IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

[2018] EWHC 125 (Admin)

CO/864/2016

Royal Courts of Justice

Thursday, 18th January 2018

Before:

SIR STEPHEN SILBER

(Sitting as a Judge of the High Court)

B E T W E E N :

T — Appellant

- and -

BULGARIAN JUDICIAL AUTHORITY — Respondent

ANONYMISATION APPLIES

J U D G M E N T

A P P E A R A N C E S

MR B SEIFERT (instructed by Edwins Solicitors) appeared on behalf of the Appellant.

MR N HEARN (instructed by CPS) appeared on behalf of the Respondent.

SIR STEPHEN SILBER:

Introduction

1 T appeals against an order of District Judge Rose made on 11th February 2016 to order his extradition to Bulgaria pursuant to a conviction European Arrest Warrant issued by the judge of a regional court in Bulgaria on 4th June 2014. It was certified in this country by the National Crime Agency on 5th August 2015.

2 The appellant's extradition was sought in relation to two sets of offences, in respect of which he is required to serve a total sentence of three years and six months' imprisonment. In respect of case number 791/2002, this relates to offences from 2001 of possessing several quantities of drugs equivalent to Class A and Class B and the supply of Class B drugs in that jurisdiction. On 21st April 2004 he was sentenced to a suspended sentence which was subsequently activated. In respect of case 3277/2006, this dates from 28th August 2004 and relates to the possession of marijuana, he was convicted on 16th April 2015.

3 The appellant is pursuing his appeal in front of me on Art.8 grounds for which permission was granted by Singh J, as he then was, on 16th August 2016. The appellant has been appealing by relying on Art.3 grounds relating to Bulgarian prison conditions, but it has been agreed that if this appellant fails upon the Art.8 ground, the Art.3 will have to be dealt with on a subsequent occasion. Accordingly, I will say no more about it.

Application to Adduce Fresh Evidence

4 In respect of the appellant's Art.8 grounds, the basis of the case put forward by his counsel, Mr Benjamin Seifert, is the clinical psychological evidence relating to the medical condition of the appellant's son, X, who was born on 19th March 2014 and who is therefore nearly four years of age. More specifically, reliance is placed upon what is described by the clinical psychologist as "the extremely serious and likely devastating consequences for X of the appellant's extradition on him." This evidence was adduced after the hearing before District Judge Rose, because, as I will explain, the medical problems confronting X were not known by then.

5 It is accepted by Mr Nicholas Hearn, counsel for the judicial authority, that the appellant should be entitled to rely upon this clinical psychological evidence which was not available when the matter was before the District Judge. Indeed, the judicial authority has adduced its own clinical psychological evidence which strongly supports that of the appellant's expert.

Both parties agree that the evidence of both parties should be adduced. I duly give permission for the parties to rely upon their medical evidence; namely, the appellant's expert report from Dr Tom Grange of 28th June 2016 and the judicial authority's report from their own expert, Ms Emma Citron.

The Background

6 The appellant, who is now 40 years of age, came to the United Kingdom on 21st April 2008 on his own account to enable him to stop using drugs. It is accepted that he is a fugitive. Indeed, he left Bulgaria without notifying the authorities. It was put to him in front of the District Judge that he knew he should not have left anyway, to which his response was "yes."

7 Since he has been in this country, the appellant has established a private and family life. He is in employment with his brother. He met his wife, who is also a Bulgarian, in the United Kingdom. They married in 2009 and X is their son. Together they have purchased a home with the appellant being the main breadwinner. His wife works part-time as a waitress, but she could not maintain all the outgoings if the appellant were extradited. She is a qualified nurse or midwife, but in front of the District Judge she explained that she could not extend her working hours as she has no childcare. Her mother sometimes helps her and the appellant also has some family here. The District Judge held that there can be no doubt that separation of the appellant from his family would have significant financial consequences for all concerned. There is a possibility or prospect they might lose their home.

8 Since the appellant has been in this country he has changed his life completely. He was a drug-user in Bulgaria. He gave evidence that he stopped using drugs as soon as he came to the United Kingdom and has not used drugs since then. As I have explained, he has been working since his arrival and has committed no offences.

9 There was no evidence before the District Judge relating to the condition of X. It was not until 18th April 2016, which was two months after the hearing in front of the District Judge, that he was assessed by a speech and language therapist, Ms Sarah Colebourne. She indicated it became apparent that X might have a developmental problem. She recommended that X be urgently assessed by a pediatrician and seen by a specialist multi-disciplinary team. On 2nd June 2017, X was assessed by a specialist registrar in community pediatrics, Dr Alabede, who observed that X was exhibiting traits that were seen

in children on the autistic spectrum. A plan was put in place and X was referred to the Child Assessment and Development Unit for a formal assessment.

10 A time came when X was seen by Dr Tom Grange, a specialist psychologist with experience of children and families. He conducted an assessment of the family on 20th June and produced a report dated 28th June. He concluded that the effects on X and his father's extradition would be potentially devastating. In his report he said:

> "I am strongly of the opinion the impact upon [X] in the event of his father's extradition would be devastating in the short, medium and long term."

11 He points out that for a child who has these problems any extended separation of a parent from their child would have a moderate impact upon the child, not least it is very likely that the impact would be severe, especially if the child has a pre-existing or complicated actus. It is also pointed out that separation would have a particularly severe impact if it occurred within the so-called "critical period" of attachment that ranges between about six months and the age of four or five. Attachment disruptions are harmful during this time, because it is believed that early parent-child relationships play an important part in the rapid brain development that occurs at these ages.

12 In clinical assessment carried out by Dr Grange he concluded that it was clear that X "is displaying significant developmental delays, as in accordance with the views of his speech and language therapist and pediatrician." He said at that stage it was not clear whether he would meet the criteria for autism, which is pending multi-disciplinary assessments, but he noted that X displayed many behavioural characteristics of that condition. He considered it was highly likely that he would receive that diagnosis.

13 Dr Grange proceeded to explain that the level of independence that a child will attain is highly dependent upon the support X received at the present time. He noted that in his experience of working with similar children difficulties in childhood become entrenched and remain into adulthood and beyond it. It was his experience that eating problems are common among children with global developmental delay and autism and that was true of X. To Dr Grange, it was particularly concerning that the appellant does most of the feeding of X and that X refuses to eat or drink at the nursery. It was pointed out that his narrow diet would be likely to be restricted even further in the event of separation from the appellant, although he explained that they were not absolutely foregone conclusions.

14 In his report, he explained that a key feature of autism is a difficulty in coping with change. This will be true of X as separation from his father would represent a major change. He noted that evidence of difficulty coping with change can be seen by the problems X had had with sleep since they had moved home. He said that those factors would be immensely distressing to X and would lead to a severe worsening in his well-being. His conclusion was the stability that X received now would be a key in determining the level of independence X could achieve in later life. Overall, his conclusion was the harm caused to X would be extremely serious and likely to have devastating consequences for him due to the pre-existing difficulties occur and the ensuing instability that X would face after the appellant's extradition.

15 A further matter of concern related to the appellant's wife. Dr Grange took the view that in the event of the appellant's extradition this loss would lead her to suffer moderate anxiety and depression, which would undermine the care that she could offer to X. This he said would create further problems for his development and make it more difficult to enhance his interdependence. Dr Grange proceeded to consider whether protective factors could be put in place to militate the harm to X, but he was not satisfied that they would militate the anticipated harm to X to any great degree.

16 The judicial authority adduced a report from their expert, Ms Emma Citron, who is a consultant clinical psychologist. She explained that she agreed wholeheartedly with the entire contents of Dr Grang's report. She considered that X had severe developmental delay with autistic features. At the age of 34 months, he had no word production and, more concerningly, no apparent verbal comprehension even for his name. Her view was that the effect of extradition would be devastating on the family. She totally agreed with Dr Grange, explaining the family were very close emotionally and it was touching to see both parents being devoted to X.

17 Her view was that X would suffer great emotional distress and withdrawal if the appellant was extradited. Being a child with severe global developmental delay with autistic presentation, he is especially bound by the familiarity and consistency of his carers, of which his father was a key one. Ms Citron noted that X became distressed very easily and he was very hard to settle. She considered what steps could be taken by the family to ameliorate the effect of it and she thought that Skype would be highly problematic as would the fact that he would be unlikely to stay in the same accommodation. She further said that the reintroduction of the appellant after several years' absence would be highly difficult for

X and she fears for the wife of the appellant, because X was very demanding and challenging and his needs might become even more pronounced as he grows up.

The Legal Landscape

18 It is common ground between counsel that I should carry out a fresh balancing exercise in the light of the new medical evidence to decide whether or not extradition ought to be ordered. The respondent has put forward a number of factors which they say show that this is an appropriate case for extradition. It has been pointed out by Mr Hearn that in the well-known case of *Norris v Gorvernment of the United States of America* (No 2) [2010] 2 AC 487 Lord Phillips explained at para.56:

> "The reality is that only if some quite exceptionally compelling feature, or combination of features, is present that interference with family life consequent upon extradition will be other than proportionate to the objective that extradition serves ... Instead of saying that interference with article 8 rights can only outweigh the importance of extradition in exceptional circumstances it is more accurate and more helpful, to say that the consequences of interference with article 8 rights must be exceptionally serious before this can outweigh the importance of extradition."

19 That approach was followed by the Supreme Court in *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25 and Baroness Hale of Richmond said at para.8:

> "(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 extraditee 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."

20 Mr Hearn accepts there have been developments since the District Judge's decision and he acknowledges that extradition would amount to a serious interference with the Art.8 rights of each member of the appellant's family. He says there are powerful factors in favour of extradition. First, there is the constant weighty public interest in honouring extradition requests. Second, the extradition offences are serious, as shown by the lengthy sentences imposed. Third, the appellant's position is aggravated by the District Judge's finding that he was a fugitive. Fourth, any delay has been of his own making. Fifth, if extradited, he would be entitled to a retrial and so he might well be able to succeed at that time.

21 The appellant's approach, not surprisingly, is to place very substantial emphasis on the reports to which I have referred. Mr Seifert points out that the family of the appellant are emotionally dependent upon him and it refers to the devastating effect on members of the family of extradition. Apart from relying on the medical matters to which I have referred, he points out, first, there has been a significant delay since the offending. The first case of offending initially attracted a suspended sentence. The appellant has lived and worked openly in the United Kingdom for almost ten years and the appellant is no longer addicted to controlled drugs. For most of X's life, the appellant has been subjected to conditional bail with a curfew from midnight until 4.00 a.m. and in addition he is required to report on a twice weekly basis to his local police station. Not surprisingly, at the forefront of his case, is the medical evidence to which I have referred. He also points out that the delay in this case must have been a very troubling factor. His submission is that this constitutes a factor against ordering extradition relying upon what Ouseley J said in *Einikis v The Ministry of Justice of Lithuania* [2014] EWHC 2335 (Admin), particularly at paras.14 and 15.

Discussion

22 The issue for me is whether or not the serious problems that X will have if the Appellant is extradited trump the public interest in ensuring that this country honours its treaty obligations and the need to ensure that this country does not become a safe haven for fugitives. Having been involved in numerous extradition cases over the years, I accept that almost invariably extradition has serious adverse consequences for the children of the person to be extradited, but, in the light of the legal principles which I have applied, they almost invariably do not prevent an order for extradition being made, essentially because of the need to ensure that the United Kingdom is not seen as a safe haven for fugitives and honours its treaty obligations.

23 I have come to the conclusion, as I explained at the end of argument, that this is a wholly exceptional case in which the powerful points put forward by the judicial authority should be trumped by the agreed evidence of the clinical psychologists. In the words of Dr Grange:

> "I am strongly of the opinion that the consequence of the appellant's extradition for X would be devastating in the short, medium and long term."

24 None of this is challenged by Ms Citron, who is the judicial authority's expert. The material I have been shown supports what Dr Grange has said about the pivotal role that the appellant plays in X's life. I stress that my decision that this appeal should be allowed must not be regarded as anything other than an application of the established principles to the wholly exceptional facts in this case which require me to reach the wholly exceptional result of allowing the appeal on Art.8 grounds.

25 I stress that nothing I have said is any form of criticism of District Judge Rose, because she did not have before her the material that I have in front of me. I strongly suspect that if she had that material, she would have reached the same conclusion as I have done.

26 I must thank counsel for the very careful way in which they put their submissions. The appeal is allowed

MR SEIFERT: My Lord, I have one application to make. It is simply to do with anonymity. It is pursuant to s.45 of the Youth Justice and Criminal Evidence Act. It basically provides that in criminal proceedings, including on appeal, the Court may direct that no mention is made of the child. I would ask if that is possible.

SIR STEPHEN SILBER: I think we will. Do you have any submissions, Mr Hearn?

MR HEARN: No.

SIR STEPHEN SILBER: What I propose to order is to say that the case should be known as "T" and the child be called "X". I think it is quite useful to have something completely different from what it is. I think you should also perhaps anonymise the court in Bulgaria in which this occurred and just talk about “a Bulgarian court”.

MR SEIFERT: Yes.

SIR STEPHEN SILBER: I cannot think of anything else in the judgment which requires anonymisation.

MR SEIFERT: The reference to----

SIR STEPHEN SILBER: My provisional view is we should keep the names of the doctors.

MR SEIFERT: Yes, of course.

SIR STEPHEN SILBER: Because I think that is important in this case. They probably have dozens of patients. I do not think that will cause any problem.

MR HEARN: I think if the title can be "T v A Bulgarian Judicial Authority" and the court is simply “a Bulgarian court”.

SIR STEPHEN SILBER: I think we will keep the names of the doctors. We will keep the actual medical evidence in. I am not sure if I mentioned the name of the appellant's wife. I do not think I did. I think I just referred to her as the appellant's wife. Certainly, when I correct the transcript, I will have a look at that.

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