Krzeminski v Circuit Court in Plock, Poland

CO/829/2015

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

20 March 2015

[2015] EWHC 1113 (Admin)

2015 WL 1838980

Before: Mr Justice Mitting

Friday, 20 March 2015

Representation

Mr Ben Cooper (instructed by Lansbury Worthington) appeared on behalf of the Appellant.

Ms Julia Farrant (instructed by The CPS Extradition Unit) appeared on behalf of the Respondent.

Judgment

Mr Justice Mitting:

1 The extradition of the appellant is sought by a conviction European Arrest Warrant issued by a judge of the Circuit Court of Plock on 19 May 2015 to serve a sentence of 2 years' imprisonment imposed initially as a suspended sentence by the District Court of Sochaczew on 10 April 2004 for an attempted street robbery committed on 1 December 2000. The offence is therefore of some antiquity. It was committed when the appellant was 18 years old. He is said to have been an accomplice of another man who tried to snatch belongings from another young man in the street.

2 On 9 October 2004, the appellant committed a further offence, driving with excess alcohol. That did not lead immediately to the imposition of the suspended sentence, as it might have done. He was fined for it and given the opportunity to pay off the fine. He did not do so. In the opinion of his probation officer he did not fulfil the conditions upon which the original sentence had been suspended. Accordingly, it was activated on 9 June 2005.

3 He was served personally with a copy of the order on 25 June 2005. He appealed against activation. His appeal was dismissed in proceedings which took place in his presence on 3 December 2005. Making an allowance for an erroneous statement of the date in paragraph 22 of his first witness statement, he left Poland some three weeks later. He has been in the United Kingdom ever since.

4 The Polish authorities did not know where he was. They issued a domestic warrant on 16 October 2007, but took no further action upon it because they did not know where he was. He was arrested under the European Arrest Warrant on 9 July 2014. His extradition was ordered by District Judge Barrie in a decision after a contested hearing on 17 February 2015. The sole ground of challenge was that extradition would be incompatible with his and his family's rights under Article 8 ECHR .

5 It seems likely that the whereabouts of the appellant became known when he was convicted of an offence in England and Wales in 2013. The offence was a public order offence. He and a

group of friends committed a racially aggravated public order offence on a train. He was fined for that. Apart from that, he has been a law-abiding person in the United Kingdom. He has also worked hard. He is working at the moment as a building contractor. He has in the past attempted to conduct a cafe business with his partner, of whom more in a moment. That cafe business has failed.

6 He formed a relationship with a Polish woman, Joanna Komendzinska, whom he met shortly after his arrival in the United Kingdom in December 2006. On 9 April 2008 she gave birth to their daughter, “JK”. They separated sometime in 2014. When the case was heard before the district judge, although she had a witness statement from Ms Komendzinska, Ms Komendzinska had not been called to give evidence to describe her then current circumstances. The district judge understood them to be that she had formed a relationship with another man, that although she shared accommodation with the appellant they were no longer cohabiting as partners, and although he played a significant role in the upbringing of their daughter, nevertheless the medium- and long-term future of Ms Komendzinska and JK was unknown. I shall return to the judge's observations about that state of affairs in a moment.

7 On the basis of those facts, the district judge gave herself an impeccable self-direction as to the law to be applied in section 21 cases. She decided, plainly correctly, that the appellant was a classic fugitive; that there was nothing to alert the Polish authorities to the fact that he was resident in the United Kingdom until not long before the European Arrest Warrant was issued; that, once they realised his whereabouts, the Polish authorities moved quickly; and that the delay was mostly of the appellant's own making. She analysed the home circumstances of the appellant and his former partner and daughter, and concluded that the hardship to the daughter which would undoubtedly be caused by the extradition of her father was outweighed by the public interest in honouring the United Kingdom's treaty obligations.

8 Her judgment was a model of its kind. Not only did she direct herself as to the law accurately, she analysed the facts, in particular in relation to the family unit with which she was concerned, with meticulous care and reached a decision which was plainly open to her.

9 However, the facts have changed since her decision. Ms Farrant, for the requesting authority, has accepted that I can properly take into account two new witness statements: one dated 19 March 2015 from the appellant, and another, undated in the copy that I have and unsigned, by Ms Komendzinska. She did not put the truthfulness of the statements in issue, and I proceed, therefore, on the basis that what is said in these new statements is true.

10 First, and most importantly, both statements demonstrate that the appellant and Ms Komendzinska are fully back together. Secondly, it fleshes out the impact which extradition would have on the family unit in financial terms. £15,000 was borrowed to fund the cafe to which I have referred. The cafe proved to be unprofitable; the money is still owing. Both the appellant and Ms Komendzinska work as hard as they can, both are responsible for the care and upbringing of their daughter. As the district judge accepted (this is not a new factor), the relationship between the appellant and his daughter is close.

11 What she was faced with was a family unit that had broken up with no clear evidence about what arrangements would be made for the care of the daughter, JK, if the appellant were to be extradited, and with little beyond the undeniable fact that financial hardship of some kind would be caused to Ms Komendzinska and JK if the appellant's earnings were to be removed from the equation.

12 The picture that I now have is somewhat different. It is that, if the appellant were to be extradited, not only would a man whose practical and emotional input is, for the time being, essential for the well-being of JK, the financial circumstances of Ms Komendzinska, and so by necessary knock-on effect of JK, would be very adversely affected by his extradition. The issue now is, therefore, much more finely balanced than it was before the district judge.

13 I do not read her judgment with regard to the outcome of the case as presented to her as straightforward. Her judgment was, as I have indicated, an impressive balancing judgment taking into account all relevant factors and coming eventually to the conclusion that extradition was justified. On the material that I have, I have come to a different conclusion. I have done so only because of the change in circumstances which has appeared since the district judge heard the case, and I have conducted my own balancing act in accordance with settled principles.

14 The conclusions which lead me to conclude that, on the facts as they now are, the public interest would not be served by the extradition of the appellant are as follows: although the offence of attempted robbery was in principle serious, it was not the most serious of its kind, as was demonstrated by the suspended sentence initially imposed. It is not an offence, if I have accurately summarised its facts, which would necessarily result in an immediate sentence of detention for a young man in this country. It occurred a very long time ago. The appellant has led a largely responsible adult life since his difficulties with the Polish probation services came to an end when he left Poland for the United Kingdom. I regard the offence committed in 2013 as an isolated and uncharacteristic blemish on the record of an otherwise hard-working and decent man. I am satisfied that his removal from this family unit now would cause very serious financial hardship to his blameless partner and daughter, as well as disrupting a family unit in which he provides significant emotional care and support for his daughter.

15 When all of those facts are weighed in the scales, they come, in my opinion, just on the side of deciding that it would not be in the public interest to order his extradition, and to allow his appeal.