IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2018] EWHC 3370 (Admin)

CO/1564/2018

Royal Courts of Justice

Tuesday, 20 November 2018

Before:

MR JUSTICE OUSELEY

B E T W E E N :

WANAGIEL — Appellant

- and -

LOCAL COURT IN STRZELCE (POLAND) — Respondent

MISS R. HILL (Instructed through Direct Access) appeared on behalf of the Appellant.

MISS A. BOSTOCK (instructed by the Crown Prosecution Service Extradition Department) appeared on behalf of the Respondent.

J U D G M E N T

MR JUSTICE OUSELEY:

1 This is an appeal against the decision of District Judge Coleman on 12 April ordering the appellant's extradition to Poland on a conviction warrant to serve a sentence of one year and four months for driving with excess alcohol. The offence was committed on 10 October 2004. He caused a collision in which a member of the public's leg was broken. For this offence, the appellant received a suspended sentence. However, in March 2007, following the commission of a further offence of a like nature, the suspended sentence was activated. He was present when that sentence was activated. He was therefore fully aware that he had to go to prison.

2 However, he appealed. His appeal was dismissed in March 2007. He was ordered to present himself at prison to serve his sentence on 18 April 2007. He collected the summons but failed to go to prison. Instead, he came to the United Kingdom. His family did not come with him. His wife and their young child were left in Poland. They followed one year later. A gap of one year was therefore an acceptable price in the appellant's mind to pay for evading justice. They were successful in that it was not until 2009 that the police in Poland found out that he was in the United Kingdom and an EAW was issued. However, the EAW was not certified and the appellant was not arrested in the United Kingdom until 2018, some nine years later. During that time the appellant made his life in the United Kingdom. He and his family became established here. His child, who would have been very young when they came to the United kingdom in 2008, has been at school in England ever since and is now about to start, or has just started, secondary school with little or no knowledge of Poland. He and his partner have another child, who is now 4. The appellant has set up a business as a self-employed car mechanic with his own garage and he has other colleagues who work in their own garages nearby. They are not his employees. He has not committed any offences in this country. He receives no State benefits other than child benefit. There are many who have spoken well of his work and his community relations. The whole family is well except for the mother who has a back problem. I shall return to that.

The facts

3 The District Judge inevitably found that, in common parlance, the appellant was a fugitive. When she decided that the appellant should be extradited she took into account evidently the weighty public interest in extradition, the gravity of the offending - he was almost three times the legal limit and there was an accident in which a member of the public was injured; he was a repeat offender. The District Judge also was firm that the country should not be a safe haven and that those sentenced to imprisonment should serve their sentence rather than evade it.

4 She took into account that he had his life in the UK without offending, had worked hard and that his children were here, and that the family was established here. She recognised that the partner's back problem might restrict the type of work she was able to do, but he thought that she would be able to find some work to help the family finances or that the State welfare system would be available to help. She found that the appellant had brought this situation upon himself and his family by fleeing. Accordingly, she ordered his extradition.

5 Miss Hill on behalf of the appellant essentially takes issue with the way in which the District Judge treated delay. She says, and it is clearly right, that delay of the sort here

needs to be considered from two points of view. First of all, it may reduce the public interest in the extradition and, secondly, it is important to consider what has happened in the interim.

6 So far as what has happened in the interim is concerned, the District Judge had regard to what had happened, namely that the appellant had established himself in business here, was a useful contributor to his local community and, above all, he had his children established here whose lives would be disrupted were they to return to Poland with him - and that has not been the suggestion.

7 In my judgment, the approach to delay by the District Judge was perfectly proper. She did not discount what had happened during the period of delay. She considered that other circumstances and in particular the gravity of the offending, and the fact that the appellant was a fugitive were rather more significant. Miss Hill says that the District Judge did not really give full weight to the total picture that emerged of a family that had now established itself and grown up together. But the District Judge, in my judgment, has done that. She has considered the particular point, and if matters were left there, I would consider that this case were perfectly clear.

8 Miss Hill, however, refers to two other factors. The first is that the District Judge has not considered the cause of the delay. True it is there is no explanation for why it took so long from the issuing of the EAW to the NCA acting upon it, but it is important to recognise that, openly though the appellant lived here, that is not of itself a proper basis for requiring the judge to investigate the causes of delay or to give less weight to them through some search for a possible degree of culpability on the part of the requesting judicial authority or indeed the NCA. There are a number of authorities relevant to this. They are cited by Miss Bostock in her skeleton argument and notably *Gomez v Government of the Republic of Trinidad & Tobago* [2009] HL21, [2209] 1 WLR 1038 [26 and 27].

> "Where a person deliberately flees the jurisdiction it simply does not lie in his mouth to suggest the requesting state should share responsibility in the ensuing delay in bringing him to justice because of some supposed fault on their part, whether this be, as in his case, losing the file or dilatoriness or, as will often be the case, inaction through pressure of work and limited resources."

There is more in the same vein.

9 Miss Bostock also cited *Cortes v Regional Court in Bydjoszcz (Poland)* [2017] EWHC 1356 Admin [35]. I would also add in the same vein the decision of the Divisional Court in *RT in the Circuit Court in Tarnobrzej (Poland)* [2107] EWHC 1978 Admin [62], where the court said that -

> "62. It is a frequent submission that someone has been living in the United Kingdom openly, often having had contact with various official bodies here. But neither the foreign judicial authority nor the NCA can be expected to explore the byways and alleyways of British officialdom to discover whether someone is in this country. In this case, it is true that the local police took a long time to arrest the

appellant, although as we have noted the evidence suggests they had tried earlier and the appellant was taking steps to avoid them."

10 Now, although I accept in this case it appears that the Polish authorities knew the appellant was here in about 2009, the principle remains the same. It does not lie in the mouth of a person who has fled a jurisdiction which had properly, as he knew, sentenced him to imprisonment, and required him to serve it, to say further that it was an obligation on the UK or Polish authorities to find him, when he had made no contact with them. It is not for them to search around amongst the various UK authorities that might have revealed exactly where he was in order to arrest him. The obligation is on the person, who is the fugitive, to tell the Polish judicial authorities exactly where he is.

11 In those circumstances, I decline to be persuaded by authorities which had taken a different tone, at least without being expressly shown those other authorities. In particular, with respect, I do not derive assistance from the decision in *Adamek v Poland* [2018] EWHC 578 in which William Davies J was critical of delay but lacked the advantage of having authorities cited to him relevant to the issue including those to which I have already referred.

12 Although I have had and considered a further statement from the appellant in relation to his living openly in the United Kingdom, it adds nothing.

13 I have also considered a further statement - a statement from his partner. I have given its admissibility sympathetic consideration because the appellant was not represented before the District Judge. I do however note that the District Judge in her decision did record the fact that she had directed the appellant's attention to some of the issues that his evidence should address, and he had been represented at the initial hearing where directions were given as to the evidence to be served. I would have expected attention to be given to significant medical issues on the part of the partner who will be caring for the children.

14 This statement from the partner was served this very morning. I have to say that that has been far too late for it to be given proper consideration by the requesting judicial authority. Nonetheless, I have considered what can be gained from it. But I do not consider that what can be gained from it is sufficient to show that the decision of the District Judge was wrong; nor does it cause me, looking at all the matters as a whole, to come to a different conclusion. First, Miss Hill accepts that it does not suggest there has been a significant recent deterioration since the hearing. The evidence, such that it is, could have been given then. Second, the medical evidence shows that painful thought the partner's back is, it is for treatment with painkillers and physiotherapy - the latter seemingly not yet begun. There is very little further evidence from the GP in England as to what can be done about the back, although the appellant's partner went to Poland for private treatment in September, which was effectively, after analysis, a recommendation for pain killers and bed rest. The appellant's partner has produced GP certificates signing her off work on account of back pain for periods of a few weeks at a time. But it does not appear that the full treatment has yet begun. I accept that the appellant's partner does experience considerably difficulty over certain activities at certain times which may be graver than were conveyed to the District Judge. I accept that the appellant's partner had shown that a particular form of benefit, now called employment and support allowance is not available to her, not because of her condition necessarily but because she has not contributed enough yet. Those circumstances may be harsher for the appellant than the

District Judge considered. I know not. She was certainly aware that the pain, as it was then being experienced, was restricting her employment. But I cannot say in the end that extradition is disproportionate.

15 The fundamental problem is that the appellant is a fugitive. He cannot expect not to be required to serve his sentence because he has been successful as a consequence of evading justice. I also just note that when he had another young child he was prepared, in order to escape justice, to leave them in Poland for a year. I do not wish to be unduly harsh but it lies a little less well in his mouth to complain of the separation now. Accordingly, I am satisfied that this appeal should be dismissed.

CERTIFICATE

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