Neutral Citation Number: [2021] EWHC 3308 (Admin)

Case No: CO/381/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

6th December 2021

Before :

MR JUSTICE FORDHAM

- -

Between :

ROBERT KRZYSZTOF MEDRZECKI	**Appellant**
- and -	
POLISH JUDICIAL AUTHORITY	**Respondent**

- -
- -

Catherine Brown (instructed by Taylor Rose MW Solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

Hearing date: 6/12/21

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: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. This is a renewed application for permission to appeal in an extradition case. The mode of hearing was by MS Teams. The case was originally to be heard tomorrow as an in-person hearing at the Royal Courts of Justice. The Respondent had confirmed that it would not be attending. I acceded to a request from the Appellant's representatives to move the case forward one day, to avoid the Appellant's counsel having to return the case a short time before this renewal hearing, in light of the listing tomorrow of a hearing in the Divisional Court. That enabled the Appellant to retain his Counsel of choice, who had prepared the papers in the case. A remote hearing avoided having to make arrangements at short notice for a hearing in open court, on a day when I would not have had a list of any other cases and so practical arrangements would be needed including in relation to staffing the Court. The Appellant's team were satisfied, as was I, that this mode of hearing involved no risk of prejudice to the Appellant's interests. The Respondent was known not to be attending and moreover did not object when asked. The open justice principle was secured. The case and its start time of 2pm were published in the cause list for today, as released by the Court on Friday afternoon. The cause list was then amended first thing this morning to add the usual note making clear that any member of the press or public could seek permission to observe this hearing by emailing my clerk, a permission which I have never yet refused. I am satisfied that in all the circumstances the mode of hearing was appropriate and justified.

2. The Appellant is aged 53 and is wanted for extradition to Poland. That is in conjunction with a conviction European Arrest Warrant (EAW) issued on 27 March 2018 and certified on 5 April 2018. The EAW relates to 17 months imprisonment remaining to be served out of a seven-year prison sentence. That sentence had been imposed for index offending constituted by the following: six violent assaults and three threats to kill in 2005 aged 36, together with a knifepoint robbery and a further threat to kill in 2007 aged 38. The Appellant also had a previous background of other serious offending in Poland, including five robberies between 1985 and 1993 for which he had received substantial custodial sentences. The Appellant came to the United Kingdom in July 2011, the month when he was due to return to prison to complete the seven-year prison sentence to which the EAW relates. He came here, having been released from prison on 'special leave' to repair a roof at the family home. In the UK, he was arrested on the EAW on 10 May 2018 and released on conditional bail. The Appellant and his partner of five years attended his oral extradition hearing on 29 June 2018 at which they both gave evidence to DJ Jabbitt ("the Judge"). The case was listed for judgment on 10 August 2018 but the Appellant failed to attend and breached his bail conditions. Following the Appellant's eventual re-arrest on 26 January 2021, the Judge's judgment was duly handed down on 27 January 2021. Having filed an application to this Court for permission to appeal, the Appellant has remained on remand. Putative fresh evidence from the Appellant's partner, which I have considered 'de bene esse' for the purposes of permission to appeal, explains that she had moved in December 2019 to assisted accommodation, provided for her by the local authority or in any event without cost to her. I will return to the significance of that in the context of her mobility conditions.

3. Article 3 ECHR and the familiar Wozniak ground of appeal were raised and were stayed by Eady J, pending their resolution in test cases. That resolution has subsequently taken

place, and those grounds have now been abandoned, as was confirmed in a helpful updating note dated 3 December 2021 filed by Ms Brown.

4. Eady J refused permission to appeal on Article 8 ECHR. That is the issue pursued today. Ms Brown submits that this case crosses the modest threshold of reasonable arguability, as to whether extradition of the Appellant would be a disproportionate interference with the Article 8 rights of himself, or of his partner, or of them both. She focuses on the up to date position, and the change in circumstances since the judge considered the position at the hearing in June 2018 and in the judgment that had been prepared for hand down in August 2018. Ms Brown accepts that the index offending is "serious", but emphasises that the vast majority of the seven-year sentence has been served, including by the further 10 months period of qualifying remand since the Appellant's rearrest in January 2021. That means that there is around seven months to serve and that this Court is presented with changed circumstances justifying re-evaluating the Article 8 balancing exercise which was performed by the Judge. Ms Brown emphasises that the index criminal conduct, which was 11 years old at the time of the hearing before the Judge, is now 14 years ago and that the passage of time tends to reduce the public interest in support of extradition, as well as tending to strengthen the private and family life ties with the UK, the impact on which ties weigh in the balance against extradition. Ms Brown emphasises the rehabilitation of the Appellant who has one conviction in this country of criminal damage in 2012 and has changed his life. She emphasises the partner's health conditions including the fresh and updating evidence. As I have explained, that evidence describes the move into assisted accommodation provided by reason of public authority support. Ms Brown emphasises that that support and assistance does not currently extend to care assistance during the day, and that the absence of the Appellant from the partner's life including currently while he is detained is significant. The updating evidence describes the partner awaiting a hip replacement and knee surgery, a significant current lack of mobility, a constant and severe pain and the limited support from busy family members. Ms Brown relies on the Appellant's explanation for his failure to surrender and his bail breach, as having been his concern for his partner if he were extradited and so were not there to support her. She emphasises the present evidence of him calling her twice a day and the fear as to the difficulty which would arise so far as contact is concerned were he extradited. Ms Brown also points to the uncertainty as to whether the Appellant would be able to return to the UK.

5. I have looked at the position as at today and taken the putative fresh evidence into account, as I have explained. But I am not going to grant permission to appeal in this case. Even on the basis of treating that fresh and updating evidence as being adduced before the Court, and even on the most favourable basis of positing this court revisiting the Article 8 balancing exercise and conducting that balancing exercise afresh, the problem – in my judgment – is that there is no realistic prospect of success so far as Article 8 incompatibility is concerned. In relation to the question of qualifying remand I have focused on the position today, it being inappropriate to "project forward" to a substantive hearing for which the grant of permission would be the bootstraps for subsequent reliance on ongoing qualifying remand. That is in circumstances where the resolution of the Wozniak and Article 3 points have removed the 'independent durable basis' on which the Appellant would otherwise in any event be entitled to remain in the United Kingdom. Those are matters of approach which I discussed in my judgment in Molik [2020] EWHC 2836 (Admin). Ms Brown has not invited me to take any different approach and, in my judgment, she was right not to extend such an invitation. I therefore

agree with Eady J. In my judgment, it is not reasonably arguable that extradition would be a disproportionate interference with the Article 8 rights of the Appellant or of his partner. The fresh evidence which updates the court is not capable of being decisive and I will formally refuse permission to rely on it. This is a case in which the public interest considerations in favour of extradition strongly and decisively outweigh those capable of weighing against it, and the contrary is not – in my judgment - reasonably arguable.

6. The Judge conducted the appropriate balance sheet exercise and had in mind all of the factors which Ms Brown emphasises, so far as they arose on the evidence at the time of the hearing in June 2018. The Judge referred to the delay since the crimes were committed as capable of having the effect of diminishing the weight to be attached to the public interest and increasing the impact on private and family life. The Judge clearly had regard to the circumstances that had arisen during the passage of time: the Appellant having established himself in the United Kingdom since 2011; his employment here; his only having committed one minor offence here in 2012; his relationship with his partner; and the impact on them both of extradition. The Judge referred to the Appellant as having served the majority of his 7-year sentence. The Judge also referred in detail to the evidence relating to the partner's health, describing her as having substantial health problems and relying on the Appellant.

7. On all of these features I have had regard to the updated picture, in order to see whether this appeal has any realistic prospect of success. The points made about the passage of time since the index offending, including the further period of time since the hearing before the Judge, need to be seen in the context of the Appellant having failed to attend for judgment in August 2018 and having breached his bail. He was only re-arrested 18 months later in January 2021. Moreover, the Judge unassailably found the Appellant to have left Poland as a fugitive, and indeed a "fugitive of the highest order". That was because he had been granted the 'special leave' from his prison sentence and, knowing that he was due to return to prison on 11 July 2011, he chose to come to the United Kingdom and put himself beyond the reach of the authorities. There are very strong public interest factors in support of his extradition to face his responsibilities in Poland. The Judge was plainly right to have in mind that the established private and family life in this case has been built up against that backcloth.

8. The Judge was also plainly right to have regard to the fact that neither the Appellant nor her partner had at that stage evidenced any contact with the local authority for an assessment of eligibility for support in light of the partner's mobility problems. The updated position, before the Court today, makes clear that subsequently contact of that kind was made and support has indeed been provided so far as the assisted accommodation is concerned. It is true that, on the evidence, the assistance currently accessed by the partner does not appear to include care assistance during the day, but the same logic as was recognised by the Judge in relation to accommodation and mobility applies to that concern. Should this stage arise at which, by reference to the appropriate statutory assessment of needs, the partner requires local authority assistance of that enhanced kind, there is no reason to suppose that she would not be able equally to invoke it and every reason to suppose that she could. The inescapable position is that the Appellant has been detained since the end of January 2021 and the partner has for 10 months been living without his support, at least his direct support, including being able to "ask my children for help", albeit that "they have their own lives and are very

busy and so are not always available to help me" and "do not help me unless I ask". The impact of extradition on the partner, and on the Appellant, are in my judgment quite insufficient – including alongside the other features of the case capable of weighing against extradition – of rendering disproportionate the Appellant's extradition.

9. I have had regard, alongside all the other features, to the fact that the Appellant is drawing closer to the line which would be crossed which would exhaust the period left to be served. But he is still seven months away from that position. The authorities that address that as a factor are discussed in Molik. Ms Brown cited, as a 'working illustration' case, the case of Balodis-Klocko v Latvia [2014] EWHC 2661 (Admin). She made clear that she was citing that authority, not by way of any suggestion that it was 'on all fours' with the present case. Rather, she cited it for the limited purpose of illustrating this proposition: that, even in the context of serious index offending , and even in the context of a long sentence which was imposed by the requesting state, the question of time left to be served is a legitimate factor which can properly be taken into account in the Article 8 balance. I respect that citation of that 'working illustration' authority. And I accept – not just as reasonably arguable but as clearly correct – the proposition which Ms Brown draws from it. However, even on the basis of accepting all of that, the scale of time served and time left to be served in the present case, and their interaction with the various features which way in favour of and against extradition, are in my judgment quite incapable of supporting the conclusion that extradition would be incompatible with Article 8. For the purposes of today's hearing, that is not, in my judgment, a reasonably arguable position.

10. Given that the case of Balodis-Klocko has been cited, I will say a little more about its particular features. It was a case in which this Court concluded that extradition would be disproportionate. The requested person had served more than eight years of a 10 year sentence for robbery in Latvia, and he had then been released by the Latvian authorities on conditional release, subsequently breaching the 'contact' conditions. He had then served a further 17 months of qualifying remand in the UK, leaving around six months to serve. Extradition was disproportionate in Article 8 ECHR terms in what Ouseley J described as the quite unusual circumstances of the case. These included the impact on a 13-year-old son with cystic fibrosis. But, most significantly perhaps, they also included evidence of a discontinuity in medical treatment for HIV and hepatitis C, the likely outcome of which would be an advancing HIV disease, probably the development of HIV-associated illness or AIDS, worsening hepatitis C and a considerable risk of non-HIV-related illness. That evidence showed a serious risk to health from the interruption in treatment. The time to serve point was a feature of the case which served as a factor in the balance alongside those other matters. In my judgment there is no realistic prospect of this court, on the particular facts of the present case, similarly concluding that extradition is incompatible with article 8 ECHR.

11. Permission to appeal, and permission to adduce the fresh evidence, are refused. I will also record in my Order the abandonment of the Article 3 ECHR and Wozniak grounds and will formally discharge the stays granted by Eady J.

6.12.21