

Neutral Citation Number: [2018] EWHC 2813 (Admin)

Case No. CO/164/2018

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

Royal Courts of Justice

Tuesday, 9 October 2018

Before:

MR JUSTICE HOLMAN

B E T W E E N :

RAFAL ADAM TRACZYK
Appellant

- and -

POLISH JUDICIAL AUTHORITY
Respondent

MR M. HAWKES (instructed by McMillan Williams) appeared on behalf of the Appellant.

MISS R. HILL (instructed by Crown Prosecution Service Extradition Unit) appeared on behalf of
the Respondent.

J U D G M E N T (As approved by the judge)

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MR JUSTICE HOLMAN:

- 1 This is an appeal against a decision and order of District Judge Jabbitt in extradition proceedings before the Westminster Magistrates' Court. By a decision dated 4 January 2018, the district judge ordered that the appellant (as he now is) be extradited to Poland.
- 2 My approach to this particular case is that I can and should only interfere with the decision of the district judge if I am satisfied that the district judge's decision is wrong. I have to say, with the utmost respect to the district judge, whose regular experience in this field vastly outweighs my own, that I nevertheless am of the very clear view that his decision in this particular case is wrong and I will, therefore, allow the appeal.
- 3 The essential factual background is as follows. The offence in question was committed in Poland as relatively long ago as April 2006, now twelve and a half years ago. It appears to have been the rather crude fraud of taking from the victim the payment for the sale of an item through the internet and then not delivering the item concerned to the victim. The payment was the equivalent in Polish currency at that time of about £75 sterling. The item was a mobile telephone. It does appear that this appellant did commit a number of this type of offences, so that when he came to be sentenced for this particular offence he received a suspended sentence of imprisonment.
- 4 After he committed the offence, but before he was convicted and sentenced, this appellant became the father of a son, born to the lady who was and remains his partner. That son was born in December 2006, so he is now aged almost twelve.

- 5 The appellant was sentenced in relation to this particular offence, on 21 May 2008, to eighteen months of imprisonment suspended for five years, that is, until May 2013. About five days later, on 26 May 2008, the appellant moved with his partner and child to live in England. As I understand it, he moved entirely lawfully and it was not a condition of his suspended sentence that he remained in Poland. Once in England, he appears always to have lived an open life. Indeed, in August 2010 another court in Poland was able to write to him, at the address at which he was living at that time in Bournemouth, to point out that he had failed to pay a similar amount in compensation under another of these offences, and he duly paid that amount. So, however they discovered it, his address in Bournemouth was known to the “global” Polish judicial authorities in 2010.
- 6 Further, it is pointed out that in 2014 the appellant applied to the British Disclosure and Barring Service for security clearance to work as a security guard. So here he was in 2014 very deliberately submitting himself, and his history and circumstances, to the British criminal investigation authorities.
- 7 In November 2011 the suspended sentence in question was activated. This appears to have been for a combination of not keeping in touch with his probation service and not having, by that date, repaid the approximately £75 to the victim. Later, in February 2012, he was evidently required to surrender to custody. He did not do so, and a Polish domestic wanted notice was issued in December 2012. Almost five years later, the European Arrest Warrant was issued. He was arrested and the extradition proceedings took place.
- 8 In his reasoning, at paragraph 18, the district judge said:

“... I do not accept that he was unaware of the terms of the suspended

sentence and/or forgot about the compensation that was payable as a condition of the suspended sentence. It is inconceivable that Mr Traczyk would compromise other cases but forget to pay the fine or compensation which is subject of a suspended sentence.”

9 Mr Malcolm Hawkes, who appears on behalf of the appellant, submits that that reasoning by the district judge is awry and, rather, it is “inconceivable” that, as he did “compromise other cases”, he would not also have compromised this case and paid the fine. Surely, submits Mr Hawkes, the common sense of the matter is that if this appellant was paying off the fines or compensation in the other cases, then he would also have paid the mere £75 that he had to pay in this case so as to avoid activation of the suspended sentence.

10 The district judge concluded:

“He has therefore been unlawfully at large since 29 November 2012 and deliberately put himself beyond the reach of the JA.”

Mr Hawkes submits that that is simply mistaken. He had not deliberately put himself beyond the reach of the judicial authority. He was living quite openly here in England. He had been in communication with other Polish courts, and the common sense of the matter is that, as he himself had claimed, he had simply forgotten about this particular matter.

11 It seems to me, however, that on that particular issue I have to accept the conclusion and decision of the district judge who, after all, heard oral evidence from this appellant.

12 At paragraph 20 of his decision, the district judge said:

“Since he has been in the UK, the RP has led an open, productive and law abiding life. He supports emotionally and financially his partner, who has been unwell, and his 11 year old son.”

13 The district judge then proceeded to list the facts and circumstances against extradition and those in favour of extradition. Having done so, it is important to note that at paragraph 24 he said:

“I do not find this an easy decision to make.”

And at paragraph 26, although ordering extradition, he went so far as to say:

“I hope that Mr Traczyk’s Polish lawyer is able to successfully petition the authorities ...”.

14 So the district judge himself clearly found this a difficult and relatively finely balanced decision, and himself expressed the hope that Mr Traczyk would in the end be able to avoid extradition by successfully petitioning the authorities. I mention in this regard that in 2017 he did, indeed, pay off the full amount owed to the victim.

15 I am obviously hesitant and circumspect about interfering with the judge’s exercise of a discretion in a case which he himself felt was finely balanced but in which he, in the end, with all his experience, felt that the balance came down in favour of extradition. It does seem to me, however, that in his listing of the factors and also in one important statement of fact, at paragraph 24, the district judge fell clearly into error so that he reached a decision

which was wrong.

16 In the list of “Factors against extradition” he, in fact, makes no reference to the date when this offence was committed, namely as long ago as April 2006. He makes no express reference to the very long period of delay between the actual sentence being activated in November 2011 and the warrant being issued in September 2017. He makes no reference in the factors against extradition to the relatively minor nature of this offence. In his list of “Factors in favour of extradition” he refers to the offence as being “not of the most serious”. That seems to me to risk overstating the gravity of the offence and to attach insufficient weight to the relatively minor nature of it.

17 It is perfectly true, as Miss Rebecca Hill submits on behalf of the Crown Prosecution Service Extradition Unit, that the Polish courts considered that this offence, being the culmination of a number of such offences, merited a sentence of imprisonment. I understand and respect that. Nevertheless, when all is said and done, this particular offence involved crudely defrauding the victim of £75 in relation to a mobile telephone. It was committed twelve years ago. The appellant, as the district judge said, had lived an open, productive and law-abiding life in the United Kingdom for ten years. Importantly, he clearly has both his partner and his twelve year old son highly dependent upon him. The district judge himself said at paragraph 24:

“His partner relies heavily upon him and has experienced quite serious medical issues since 2010.”

Those medical issues were described by the partner in her statement, now at bundle Tab 8, and also in her own oral evidence. In summary, she has a long history of deep vein

thrombosis which has meant long periods confined to a wheelchair.

- 18 Where the district judge appears to have made a clear error of fact is in the last sentence of paragraph 24 of his decision and reasons, where he said:

“However Mr Traczyk is not the primary carer for [the son] and his partner is currently able to work.”

In fact, the very clear evidence of the partner was that she was not currently able to work. She described herself in her written statement as being “on long-term sick leave”. She said, at paragraph 7 of that statement, that in January 2017 she had had to leave her job, and the whole picture presented by her statement is of a vulnerable, rather immobile, wheelchair-bound person.

- 19 In my view, this district judge simply performed a balance here which can only be characterised as wrong. It cannot, in my view, be justifiable to extradite somebody for a crude fraud in relation to £75, committed twelve years ago, when that person has come lawfully to the United Kingdom and lived an open, virtuous and good life here for ten years, living with a partner and son, both of whom are heavily dependent upon him.

- 20 Of course, there is always the strong public interest in honouring treaty obligations and ensuring that the United Kingdom is not regarded as a safe haven for convicted individuals to avoid the court process in the requesting state. Of course, there is a strong public interest in ensuring that criminals serve their lawful sentences, whether here or in the requesting state. But there have to be some limits and, in my view, this district judge, in the end in this case, lost sight of balance and proportion. This man does not require to be extradited and

should not be extradited, the more so as the victim has for some time now been repaid.

21 So for those reasons, respecting as I do the expertise and experience of the district judge, I nevertheless consider that in this particular case he was plainly wrong and I will allow this appeal.

CERTIFICATE

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