

Westminster Magistrates' Court

The Judicial Authority of Poland

v

Kinga TRYBULSKA

Findings of facts and reasons

Application

This is an application by the judicial authority of Poland for the surrender of **Kinga Trybulska** who appears and is represented by Counsel. Poland is a category 1 territory for the purposes of the 2003 Extradition Act ("The Act") and this hearing is considered under Part 1 of the Act. The application is opposed.

Preliminary issues including identity have been determined at an earlier hearing so that an Appropriate Judge expressed at the first hearing that sections 4 and 7 of the Act had been satisfied.

Section 2 Validity of the warrant.

2 Part 1 warrant and certificate

(1) This section applies if the designated authority receives a Part 1 warrant in respect of a person.

(2) A Part 1 warrant is an arrest warrant which is issued by a judicial authority of a category 1 territory and which contains—

(a) the statement referred to in subsection (3) and the information referred to in subsection (4), or

(b) the statement referred to in subsection (5) and the information referred to in subsection (6).

(3) The statement is one that—

(a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, and

(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence.

(4) The information is—

(a) particulars of the person's identity;

(b) particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;

(c) particulars of the circumstances in which the person is alleged to have committed the offence, including the conduct alleged to constitute the offence, the time and place at which he is alleged to have committed the offence and any provision of the law of the category 1 territory under which the conduct is alleged to constitute an offence;

(d) particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence if the person is convicted of it.

(5) The statement is one that—

(a) the person in respect of whom the Part 1 warrant is issued has been convicted of an offence specified in the warrant by a court in the category 1 territory, and

(b)the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being sentenced for the offence or of serving a sentence of imprisonment or another form of detention imposed in respect of the offence.

(6)The information is—

(a)particulars of the person's identity;

(b)particulars of the conviction;

(c)particulars of any other warrant issued in the category 1 territory for the person's arrest in respect of the offence;

(d)particulars of the sentence which may be imposed under the law of the category 1 territory in respect of the offence, if the person has not been sentenced for the offence;

(e)particulars of the sentence which has been imposed under the law of the category 1 territory in respect of the offence, if the person has been sentenced for the offence.

No issue arises, the warrant is compliant with Section 2(3) in that it states that it is issued for the purpose of executing a custodial sentence, and the content of the warrant is compliant with Section 2(6) for these reasons I conclude that the warrant is valid.

Extradition Offence

I am satisfied that the offences in the EAW are extradition offences within sections 10 and 65(3) Extradition Act 2003 being the equivalent offences of possession of controlled drugs of class B with intent to supply, possession of a controlled drug of

class C and possession of an identity document relating to another person.

(3) The conduct also constitutes an extradition offence in relation to the category 1 territory if these conditions are satisfied—

(a) the conduct occurs in the category 1 territory;

(b) the conduct would constitute an offence under the law of the relevant part of the United Kingdom if it occurred in that part of the United Kingdom;

(c) a sentence of imprisonment or another form of detention for a term of 4 months or a greater punishment has been imposed in the category 1 territory in respect of the conduct.

The sentence imposed was one of 1 year 11 months and 27 days and all of the offences were committed within Poland.

I am satisfied for these reasons that the offences are extradition offences within sections 10 and 65(3) Extradition Act 2003.

Bars to extradition

No bar to extradition was raised pursuant to section 11 of the Act.

Section 20 Extradition Act 2003

I am required by Section 11 of the Act to proceed under Section 20(1), and I have decided that he was convicted in his absence but I am equally satisfied that the warrant provides for a right of retrial, which he accepted in his evidence before me.

The requested person was not deliberately absent but the right to retrial provided satisfies Section 20(5) and (8).

Section 21

I am required to proceed under this section by virtue of section 20 and must decide whether the requested person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998. Article 8 is engaged.

Article 8 of the Convention provides:

- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”

The circumstances in which extradition would amount to a disproportionate interference with the article 8 rights of the requested person and his family were considered by the Supreme Court in *Norris v Government of the United States* [2010] 2AC 487; and *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25.

The article 8 claim requires the requested person to demonstrate factually a very strong case, before the balance would be struck by refusing extradition.

The correct approach was identified by Lord Phillips of Worth Matravers in paragraph 56 of his judgment:

"The reality is that only if some quite exceptional 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. That, no doubt, is what the Commission had in mind in *Lauder* 25 EHRR CD 67, 73 when it was only in exceptional circumstances that extradition would be an unjustified or disproportionate interference with the right to respect for family life of the person resisting extradition."

In paragraph 8 of her judgment in *HH*, Lady Hale distilled the conclusions that might be drawn from *Norris* to seven propositions. They are as follows:

- (1) There may be a closer analogy between extradition and 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 they will not be sent back.
- (5) The public interest will carry great weight, but the weight to be attached to it and

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."

The requested person gave evidence before me. I also heard Dr Grange a clinical psychologist specialising in children and families who spoke to his filed report. I recorded the following evidence:

The requested person adopted her two filed proofs of evidence. She accepted that she had pleaded guilty, that she was aware of the suspended sentence, "nobody told me about any conditions. I did not know of the need to see a probation officer or to provide my UK address when I moved, I was not told to appoint an addressee for service of documents. I stayed in Poland for a year and I never saw a probation officer, no-one came to my address and no-one got in touch with me. I had no previous convictions in Poland before these sentences in the EAW. I do have convictions in the UK. My parents care for my other 2 children age 15 and 16 in Poland. I have given the last known address of my parents to social services in Gloucestershire about a month after my release from prison. I wrote it down on a piece of paper and the social worker took it. I don't know my parents present address or telephone number. I tried to contact my parents quite a few years ago, I have not made recent attempts to contact them, I have not been in contact with them since

2002. I did see the lady from turning point who saw no purpose in continuing. There is no problem with Kamil and I caring for Lukasz, or in my absence Kamil. I have known my other friend, Marilla for 4 years, she lives in Gloucester with her husband, their children are now adult. Marilla receives disability allowance and her husband works in a furniture shop. Marilla is healthy enough to look after a child she knows my situation and she has agreed to look after Lukasz. Kamil and I have been together for 2 years. We are both in JSA looking for work. I am satisfied that he could care for Lukasz who is very close to him and he has agreed to care for Lukasz.”

Dr Tom Grange

The circumstances have changed since I reported in view of the passage of time and information from social services so I find giving evidence challenging. There are concerns about RPs parenting and the safety she has been able to afford to her son set against the instability in his life and disturbing circumstances he has endured. I remain of the view that he is highly vulnerable and I remain of the view that extradition is not in Lukasz best interests at present. He has clearly been subject to or witnessed some inappropriate sexual experience. With any child the experience of being separated from a parent is extremely harmful long term with problems of some intensity. Lukasz has potentially suffered neglect, the experience of going to foster care in this case was an extreme reaction, I have never seen that reaction. Obviously his mother has been partly responsible, but his relationship with his mum has always been viewed as positive. Concerns about his mum in drink have not reached the level where he should be separated from his mum. I have clinical experience of separations, a dose effect of multiple separations, the more he is separated the greater the emotional impact. Foster care for Lukasz is not a good outcome. There are so many strands of the effect of

separation on children. Changing foster placements would be a concern. The fact that his mum has been round most of the time is a protective factor. At his age there are less favourable outcomes of going into foster care. He is doing ok but there is only so much a child of this age can take. Alcohol and substance abuse and her associations with others including partners. Her choice of partners would be an ongoing concern. Lukasz has lost his mother once for an extended period and he clearly did not manage that well. Lukasz would initially see his grandparents, if they could care for him, as strangers. Placement with Kamil would offer continuity of some care but his mother is the primary caregiver and so separation from her is the most harmful.

Any child separated from a primary care giver is going to be caused some degree of harm.

I have considered a number of reports now provided by children's services in Gloucester.

There have been historic concerns about the care which the requested person has provided to her son Lukasz, a boy born on 13th February 2012 and so 4 years of age. In 2012 a referral was made to social care from police who suspected that the requested person was using alcohol and drugs and Lukasz was being left alone. Lukasz was assessed as a child in need and remained so until April 2013. In December 2014 a further police referral brought to the attention of children's services that the requested person had been evicted with Lukasz leaving behind suspicion that the premises had been used for growing and using drugs. Follow up visits found that the home conditions were good. In February 2015 police once again attended the requested person's home, this time after a 999 call when an ex-partner had attended

her home and smashed a window. Further concerns became apparent from a health visitor referral that Lukasz had missed his 3 year developmental check and was overdue immunisation. On 22.4.2015 Lukasz was placed on a child in need plan. The requested person was arrested on 1.5.2015 and detained on remand in custody from 2.5.2015 on the EAW. Lukasz, with the imprimatur of the local authority went to live in the interim with a family friend. 4 weeks later he displayed two very concerning incidents of sexual behaviour toward other children at his nursery. On one occasion he has his trousers and pants pulled down asking another child to insert a stethoscope up his bottom and in the second pulled the trousers and pants of another child down as he lay face down on the floor, straddled him and pressed himself slowly into the other child pulling up the child's trousers when he realised he was being watched by nursery staff. On 16th July the local authority removed Lukasz from his carer and placed him in local authority foster care having been concerned that the sexualised behaviour was in some way connected with his stay with the family friend. On 31st July 2015 the requested person was released on bail and resumed the care of Lukasz on 6.8.2015 when he adapted and settled back into his mother's care. When he entered foster care he was described as suffering night terrors although later settled. Concern started to be expressed about the requested person's new relationship with a man known as Kamil who she had met in the summer of 2015. The concerns were of his criminal history, violence and involvement in drugs within the Gloucester area and by September 2015 he was due before the court for possession of knives. In their assessment at that time the protective factors for Lukasz were his relationship with his mother, a clear positive attachment, her agreement to his voluntary foster care placement when concerns had arisen over his care by a family friend, the efforts which his mother had made even whilst she was in prison to contact Lukasz regularly

and enquire about his wellbeing. Concerns focussed on his mother's drug taking, the requested person's relationship with a violent man where domestic violence may have been a feature in the requested person's previous relationships. The requested person had also failed to disclose that she has 2 older teenage children who were cared for by her mother in Poland. Other incident followed so that by February 2015 at a time when Kamil had been released from prison a review child protection conference it became clear that Kamil had been attacked by a group of men. Lukasz remained subject to a child protection plan. Police reported on 1.3.2016 that the requested person and Kamil were being threatened by a Polish gang, the family were therefore moved out of the county to a new address on 21.4.2016.

It is against this background that Dr Grange reported and provided his evidence.

I have considered the following factors in favour of the requested person;

- Her family life in England and her obligation to her child
- Her having been moved home and assisted with accommodation by the local authority.
- The likelihood that care proceedings will be initiated in respect of Lukasz by the local authority should the requested person be extradited.
- The fact that there is a relatively short sentence still to serve compared with the disruption to family and private life.
- The specific needs of Lukasz and in particular his separation anxiety and the particular consequences for him as a child with the harm caused to him by his early life experiences which may flow to him now and in later life as a consequence.

young child's life, a quarter of his young life has been lost in these proceedings which could have a significant impact upon him. If care proceedings are taken and Kamil is found as unsuitable to care for Lukasz then realistically the court will have 2 options, long term foster care or adoption. The significance of the delay is that Section 1 Children Act 1989 specifically tells us that delay in settling the arrangements for a child is harmful to the child. One measure of that is that the window of opportunity to place a child for adoption diminishes rapidly as a child attains the age of 5 and operates on something of a sliding scale up to that age. If in these proceedings the child's interests are of significant importance, as they are and should be, then this child has been potentially further harmed already by the delay. In addition Dr Grange reports that Lukasz's age is highly important in terms of his attachment at para 7.10 of his report as follows; " His age is within the so called 'critical period' of attachment that ranges between about 6 months and age four or five. Attachment disruptions are particularly harmful during this time." The local authority plan to take care proceedings which was delivered only last week, although I am unaware who is at fault in that regard, causes further consternation. If I came to the conclusion that the requested person has to be extradited for good reason then it would not be possible for me to order her immediate extradition. I could not order her extradition where it would breach her Article 6 rights in respect of the care proceedings. The mother has the right to attend and be heard. I would have to agree with the judicial authority that she should not be extradited until the outcome of the care proceedings. The judge in the care proceedings would be asked to determine the case against an intolerable background of the mother awaiting extradition. This may be a vicious cycle that is incapable of proper interruption and which would inevitably likely take many weeks within the 'maximum' 26 week timescale for those proceedings.

The evidence of Dr Grange, I find compelling. I am significantly affected by his opinion that Lukasz would suffer severe developmental consequences should he be separated from his mother by extradition as explained in Para 7 of his report.

Dr Grange reports, as I would have determined in any event that if the realistic outcome of care proceedings was to be long term foster care then that is an option where research, and my experience as a judge of the family court can have poor outcomes for children. Changes of foster placement, the social stigma of being in care as a foster child, looked after children reviews and statutory medicals and meetings throughout his minority

I am significantly concerned about the position of Lukasz and the fact that his rights under Article 8 ECHR as defined by the Human Rights Act 1998. I have concluded that, in accepting the evidence of Dr Grange about the separation anxiety which would potentially have long term and harmful consequences for his future emotional health and development, that he is at risk of significant harm. Any deterioration in Lukasz's attachment to his primary carer would likely have a significant impact upon his future ability to develop attachments and relationships. I agree with the assessment of Dr Grange that the potential impact of a second enforced separation from his mother would cause Lukasz emotional harm that can be characterised as beyond severe and long lasting and which can properly be described as devastating to his emotional health and development. This factor together with the fact of some culpable delay all go to reduce the public interest in the extradition of this requested person.

I have determined that the interference with their individual Article 8 ECHR right to respect for a private and family life that would flow from extradition would indeed be a disproportionate response to the legitimate aims summarised by Baroness Hale in the passage from Re HH which I have quoted above. This is one of those cases where taking account of the family circumstances the interference with family life is on the evidence presented to me properly characterised as exceptionally severe so as to displace the treaty obligations of the United Kingdom and the weighty public interest in extradition. That is not to introduce a test of exceptionality, it is a simple reference to the words of Lady Hale in HH by reference to the judgment in Norris (before) and is guarding against run of the mill factors.

It follows that I have determined that even set against the imperative that the 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 they will not be sent back should be respected by this court; that the consequences of the interference with family life will not so exceptionally severe as to prevent the extradition of the requested person.

I have therefore come to the conclusion that it would be incompatible with the requested person' and Lukasz's convention rights as defined in the Human Rights Act 1998 to order her extradition.

Section 25

I have not seen or heard any evidence that the requested person suffers from poor mental or physical health. I am satisfied that those circumstances do not satisfy the test in Section 25(2)

In all of the above circumstances I determine that it is neither necessary nor proportionate or compatible with the requested person's and her child's convention rights to order the requested person's extradition to Poland.

District Judge (Magistrates Courts) McPhee

Appropriate Judge

9th June 2016

