.3, she records that Ms. Wyrębek had suffered from mental health problems in Poland, soon after the sentencing hearing, and that as a result of the stress of the proceedings she had to be admitted to a psychiatric unit. Ms. Wyrębek also told Dr. Singh that she had been prescribed antipsychotic medication. This information is repeated at §8.2 of Dr. Singh's report.

26. Under the heading 'Diagnosis – ICD-10 F33 Recurrent Depressive Disorder' Dr. Singh stated, 'from the developmental history as indicated by Miss Wyrebeck and her brother I am of the clinical opinion that she has mild to moderate degree of learning disability. Although I do not have a formal IQ test score, her presentation, and history is highly consistent with Learning disability'. No further reasons were provided for reaching this diagnosis. Dr. Singh did not interview Ms. Wyrębek's brother, but relied on the short statement produced for these proceedings.

27. Dr. Singh considered that Ms. Wyrębek's psychiatric condition would benefit from pharmacological treatment, including anti-depressants, and from psychological therapy such as Cognitive Behavioural Therapy (CBT). If this treatment was ineffective, she considered from other forms of psychotropic medication and intense psychological interventions could be used. She stated her opinion at §12.44, that if extradited to Poland, Ms. Wyrębek would 'not be fit to serve a prison sentence' as 'she is likely to be extremely vulnerable in a custodial setting subject to exploitation by other inmates'. She considered that Ms. Wyrębek's detention could lead to a further deterioration of her symptoms of depression and anxiety, which she considered can eventually increase the risk of suicide. In her opinion the negative impact of Ms.

Wyrębek losing contact with her partner and family and being unable to receive their support would have a substantial negative effect on her psychological wellbeing.”

14. At [29] the judge said:

“In cross-examination, Dr. Singh confirmed that she had no documents from Poland regarding Ms. Wyrębek’s medical history. Nevertheless, she considered herself an experienced clinician able to assess a patient’s mental health from first presentation. Asked about the possibility of fabrication, she stated that there is always this possibility but that Ms. Wyrębek would need to have knowledge of mental illness. She did not find Ms. Wyrębek to have exaggerated her symptoms.”

15. Turning to Article 8, the judge dealt with this at [42] onwards. She carried out the well-known *Celinski* balancing exercise. She dealt with the medical evidence in detail between [47] and [56] and said at [56] that ‘in light of the limited information available to Dr. Singh, and her reliance on information which now appears to have been unreliable, I did not accept her conclusions regarding Ms. Wyrębek’s diagnoses.’

16. At [66] the judge listed the factors in favour of extradition and noted as one of them that the Appellant had left Poland in breach of the terms of her suspended sentence and that this had contributed to delay.

17. Among the factors against extradition ([67]), she said:

“In Poland, in 2009, Ms. Wyrębek was diagnosed with a sleep disorder. More recently, Dr. Singh found her to be depressed with some anxious theme during a mental state examination. She became frequently tearful during the interview.

Separation from her close family will have a detrimental effect on her mental health and wellbeing.”

18. The judge’s conclusion at [68] was:

“68. I have taken account of these competing considerations to determine whether the public interest in extradition outweighs the interference with Ms. Wyrębek’s Article 8 rights. As discussed above, Ms. Wyrębek faces a sentence of eighteen months imprisonment. Although there has been delay in bringing Ms. Wyrębek to justice, this has primarily been caused by her departure from Poland within six months of the imposition of a suspended sentence. When she left Poland, she failed to inform the authorities or provide an address for contact in the UK. She was aware that she was in

breach of the requirement to pay compensation to the victim banks and her deliberate absence from her sentencing hearing meant that she was wilfully ignorant of the requirement to maintain contact with probation. The Judicial Authority have acted with reasonable diligence in investigating and prosecuting the offences, and in their decision to enforce the sentence by activating it and issuing this EAW. I note that Ms. Wyrębek was diagnosed with a sleep disorder in 2009 but also take account of the fact that she has not needed further treatment for her condition since her arrival in the UK, over ten years ago. On her account, her family provide an important source of support and comfort to her, and I have no doubt that this is true. However, if her mental health deteriorates I have been given no reason not to trust that the Polish authorities will provide appropriate treatment. Ms. Wyrębek has neither dependants nor dependant children in the UK. In my judgment, the factors which militate against extradition, set out above, are not so compelling that they override the strong public interest in extradition. I am satisfied that Ms. Wyrębek's extradition remains proportionate and necessary.

Grounds of appeal and submissions

19. On the appeal Mr Hawkes (who did not appear below) argued two grounds of appeal: (a) the judge had been wrong to reject the Article 8 submission (and he sought to rely on up to date medical evidence (on Jay J granted permission) and; (b) s 25 (extradition unjust or oppressive by reason of physical or mental health) (for which permission is required, it having been reserved by Jay J to the full hearing).
20. In granting permission on the Article 8 ground, Jay J said that 'The merits of this case are sufficiently troubling to warrant a full hearing.'
21. In relation to Article 8, Mr Hawkes relied on the following as showing that extradition would be a disproportionate interference with her right to private and family life on four bases and so be a violation of Article 8: (a) her mental health condition; (b) the overall delay since the conduct took place and this appeal (thirteen years: 2009-2022); (c) the low-level gravity of the conduct; and (d) the time the Appellant has spent subject to restrictive bail conditions (an eight-hour curfew and police reporting) for almost two years (27 November 2020 – 3 November 2022, as at the date of the hearing) is punishment enough.
22. On this appeal Mr Hawkes seeks to rely on Dr Singh's report that was before the district judge (but about which the judge was sceptical, as I have indicated), and also two reports from Dr Helen Wain, a registered clinical psychologist with specialist experience in the field of children and families, dated 22 November 2021 and 4 May 2022 following the grant of funding by this Court. Jay J left the question whether Dr Wain's reports should be admitted to the full hearing.
23. In Section 3 of her report of 22 November 2021(Executive Summary) Dr Wain said:

“3.01. Miss Wyrebek’s extradition was ordered by District Judge Baraitser, in May 2021, to serve a one year and six month sentence related to eight offences of fraud. These offences formed the basis of a European Arrest Warrant. Miss Wyrebek was assessed by Dr Singh, Consultant Psychiatrist, prior to this hearing and she concluded that Miss Wyrebek presented with a mild to moderate degree of learning disability. The District Judge rejected this diagnosis as no formal assessments for learning disability were completed. A psychological assessment of Miss Wyrebek was therefore sought to determine if Ms Wyrebek has a learning disability or learning difficulty, and the extent.

3.02 Following the assessment, I was of the opinion that Miss Wyrebek has a borderline learning disability and specific learning difficulties with processing speed and verbal comprehension. These difficulties are life-long, have been present since her childhood and impact on her daily functioning. Miss Wyrebek finds it difficult to understand and use spoken language, especially if she does not have the time that she needs to process it. This leaves Miss Wyrebek vulnerable to other people taking advantage of her. She has a very concrete thinking style, and is likely to agree to things without fully understanding the nuances of the situation. Miss Wyrebek’s performance on the verbal tasks may have been impacted, as the assessment is British oriented. Miss Wyrebek is also suffering from poor mental health. However, despite these factors, in my opinion, it is a valid and reliable measure of her functioning. Further details are provided in the response to instructions.”

24. At [7.01]-[7.03] she said, having tested the Appellant’s IQ:

“7.01 Following the assessment, I am of the opinion that Miss Wyrebek has a borderline learning disability and specific learning difficulties with processing speed and verbal comprehension.

7.02 A learning disability is a global developmental delay that affects all areas of learning and functioning. To diagnose a learning disability, a person has to meet three criteria: (i) an IQ of less than 70; (ii) onset during childhood, and; (iii) problems in independent living and adaptive functioning. I will discuss each of these areas in relation to Miss Wyrebek.

7.03 In terms of an IQ of less than 70, Miss Wyrebek has a full scale IQ of 67 (95% confidence interval, 64 – 72), indicating a learning disability. This result falls within the

extremely low range, and less than 2% of other people her age would perform at this level. Caution is needed when interpreting this overall result, as there is significant variation in Miss Wyrebek's index scores. There were two areas of particular deficit for Miss Wyrebek and two areas of relative strength. Miss Wyrebek has specific difficulties with processing speed and verbal comprehension and relative strengths with perceptual reasoning and working memory."

25. In her report of 4 May 2022, Dr Wain was asked to address the following issues (Section 2.0):

"1. In what way do Ms Wyrebek's learning disability/difficulties contribute to the following two issues that were previously identified in the psychiatric assessment by Dr Singh and the judgement of the District Judge:

- Ms Wyrebek's risk of exploitation within a custodial setting
- Possible deterioration in Ms Wyrebek's mental health whilst in a custodial setting.

2. When questioning a person with learning disabilities, such as Ms Wyrebek in the context of a police station or prosecution interview or in court, what steps should be taken to ensure they have understood the question and given a reliable response ? What can be said about the reliability of their responses where no such steps are taken ?"

26. The Executive Summary 3.01 is as follows:

"Further to the psychological report dated 22nd November 2021, additional questions were instructed. Specifically, Ms Wyrebek's risk of exploitation and possible deterioration in her mental health, whilst in a custodial setting; recommendations for questioning a person with learning disabilities; and the reliability of their response where no such steps are taken. The previous report identified that Ms Wyrebek has a borderline learning disability and specific learning difficulties in verbal comprehension and processing speed. I am of the opinion that Ms Wyrebek's cognitive profile places her at a greater risk of exploitation within a custodial setting, due to impaired understanding and communication skills. I am also of the opinion that Ms Wyrebek's mental health will be vulnerable to further deterioration when in a custodial

setting, and psychological therapy, such as cognitive behaviour therapy, will not fully prevent this. A detailed list of recommended ways of working with people with learning disabilities is provided, and the potential for inaccurate responses is identified, if these are not used. Further details and responses are provided in the response to instructions.”

27. At [4.02]-[4.03] she said:

“4.02 People with a learning disability are in general at greater risk of exploitation and abuse. This is because they may not understand that what is happening to them is wrong, they may find it hard to communicate to others about what is happening to them, and they may also not fully understand how to report it (Mencap, 2021). These vulnerabilities are particularly relevant for Ms Wyrebek as she has a borderline learning disability and specific learning difficulties in verbal comprehension and processing speed. Ms Wyrebek is very concrete and literal in her understanding and is likely to believe that she has understood information, without fully comprehending the nuances or subtleties, especially if she is under time pressure. Therefore it is very likely that if Ms Wyrebek is exploited, she will not at first understand that what is happening to her is wrong, and also struggle to verbally explain the situation to others. Within a custodial setting there is a clear demarcation of prison staff, which would benefit Ms Wyrebek in terms of reporting exploitation. However, people with learning disabilities find it hard to communicate to others when they are being exploited, and therefore it is recommended that those close to them are vigilant for changes in their behaviour to indicate exploitation (Mencap, 2021). As Ms Wyrebek will be away from her family, and those that know her well, this will be harder to observe. It is for these reasons that in my opinion, Ms Wyrebek will be at increased risk of exploitation whilst in a custodial setting.

4.03 In my opinion, Ms Wyrebek’s mental health will be vulnerable to further deterioration if she experiences significant life stressors, of which the on-going extradition case and a custodial sentence would be. I have seen this repeatedly occur within my clinical work. This is in agreement with Dr Singh’s report, which identified that imprisonment would be further detrimental to Ms Wyrebek’s mental health. Dr Singh recommended management of Ms Wyrebek’s mental health through Cognitive Behaviour Therapy (CBT) and anti-depressant medication. Ms Wyrebek medical records detailed that she

is prescribed Mirtazapine (an anti-depressant medication) since May 2021. There was no report of psychological therapy. When I met with Ms Wyrebek (05/11/2021) her presentation was congruent with Dr Singh's report of recurrent depressive disorder. Ms Wyrebek was emotionally distressed, tearful and reported feeling overwhelmed. At assessment I did not assess Ms Wyrebek's mental health with psychometric measures, as this question was not within the original instructions. However, in my clinical opinion Ms Wyrebek was continuing to present with symptoms of depression."

28. In light of the medical evidence as it now is, the way Mr Hawkes put it for the Appellant was summarised at [1] of his Skeleton Argument:

"The Appellant's measured IQ is 67; she is a vulnerable, easily led woman who was likely the victim, rather than the perpetrator of the index offences of fraud. The fresh evidence confirms that she was very likely taken advantage of in the commission of a fraud which she lacked the ability to understand, still less knowingly commit; there is no evidence her mental health condition was ever taken into account in the Polish proceedings or could be now. The impact of extradition and imprisonment on her mental well-being would be devastating. The near-two years she has spent subject to a curfew and reporting conditions is sufficient to address any suggestion of impunity and reduces the public interest in her extradition."

29. Mr Hawkes said that Dr Singh's diagnosis of recurrent depressive disorder, and a mild to moderate degree of learning disability was criticised by the district judge as it was based upon the self-report of the Appellant and her interview with the Appellant's partner. The judge also criticised Dr Singh for not performing psychometric testing to confirm her diagnosis of learning disabilities.
30. He said that none of these criticisms was now sustainable in the light of Dr Wain's reports, which corroborate Dr Singh's findings. For example, at paras. [47-56], the judge set out her reasons for rejecting Dr Singh's diagnoses of moderate to severe depression, which has been severe since November 2020 ([47]). The judge rejected this evidence as it was based upon the Appellant's self-report ([48]). in the light of the confirmation of the Appellant's learning disability by Dr Wain and her measured IQ of just 67, the district judge's imputed finding that the Appellant had exaggerated or deliberately falsely presented her depression is unsustainable: Dr Wain assessed the Appellant's responses and those of her family as authentic.
31. He said that Dr Wain's evidence also raised questions about the fairness of the proceedings against the Appellant in Poland absent any evidence of mitigating measures. He also said it raised the possibility the Appellant had been exploited by her co-defendant.

32. On behalf of the Respondent, Ms Beatty submitted that the appeal should be dismissed. She argued that the district judge's decision to order the extradition of the Appellant was not wrong, and therefore the order for extradition ought to be upheld.
33. It was originally envisaged that Dr Wain would attend the appeal for cross-examination but in the event she was unable to do so. The Respondent, very fairly, did not object to the appeal going ahead in her absence but said I should bear in mind – as I obviously do – that her evidence and opinions have not been tested. In her Skeleton Argument in particular, Ms Beatty thoroughly critiqued Dr Wain's evidence.
34. That said, Ms Beatty argued that I ought not to admit the evidence of Dr Wain because it could and should have been obtained prior to the extradition hearing, and so was available, and on the well-known *Fenyvesi* principles I ought not to admit it. The Appellant's representatives could have engaged Dr Wain, or another suitably qualified psychologist, to conduct the required psychometric testing and prepare a report on the issue at that stage. If necessary, the Appellant's representative could have sought an adjournment to the extradition hearing to allow for a second report to be completed.
35. In any event, Ms Beatty submitted that Dr Wain's reports are inadmissible because they are not decisive and she made detailed comparisons between what Dr Singh had said, and what Dr Wain said.

Discussion

Article 8

36. I admit the evidence of Dr Wain. I accept all of the points made by Ms Beatty about it having been available earlier, and it would have been better had it been obtained before the extradition hearing, but that said, I think that given it does confirm aspects of Dr Singh's evidence which the judge was sceptical about (for understandable reasons at that stage – a point I shall return to) I should admit it in the interests of justice. In general terms, the Court is assisted by having as complete a medical evidential picture as possible. I found Dr Wain's reports to be fair and balanced and she made points against the Appellant, as well as points for her (see eg at [7.03], which I quoted earlier). Although I bear in mind, as I have said, that Dr Wain was not cross-examined, I regard it as unlikely that her opinions would have been undermined to any significant degree had that taken place.
37. Although, in general, the question for an appeal court in an extradition case is whether the decision of the district judge was wrong (see eg, *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551, [19]-[25] and *Love v Government of the United States of America* [2018] 1 WLR 2889, [25]-[26]), in a case where fresh evidence not before the district judge is relied upon on an appeal, then the appellate court must make its own assessment based on all of the material: *Olga C v The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), [26], where Burnett LJ (as he then was) said:

‘26. In *Polish Judicial Authority v Celinski* [2015] EWHC 1274 (Admin); [2016] 1 WLR 551 this court indicated that a District Judge should identify the factors pulling each way in an article 8 case and state the conclusion. An appellate court would interfere only if the conclusion was wrong. The judge in this case had very little information before him about the appellant's circumstances because of the way in which the hearing had to proceed in her absence. As a result, it is common ground that the limited role of the appellate court identified in the *Celinski* case needs modification in this appeal. We must make our own assessment."

See also *Versluis v The Public Prosecutor's Office in Zwolle-Lelystad, The Netherlands*, [2019] EWHC 764 (Admin), [79].

38. The test under Article 8 was summarised by Lady Hale in *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338, [8]:

“8. We can, therefore, draw the following conclusions from *Norris*: (1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life. (2) There is no test of exceptionality in either context. (3) The question is always whether the interference with the private and family lives of the extradite and other members of his family is outweighed by the public interest in extradition; (4) There is a constant and weighty public interest in extradition that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no "safe havens" to which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe.

39. Making my own assessment, I have reached the clear conclusion that this is a case where extradition would cause exceptional hardship to the Appellant because of her learning disability and other psychiatric and psychological conditions, so that it would be a disproportionate interference with her rights under Article 8 of the ECHR.

40. I have reached this conclusion primarily on the basis of Dr Wain’s evidence, and her assessment of the particularly severe impact which imprisonment would have on the Appellant, which I set out at length earlier and which I accept and adopt, but do not repeat, save to emphasise the risk of exploitation and abuse of the Appellant were she to be imprisoned, and the risk that her mental health would deteriorate.
41. Because I am making my own assessment, I do not need to look for errors by the district judge. However, if I did need to do so, there is an obvious one in [54] of her judgment, where she said:

“Dr. Singh diagnosed Ms. Wyrębek with a learning disability, which she described as mild to moderate. This diagnosis, it seems, was primarily based on Ms. Wyrębek’s account, supported by her brother, that she struggled academically in school. Dr. Singh did not carry out an IQ test, or request psychometric tests from a psychologist. No school records or reports were provided to her. When the basis for her diagnosis was challenged by Ms. Beatty, Dr. Singh could only refer to the accounts of Ms. Wyrębek and her brother regarding her academic performance at school.”

42. The district judge was therefore obviously sceptical about Dr Singh’s diagnosis. However, now we have Dr Wain’s reports (which are based on appropriate testing, including the Wechsler Adult Intelligence Scale– 4th UK Edition), I consider they show that Dr Singh was correct and that the Appellant does indeed have a learning disability.
43. Ms Beatty argued that the report of Dr Wain dated 22 November 2022 confirms that the district judge’s concerns were well founded, as upon completion of the required psychometric tests, Dr Wain concluded that the Appellant suffers from a ‘borderline’ learning disability, ‘which is a significant reduction in severity when compared with Dr Singh’s diagnosis of a ‘mild to moderate’ learning disability’ (Skeleton Argument, [22]). With respect, I think this is hair-splitting. Dr Wain’s assessment was complex and detailed and although she used the term ‘borderline’, in other places, as I have quoted, she used terms like the Appellant’s score being in the ‘extremely low range’ and ‘specific difficulties’ that she has. She was also quite clear as to the vulnerable position the Appellant would be in were she to be imprisoned.
44. In his Skeleton Argument at [54] onwards Mr Hawkes identified what he said had been other errors by the district judge, however I do not think it is necessary for me to set these out.

Section 25

45. Given my conclusion on Article 8, I do not need to address s 25.

Conclusion

46. This appeal is allowed for these reasons and the order for extradition is quashed.