

Jerzy Borkowski v Lublin Provincial Court, Poland

CO/2083/2014

High Court of Justice Queen's Bench Division the Administrative Court

13 October 2014

[2014] EWHC 3583 (Admin)

2014 WL 5483643

Before: Mr Justice Foskett

Monday, 13 October 2014

Representation

Ms Kate O'Raghallaigh (instructed by Lansbury Worthington) appeared on behalf of the Appellant.

Ms Natasha Draycott (instructed by CPS Extradition Unit) appeared on behalf of the Respondent.

Judgment

Mr Justice Foskett:

1 The appellant is a 51-year-old Polish national who has been in the United Kingdom since 2007. His extradition to Poland has been sought pursuant to two conviction warrants, dated 8 May 2007 and 21 December 2010 respectively. Under the first it was said that there are 7 months and 11 days of an 18-month prison sentence to serve and under the second it is said that the whole of a 12-month prison sentence is to be served. I will come to say a little more about the background in a moment.

2 He was arrested on 29 April 2014 and appeared before Westminster Magistrates' Court on 30 April. On the advice of the duty solicitor he raised no objections to his extradition and, accordingly, an order for his extradition was made, and indeed he was remanded in custody. However, he sought further advice thereafter and has launched this appeal with the assistance of his present solicitors and Ms Kate O'Raghallaigh's assistance also.

3 He was granted bail subject to conditions, including a curfew of in excess of 9 hours per day, by Collins J on 14 July. The appeal was due to be heard on 25 July but it was adjourned, and in due course it was eventually re-fixed for hearing before me today.

4 Further information has been supplied by the Polish judicial authority. It is, with respect, not entirely easy to follow some of the background, but the position seems to be as follows: in 1999 the appellant was disqualified from driving, but on two occasions in 2001, on 8 May and 15 September, he drove whilst disqualified. The convictions arising out of those two occasions led to the imposition on 24 January 2002 to a sentence of 1 year's imprisonment suspended for a 3-year probation period on the first matter, and then on 17 April 2002 an identical sentence for the second matter, and so in neither matter did he go immediately into custody.

5 On 6 February 2004, and thus during the currency of the suspension of the sentences to which I have just referred, the appellant drove again whilst disqualified. He appeared before a Polish court on 1 March 2004. It would seem that the previously suspended sentence relating to the

offence committed on 8 May 2001 was activated and it appears that in consequence he served a period in custody from 1 June 2004 to 10 February 2005 in relation to that offence, a period of just over 8 months. However, on 17 August 2004 he appeared before the court again specifically in relation to the offence committed on 6 February 2004 and he was sentenced to 12 months' imprisonment. His case came back before the court on 10 February 2005 when the court aggregated the sentences for the two offences committed in 2001. In so doing, the court took into account his period of imprisonment between 1 June 2004 and 10 February 2005.

6 The appellant apparently remained in custody until 20 March 2006 when he was "conditionally released" with the condition of 2 years' probation. However, that conditional release was cancelled on 28 August 2006, by which time it seems that the appellant had gone to live with his sister in Germany. It has been said that he has, as I have indicated, a little over 7 months to serve in relation to the matters that appear on the first European Arrest Warrant. However, it is equally clear from some information supplied recently that the precise amount of time that falls to be served (if it remains to be served at all) in relation to those offences committed in 2001 is unclear on the face of the European Arrest Warrant. Ms Draycott, who appears for the respondent, has sensibly and realistically conceded that insufficient particulars have been given to meet the relevant statutory requirement and consequently the appellant falls to be discharged in relation to that first warrant.

7 I say nothing more about it in the circumstances. The fact that I have recited the history is really to explain the way in which the position in relation to the second warrant falls to be considered.

8 The second European Arrest Warrant, which is the warrant that I must consider for the purposes of this appeal, as I have indicated related to the sentence of 12 months' imprisonment imposed for the offence committed in February 2004. It is said in the warrant that the appellant did not appear voluntarily to serve the sentence thus imposed. However, at the time he should have appeared voluntarily to serve that sentence he was already a serving prisoner, as will be apparent from the chronology to which I have already referred. Nonetheless, that is the reason given for requiring his extradition so that he can serve the totality of that sentence. The European Arrest Warrant in relation to that was issued on 21 December 2010 and certified on 12 March 2014. Because this matter went in effect by consent or uncontested before the district judge, the district judge was not called upon to determine whether the appellant was properly to be regarded as a fugitive or not. To that extent it falls to me on the appeal to try to resolve that issue.

9 I need not spend long on this, because although not formally conceding the point, Ms Draycott realistically accepted that the material upon which it would be possible to make a positive conclusion to the extent that I was sure that the appellant was a fugitive is simply lacking. It is possible that he was, but that is not sufficient for my purposes. I agree with Ms O'Raghallaigh that the date upon which that matter fell to be determined was March 2006, and, as I say, on the material available it would be quite impossible for me to say that his leaving to go to Germany and then in due course leaving to come to this country was done deliberately to avoid the consequences of that sentence. On that basis, the question of whether he should be extradited falls to be considered on what might be termed ordinary Article 8 considerations, balancing his Article 8 rights and those of his family against the need to support and sustain proper extradition arrangements.

10 Ms O'Raghallaigh has reminded me in her helpful skeleton argument of a number of fairly recent cases when this court has discharged appellants because of substantial delays, substantial delays that have militated in favour of discharge in those particular cases. Comparisons with other cases are, of course, not particularly helpful: each case depends on its own facts and the weight given to the various circumstances will vary from case to case. But Ms O'Raghallaigh submits that the two periods of delay in this particular case, namely the delay from March 2006 until the European Arrest Warrant was issued on 21 December 2010, and then the further delay before certification until March of 2014, were first of all unacceptable and indeed largely unexplained. It does seem to me that there is a significant point to that effect to be made in this case.

11 The position so far as the appellant is concerned is that he has a settled family life here and he has been working. He lives with his wife and grownup son. His daughter is in this country with children of her own. There is therefore an established family network, and he appears to be playing his part in supporting that network. On the other hand, unlike other cases it can hardly be said that this is a case where young children are, for example, dependent upon him for their

support. Nonetheless, he has established that secure family life.

12 There is one blot on the landscape in the form of a conviction for a drink-driving offence in April 2013, for which he received a sentence of 8 weeks' imprisonment. Plainly, the court must have taken a serious view of such an offence. Ms O'Raghallaigh says that the offences the subject of the relevant European Arrest Warrant are just driving offences, and the one in relation to this particular matter is a driving offence, but against the background of his non-compliance with laws relating to driving matters plainly one cannot simply dismiss the offence underlying the European Arrest Warrant as something that is merely trivial, and of course she did not suggest to the contrary.

13 The bottom line of the present situation is that he has served 2 1/2 months in custody and has also experienced a period of time subject to curfew which, according to the way in which matters would be dealt with in the United Kingdom, would give him about another 1 1/2 months' credit against any prison sentence in Poland. So by English standards he has, in effect, served 4 months in custody: in other words, the equivalent of an 8-month prison sentence. Ms Draycott rightly reminds me that remission of sentence at the half-way stage in Poland is not automatic, and that indeed is correct, but it does seem to me that I should take into account the fact that he has spent the equivalent of an 8-month sentence in this country, in effect, on remand and that what is being sought is his return to, in effect, serve the equivalent balance of a 12-month sentence in Poland.

14 I have not found balancing the relevant factors in this case particularly easy because the offence itself is potentially serious, but doing the best I can, it does seem to me that this is a case where it would be disproportionate to require the appellant to be extradited to face the consequences of the particular sentence in question. What may happen in relation to the other European Arrest Warrant is not of relevance to my consideration.

15 So for those reasons, relatively briefly expressed, it seems to be that this is a case where it would be appropriate to discharge the appellant and I will do so. The appeal is allowed to that extent.

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