



Neutral Citation Number: [2024] EWHC 1756 (Admin)

Case No: AC-2023-LON-001796

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/07/2024

Before:

MR JUSTICE CHAMBERLAIN

Between:

KAMIL DRZEWIECKI

Appellant

- and -

POLISH JUDICIAL AUTHORITY

Respondent

George Hepburne Scott (instructed by Bark & Co Solicitors) for the Appellant
Gary Dolan (instructed by Crown Prosecution Service) for the Respondent

Hearing dates: 25 June 2024

Approved Judgment

This judgment was handed down remotely at 12.00pm on 8 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

- 1 Kamil Drzewiecki is sought by Poland pursuant to an arrest warrant issued on 14 June 2022 and certified by the National Crime Agency on 15 February 2023. The warrant seeks his surrender to serve sentences imposed for (1) an offence of robbery committed on 14 November 2011 and (2) an offence of theft committed between 23 August 2011 and 14 September 2011. The sentence for these offences was 1 year and 2 months' imprisonment. It was originally suspended, but then activated. The warrant also seeks his surrender to stand trial for (3) VAT fraud with a total value of PLN 527,414.84 between 1 April 2011 and 28 July 2011 and (4) fraud by false representation between the same dates and with the same total value. The fraud offences carry a maximum sentence of 5 years' imprisonment.
- 2 The appellant was arrested pursuant to the warrant on 15 February 2023 and remanded in custody. The extradition hearing took place at Westminster Magistrates' Court before District Judge Sarah-Jane Griffiths on 27 March 2023. In a decision dated 9 June 2023, she ordered the appellant's extradition. Permission to appeal was initially refused on the papers, but granted by Steyn J following a hearing on 21 March 2024 on one ground only: that extradition would not be compatible with the appellant's rights under Article 8 ECHR and so is barred by s. 21A of the Extradition Act 2003.
- 3 Since then, District Judge Law ordered the appellant's extradition under a separate accusation warrant, also alleging VAT fraud, said to have been committed in January 2011. There is an outstanding application for permission to appeal from that decision. On this appeal, I am not concerned with that warrant.

The decision of District Judge Griffiths

- 4 In her decision, District Judge Griffiths found that the appellant is a fugitive in relation to offences (1) and (2). He had been present when the sentenced to the suspended term of imprisonment. He acknowledged his obligations under the suspended sentence and was aware that that sentence would be activated if he failed to comply with them. These included an obligation to meet his probation officer. He initially did so, but then breached the terms on which the sentence had been suspended by leaving Poland and not notifying or providing his address to his probation officer.
- 5 Offence (1) was serious. It involved a group attack in which the victim was kicked and punched, causing injuries. The sentence was also not insignificant. At the time of the decision, there remained an outstanding term of 7 months and 2 days. Offences (3) and (4) related to a fraud which was not insignificant, were part of a course of conduct and carry a maximum sentence of 5 years' imprisonment.
- 6 The appellant had been vague about when he had come to the UK. On balance, the District Judge found that he did so at the end of 2014 or the beginning of 2015 and had a settled intention to remain.
- 7 At the time of the hearing in March 2023, the appellant had been living with his partner for around a year. The partner had two children who lived with her. The appellant had

lived on and off with them. He was living with them at the time of his arrest. There would be emotional distress to the partner and her children if he were extradited. However, the relationship was not of long standing. If the appellant were extradited, the children would remain with their mother as now. They had had to cope without him since his arrest. They would cope if he were extradited, though things may be difficult for them.

- 8 The appellant had worked in the United Kingdom on and off. He had been through a very difficult time when his brother was killed in tragic circumstances. He had been able to find work eventually and had worked since then, though not since his arrest in February 2023. Extradition would cause some financial hardship to the appellant and to his partner and her children.
- 9 The appellant had no convictions or cautions in the United Kingdom.
- 10 If extradited, the appellant may not be permitted to return to the United Kingdom.
- 11 There had been some delay, which weighed in the appellant's favour. However, in relation to offences (1) and (2), his fugitive status contributed to the delay. Further, the appellant had moved around the United Kingdom. Whilst he had not been hiding, he had been working cash in hand, was not registered for tax and was not on the tenancy agreement for the premises where he lived. The bills were not in his name. Therefore, to some extent at least, he had not been living openly in the United Kingdom.
- 12 As to Article 8, District Judge Griffiths directed herself by reference to the principal authorities: *Norris v USA* [2010] UKSC 9, [2010] 2 AC 487; *HH v Italy* [2012] UKHL 25, [2013] 1 AC 338; and *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551. She performed the balancing exercise required by the latter decision.
- 13 The factors favouring extradition included: the strong public interest in honouring extradition arrangements; the importance of according a proper degree of respect to judicial authorities with whom the United Kingdom has extradition arrangements; the seriousness of offences (1) and (2); the significant unserved sentence for those offences (at the time of her decision); the significance of the VAT fraud offences (carrying a maximum sentence of 5 years' imprisonment); and the fact that the appellant was a fugitive in relation to the conviction matters.
- 14 The factors tending against extradition were: the length of the appellant's residence in the UK (having come here in 2014 or at the start of 2015); the appellant's relationship with his partner and her children; that he had worked on and off in the United Kingdom and was working at the time of his arrest; that his extradition would cause financial hardship to the appellant, his partner and her children; that he had no convictions or cautions in the United Kingdom; that he may not be permitted to return to the United Kingdom if extradited to Poland; that he is not a fugitive in relation to the accusation matters; and that there had been some delay (although in relation to the conviction matters, his fugitive status had contributed to the delay). More generally, it was relevant that the appellant had, at least to an extent, not been living openly in the United Kingdom.

- 15 The District Judge found that the impact of extradition did not reach a level where it could be said that extradition would be incompatible with the appellant's Article 8 rights.

Submissions for the appellant

- 16 George Hepburne Scott for the appellant submitted that the position had fundamentally altered since the hearing before the District Judge, because the appellant had now served all the time outstanding on the conviction matters and a substantial period on qualifying remand. In total, he had served 1 year, 4 months and 10 days since his arrest pursuant to the warrant. The Article 8 balance must be struck afresh at the time of the appeal. As to that, there had been a delay of more than a decade since the date when the accusation matters were said to have been committed; the appellant was now in a relationship; he had committed no offences and received no cautions in the United Kingdom and was clearly a reformed person.

Submissions for the respondent

- 17 Gary Dolan for the respondent submitted that the fact that the appellant had now served a period in excess of that which he had left to serve on the two conviction matters did not affect the balance in any material way, given the seriousness of the two accusation matters. The decision to charge those matters was made in May 2018. There could be no serious complaint about the delay between the date of the offences and that charging decision, given the need to discover the offence, which involved the creation of fraudulent invoices. Although the appellant said he was in a relationship, no evidence from the partner was called at the extradition hearing. The weight to be given to the interference with his right to respect for family life was minimal. As to the suggestion that the appellant was a reformed character, it should be noted that, at the point of arrest, he had been stopped in a car with no licence and no insurance while smoking cannabis and in possession of a bladed article (a kitchen knife which he said was for work).

Decision

- 18 The fact that the appellant has now served time in custody which exceeds that outstanding on the conviction matters is plainly relevant to Article 8 balance. It is a development that post-dates the extradition hearing. This means that it falls to me to conduct the Article 8 balancing exercise afresh. However, in conducting that balancing exercise, many of the factors borne in mind by the District Judge seem to me to remain pertinent.
- 19 As to delay, the District Judge was right to note that the appellant was a fugitive in relation to the conviction matters. Although not technically a fugitive in relation to the accusation matters, the fact remains that he had already fled Poland following the conviction and so could not be easily found. I agree with the District Judge that this was highly relevant to the degree of the Polish judicial authority's culpability for the delay. So too was the fact that the appellant had been living in circumstances where his presence in the United Kingdom was not, or not fully, open. In those circumstances, the delay of four years between the charging decision in respect of the VAT offences and

the issue of the warrant does not attract significant culpability on the part of the requesting State.

- 20 As to seriousness, the VAT offences each attract a maximum sentence of 5 years imprisonment. Mr Hepburne Scott submitted that, applying domestic sentencing guidelines, they might attract a sentence of about 18 months imprisonment, which could be suspended. Some caution is required in using domestic sentencing practice as a guide to the sentence likely to be imposed by a requesting state, particularly in theft and fraud offences, where the sentence depends critically on the value. Different states may have very different conceptions of the appropriate sentence for an offence of the same value. In any event, even assuming that the sentence might be in the region of 18 months, there is a substantial public interest in the appellant facing trial for an offence which could lead to a sentence of that kind. No assumptions can be made about whether the Polish authorities will decide to suspend the sentence; that will be a matter for them, applying their own sentencing rules and principles.
- 21 As to the appellant's family life, I agree with Mr Dolan that the evidence before the District Judge was limited. Although the appellant had been living with his partner at the point of his arrest, that relationship had started no more than a year before the extradition hearing. It was described as "on and off". There was no evidence from the partner before the District Judge, or before me. In those circumstances, I proceed on the basis that the appellant's extradition will cause some degree of emotional and financial hardship to the appellant, his partner and her children, but I cannot attach substantial weight to that hardship in the absence of reliable evidence about the nature and quality of the relationship.
- 22 I accept that the absence of convictions and cautions in the United Kingdom is a factor which weighs against extradition, though the circumstances of the appellant's arrest must also be borne in mind. Those circumstances detract from the submission that the appellant is a "reformed character". I accept also that the appellant may find it difficult to re-enter the United Kingdom if extradited.
- 23 Overall, however, I consider that the public interest in extradition pursuant to this warrant continues to outweigh the factors against it. Offences (3) and (4) are, on their face, significant frauds for which a substantial sentence may be imposed. The weight to be attached to the Article 8 interests relied upon is, on the evidence, limited. The interference with those interests is proportionate to the legitimate aim of honouring the United Kingdom's international obligations.

Conclusion

- 24 For these reasons, the appeal is dismissed.