If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2024] EWHC 381 (Admin)

No. AC-2022-LON-003110

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 7 February 2024

Before:

MRS JUSTICE FARBEY DBE

B E T W E E N :

RANDOSLAW RAFAL SAWICKI — Appellant

\- and -

POLISH JUDICIAL AUTHORITY — Respondent

MR G HEPBURNE-SCOTT (instructed by Bark & Co) appeared on behalf of the Appellant.

MR J SWAIN (instructed by Crown Prosecution Service) appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE FARBEY:

1 The appellant is a Polish national born on 13 January 1983. He appeals against the decision of District Judge Sternberg to order his extradition to Poland following an extradition hearing at Westminster Magistrates' Court. Permission to appeal was granted at an oral hearing on a single ground, namely that the appellant's extradition is prohibited by s.21 of the Extradition Act 2003 ("the Act") because it would not be compatible with his right to respect for private and family life under Art.8 of the European Convention on Human Rights ("the Convention").

2 The arrest warrant is a "conviction" warrant seeking the appellant's surrender for the purpose of serving a sentence of eighteen months' imprisonment (all of which remains to be served). The sentence was imposed for an offence that took place as long ago as 27 October 2006 when the appellant (then aged 23) was found in Gdansk in possession of 5.85 grams of cannabis resin and twenty-seven tablets containing MDMA. On 28 October 2006, the appellant pleaded guilty to one offence of "counteracting drug addiction" contrary to Polish criminal law. On 24 May 2007, he was sentenced to eighteen months' imprisonment suspended for a period of four years with an obligation to undertake addiction treatment and supervision by a probation officer and to pay a fine. The sentence was imposed in his absence because his lawyer had agreed to it in advance.

3 In November 2007, the court probation officer sought the appellant for the purpose of supervision under the terms of the suspended sentence but the appellant evaded supervision. He came to the United Kingdom in January 2008 where he has remained. As a result, on 19 March 2009, the suspended sentence was activated. That decision became final on 11 June 2009. The arrest warrant seeking the appellant's return was issued on 23 May 2022 and certified by the National Crime Agency on 9 June 2022.

4 The extradition hearing before the District Judge took place on 7 October 2022. The respondent relied on the arrest warrant as supplemented by further information. The appellant gave oral evidence which was carefully recorded by the District Judge in his written judgment. For present purposes, it is sufficient to set out the District Judge's recitation of those parts of the appellant's evidence that engage his private and family life.

5 As regards the appellant's upbringing, the District Judge noted:

> "He had a turbulent childhood; his parents divorced when he was 5 and [he relocated] to South Africa with his mother when he was 7. He lived there for seven to eight years. It was a difficult time in his life. His mother was depressed and made a number of suicide attempts. He became involved in drugs and alcohol... He returned to Poland at the age of 15, initially for a holiday, but then returned to live with his father for two years. He fell out with his father and became homeless. He did various temporary jobs, found accommodation, and then joined the Polish military which enabled him to, in his words, 'get back on track' and set goals for the future."

6 It may be seen that the appellant has in the past been a drug user, homeless, and cut off from his parents. However, as the District Judge recorded, he has turned his life around since then:

> "He re-established contact with his father who moved to the United Kingdom. In January 2008, he relocated to the UK, found

> employment, and applied for a national insurance number. Since moving to the UK, he has been working continuously. He has worked in various jobs in building and construction. He has now set up his own limited company which carries out building services."

The appellant supplied documentary evidence of his employment history which demonstrates that he established his own building services company in November 2021.

7 An additional and important element of his changed life is that the appellant has a son born in the United Kingdom. As the District Judge's judgment records:

> "He formed a short-lived relationship as a result of which he has a son ... who is now 9 years old. He is actively involved in all of his life, often spending the weekends with him, and making payments to support him financially. He wishes to continue to play an active role in all of his life. In his view, [his son's] birth has changed his perspective on things and he does not wish to jeopardise all of the safety or happiness."

8 The appellant's former partner, who is the mother of his son, is Ivita Kalnina. She did not provide the District Judge with a witness statement and was not called to give evidence. The appellant relied on witness statements from his stepbrother Dawid Kandzioraa and his father Arkadiusz Marek Sawicki who both live in the United Kingdom. Their statements confirm the appellant's evidence about his ties to the United Kingdom through his family and work.

9 In his detailed written judgment, the District Judge found that the appellant is a fugitive from justice. He accepted that the appellant is a man of good character in the United Kingdom save for an old caution for affray. He has held a number of different jobs in the United Kingdom. He has put drugs and criminality behind him. He does not live with his former partner or their son. He sees the son at weekends and provides financial support to him and to his former partner.

10 The District Judge found that, in the event of the appellant's surrender to Poland, it is highly likely that his son and former partner would remain in the United Kingdom. They would lose the appellant's financial and emotional support. The son would suffer hardship. His former partner might have to care for their son at the weekend or find alternative sources of childcare.

11 The District Judge dealt with the question of delay between the activation of the appellant's sentence and the issue of the arrest warrant. He held:

> "Whilst it took some time for the Polish authorities to make a decision to activate [the appellant's sentence] and further time to issue a warrant, **I am unable to find that that delay was culpable. I accept the explanation for the delay set out in the further information** of 31 August 2022 ... which essentially boils down to the fact that the Polish authorities had no information where the [appellant] was after his sentence was activated on 19 March 2009. They knew that he had gone abroad but did not know whether he was in an EU or a non-EU country. They only became aware that he was in the UK on 26 November 2021 and they took steps to issue the current warrant relatively promptly after that" (emphasis added).

12 The District Judge went on to consider the various bars to extradition on which the appellant sought to rely. In relation to s.14 of the Act, he concluded that the appellant's extradition would be neither oppressive nor unjust and so was not barred by the passage of time. He held that the requirements of s.20 of the Act were met as the appellant was a fugitive from justice.

13 The District Judge then turned to Art.8 of the Convention. The beginning of this section of his judgment states:

> "I am very familiar with the leading authorities on this issue, including *Norris v Government of United States of America* [2010] UKSC 9, *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25, the balance sheet approach required following *Polish Judicial Authorities v Celinski & Ors* [2015] EWHC 1274 (Admin), [2016] WLR 551."

14 He proceeded to carry out the now very familiar *Celinski* balancing exercise finding that the following factors weighed in favour of extradition:

> "(1) The constant and weighty public interest in extradition that those accused of crimes should be brought to trial and that the UK should honour its international obligations. The public interest in ensuring that extradition arrangements are honoured is very high;
>
> (2) Where, as here, the extradition of a fugitive is sought, there is a need for very strong counterbalancing factors before extradition could be disproportionate (*per Celinski* at [39] and *Gorczewski v Court of Swidnica, Poland* [2019] EWHC 279 (Admin). Although there is no test of exceptionality, as Baroness Hale explained in *HH* at [8(7)], it is likely that the public interest in extradition will outweigh the Art.8 rights unless the consequences of the interference with family life will be exceptionally severe;
>
> (3) The offences for which the requested person is sought to serve a sentence are not trivial. Applying the domestic sentencing guidelines, custody is an available disposal for a person convicted of possession of a quantity of class A drugs which includes MDMA;
>
> (4) Although there has been delay in pursuing the matters contained in the warrant in Poland, an explanation for the delay is provided by the further information of 31 August 2022;
>
> (5) The Polish court gave the requested person an opportunity to comply with conditions of suspension which he ignored and did not complete, resulting in the activation of the sentence."

15 The District Judge held that the key factors against extradition were as follows:

> "(1) The underlying conduct is not particularly serious;
>
> (2) There has been a substantial delay in this case following conviction and sentence;

(3) [The appellant] was at a vulnerable stage of his life at the time of these offences and gave evidence that he simply signed the documents presented to him by the police in order to obtain his release rather than fully understanding the sentence to which he was agreeing;

(4) Since the offending, he has relocated to the UK, has worked and paid taxes, has generally stayed out of trouble, and has become a father. He has left his criminality behind him in the past and has established a life as a positive contributing member of society;

(5) Extradition will have an impact on [his son] who has somewhat infrequent contact with his father at the moment. I accept that he relies on him for emotional and practical support and although I do not accept [that] ... extradition will be devastating for [the appellant's son], it is likely that he will suffer as a result of his return to Poland;

(6) The requested person may face difficulties in returning to the UK due to having served a sentence in Poland."

16 The District Judge did not regard any of the factors against extradition as weighty. He did not regard them as so strong as to tip the balance in favour of discharge. The extradition offence was not trivial as reflected by the imposition of an eighteen month sentence. The appellant is a fugitive and faces serving that activated sentence as a consequence of his own actions through no culpable delay of the Polish authorities. As the appellant is a fugitive, there must be very strong counterbalancing factors to render extradition disproportionate. No such factors existed.

17 As regards family life, the District Judge held:

> "it is ... correct that [the appellant's] extradition will cause hardship and distress to his son. As I have found, they will lose his financial and emotional support. I do not underestimate the impact but, in my judgment, that does not render the interference in his and his family's Art.8 rights disproportionate in this case. It is correct that they were not living together as a family unit before his arrest and according to [the appellant], his support was limited to putting money in [his son's] account and looking after him no more frequently than every other weekend which will now require Ms Kalnina to make alternative arrangements...
>
> [The appellant] has relocated to the UK and has enjoyed a relatively brief relationship with Ms Kalnina and family life with his son. Whilst his family life is a relevant factor in his favour in the balancing exercise, I do not find that it is sufficient to outweigh the other powerful factors weighing in favour of his extradition to Poland."

18 The District Judge found that any potential future difficulty that the appellant may encounter under immigration law in re-entering the United Kingdom to see his son after serving his sentence was not decisive in the overall balance. For all these reasons, the District Judge reached the conclusion that the appellant's extradition amounted to a proportionate interference with his Art.8 rights.

LEGAL FRAMEWORK

19 The legal framework applicable to Art.8 claims in extradition proceedings is well-trodden ground. No new legal points arise for my determination. Although I was referred to a number of authorities, the principles relevant to the present appeal may be shortly stated:

(i) In assessing the proportionality of extradition, the constant and weighty public interest in extradition will outweigh the Art.8 rights of the family unless the consequences of the interference with family life will be exceptionally severe (*HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25, [2013] 1 AC 338 at [8]);

(ii) In any case in which a child's rights are involved, the child's best interests are a primary consideration but they may nevertheless be outweighed by countervailing considerations (*HH* at [15]);

(iii) Delay since the extradition crime was committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life (*HH* at [8]);

(iv) If a person is a fugitive, it does not lie in his mouth to suggest that the requesting State should share responsibility for the ensuing delay in bringing him to justice because of some subsequent supposed fault, even if the fault is some alleged dilatoriness on the part of the requesting state or inaction through pressure of work and limited resources. In such circumstances, the chain of causation with regard to the effects of the accused's own conduct is not broken *(Gomes v Government of Trinidad and Tobago* [2009] UKHL 21, [2009] 1 WLR 1038 at [26]);

(v) A district judge is entitled to take the view that the weight to be attached to delay in assessing the proportionality of extraditing a fugitive is very much reduced as any private and family life established in the United Kingdom will have come about as a result of the requested person's flight from justice (*Gomez* at [27]; *Polish Judicial Authorities v Celinski & Ors* [2015] EWHC 1274 (Admin), [2016] WLR 551 at [48]);

(vi) The very high practical hurdle that Art.8 presents in an extradition case is apparent both from *HH* and *Norris v Government of the United States of America (No. 2)* [2010] UKSC 9, [2010] 2 AC 487. The applicable principles were drawn together in *Celinski*. There will rarely be any need for reference to other authority on the point (*Kortas v Regional Court in Bydgoszcz (Poland)* [2017] EWHC 1356 (Admin) at [37]);

(vii) The assessment of proportionality under Art.8 is a fact-specific exercise. It follows that this court, on an appeal, would derive little assistance from the party's citation of other decisions of the Administrative Court that also turn on their facts and that do not lay down new principles (*Celinski* at [14);

(viii) I would add that any authorities cited to this court should be specifically selected for their relevance to the particular issues that are raised by an individual appeal. The parties may assume that the judge hearing an appeal will have a copy of the judgments named in the "Frequently cited authorities" list published on the Administrative Court website and need not supply the court with a further copy. It is sufficient for any such judgment to be cited together with the relevant paragraph numbers (Cr PD 12.6.16);

(ix) The single question on an appeal is whether or not the District Judge made the wrong decision. Findings of fact, especially if evidence has been heard, must ordinarily be respected. In answering the question whether the District Judge, in the light of those

findings of fact, was wrong to decide that extradition was or was not proportionate, the focus must be on the outcome; that is, on the decision itself (*Celinski* at [24]);

(x) A decision is not wrong simply because the Administrative Court, which exercises a reviewing function on an appeal, would have taken a different view (*Celinski* at [20);

(xi) The reasoning of a District Judge in balancing the factors for and against extradition may be succinct provided that the decision is clear and adequate (*Celinski* at [15]);

(xii) Although the District Judge's reasons for the proportionality decision must be considered with care, errors and emissions do not, of themselves, necessarily show that the decision on proportionality itself was wrong (*Celinski* at [24]).

20 These various principles mean that in order to succeed on an appeal, an appellant must do more than reiterate to this court the factors said to weigh against extradition that have already been addressed and weighed by a District Judge adopting a *Celinski* balance sheet approach. A mere recitation of points made to but rejected by the District Judge will fail to recognise the appellate function of the Administrative Court (*Love v The Government of the United States of America & Anor* [2018] EWHC 172 (Admin), [2018] 1 WLR 2889 at [25]). Grounds of appeal that upon analysis amount merely to a recitation of factors that weight against extradition, in the sense that they do not engage in any substantial way with how and why the District Judge's decision was wrong, may well fall at the first hurdle by the refusal of permission to appeal.

APPLICATION TO RELY ON FRESH EVIDENCE

21 On the appellant's behalf, Mr George Hepburne-Scott applies to rely on evidence that was not before the District Judge in the form of an addendum proof of evidence from the appellant dated 25 April 2023, and a witness statement from Ms Kalnina dated 21 April 2023. He submits that the fresh evidence demonstrates the continuing strong emotional connection between the appellant and his son. In an appeal that concerns the appellant's human rights, it is fair and just for the court to admit evidence that relates to the updated position as at the date of the appeal.

22 On behalf of the respondent, Mr Jonathan Swain resists the application on the grounds that most of the appellant's addendum proof does not contain new evidence but merely supplements the sort of evidence that the appellant gave to the District Judge. There is some fresh evidence relating to the appellant's mental health but the addendum proof does not contain anything that would be determinative. The witness statement from Ms Kalnina could have been produced to the District Judge and, in Mr Swain's submission, adds nothing meaningful to the appeal.

23 The appellant's addendum proof is brief and states in general terms that his mental health has declined since the District Judge's order because he cannot cope with the prospect of extradition. He states that his GP has prescribed sleeping pills but has produced no medical evidence of any significant decline in his mental health. The remainder of the addendum proof raises matters that could have been - and were - raised before the District Judge. I agree with Mr Swain that the addendum proof contains little, if anything, that could advance the appellant's appeal. There are no proper grounds for its admission.

24 Ms Kalnina says in her witness statement that the appellant wanted to protect her and their son from the upsetting extradition proceedings. If she had known about the extradition hearing before the District Judge, she would have provided a statement at that earlier stage. Her explanation for the lateness of her statement is not supported by anything in the

appellant's addendum proof and strikes me as reflecting a dilatory approach by the appellant to his case. It represents an attempt to introduce on appeal evidence which could and should have been relied on below, nor is it properly fresh evidence because it reiterates matters that were before the District Judge, such as the bond between the appellant and his son. There are no proper grounds for its admission. For these reasons, the application to rely on fresh evidence is refused.

THE APPEAL

The Parties' Submissions

25 In his written and oral submissions, Mr Hepburne-Scott submits that the District Judge was wrong to conclude that the factors weighing in favour of extradition should prevail. There had been a delay of sixteen years since the offence was committed. The delay had been unreasonable. The appellant had been in his twenties when he offended. He was at that time addicted to drugs, and homeless. He has since then completely turned his life around. The breach of the requirements of his suspended sentence related to the fact that he had not kept in touch with the probation service. The breach was minor and the District Judge should have treated it as a factor weighing against extradition. The extradition was for possession rather than supply of drugs and so was not "hugely serious offending" (to quote Mr Hepburne-Scott's skeleton argument). Since being in the United Kingdom, the appellant has worked hard. He has forged close ties to his father, stepbrother, and stepsister in the United Kingdom. The District Judge failed to treat the appellant's son's best interests as a primary consideration and had failed to give proper weight to the devastating effects on of extradition on the son.

26 In his written and oral submissions, Mr Swain submits that the weight to be given to the various factors on which the appellant relies was a matter for the District Judge. The sole question is whether the ultimate decision of the District Judge was wrong. The District Judge's analysis of the competing factors was correct or at least not so evidently wrong that this court should interfere. The District Judge had applied the correct legal framework. Notwithstanding that he had not expressly referred to the son's best interests as being the primary consideration, it was plain from a fair reading of his judgment as a whole that he had properly and fully considered the impact of extradition on the son for whom the appellant was in any event not the primary carer.

Analysis and Conclusions

27 In his consideration of the passage of time under s.14 of the Act, the District Judge found both that the appellant is a fugitive from justice and that the delay in issuing the arrest warrant was not culpable. In his submissions, Mr Hepburne-Scott breaks down the delay into various periods which he maintains were culpable because they show nothing but dilatoriness on the part of the Polish authorities. The appellant does not have permission to appeal against the District Judge's findings on the passage of time. In the absence of permission, he cannot seek to challenge them through the mechanism of Art.8 because such a challenge would unduly dilute or circumvent s.14 (*Kortas* at [36]). In any event, the District Judge's findings in relation to s.14 are rooted in the evidence before him and reveal no error of approach.

28 In the absence of permission to appeal, this court is bound to proceed on the basis that the appellant is a fugitive and that (contrary to Mr Hepburn-Scott's submissions) the respondent's delay was not culpable. In these circumstances, as the District Judge expressly recognised, there is a need for very strong counterbalancing factors before extradition could be disproportionate.

29 I appreciate that since the extradition offence, the appellant has become a responsible member of society. He is no longer a drug user. He has his own business. He has a loving, caring relationship with his son. He has repaired his relationship with his father who is also in the United Kingdom. The extradition offence took place a very long time ago. All these factors, however, were acknowledged and weighed by the District Judge.

30 The District Judge weighed the nature and seriousness of the appellant's offending. He did not refer in terms to the son's best interests as being a primary consideration but that omission does not demonstrate that the decision on proportionality is wrong. It is clear from reading his judgment as a whole that the District Judge considered the son's situation in detail. On a fair reading, the inevitable conclusion is that the District Judge regarded the son's interests as outweighed by countervailing factors. He was entitled to reach that conclusion. I have been provided with no adequate grounds to interfere

31 Mr Hepburne Scott has cited other cases on other facts that he says are comparable. I do not find this approach useful. The District Judge cited and applied the trilogy of authorities formed by *Norris*, *HH*, and *Celinski*. As *Kortas* (above) makes clear, he was not required to embark on some greater academic analysis.

32 In my judgment, this is an appeal where the appellant has not engaged in any concrete way with the question of how and why the District Judge's assessment of the various competing factors was wrong. As Mr Swain emphasises, the appellant has failed to particularise any factors that would render the interference with private or family life exceptionally severe. The District Judge's focused and cogent *Celinski* balancing exercise cannot be faulted.

33 Accordingly, this appeal is dismissed. I am grateful to both counsel for their helpful submissions.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

This transcript has been approved by the Judge.