Adam Wawrzyczek v District Court In Bielsko-Biala, Poland

Case No: CO/2573/2015

High Court of Justice Queen's Bench Division Administrative Court

9 October 2015

[2015] EWHC 2854 (Admin)

2015 WL 5885481

Before: The Honourable Mr Justice Supperstone

Date: Friday 9th October 2015

In the matter of an appeal under s.26 of the Extradition Act 2003

Hearing dates: 10-11 September 2015

Representation

Graeme Hall (instructed by Lansbury Worthington) for the Appellant.
Hannah Hinton (instructed by Extradition Unit CPS) for the Respondent.

Judgment

Mr Justice Supperstone:

1 The Appellant appeals against the decision ("the Decision") of District Judge Ikram ("the DJ") at the Westminster Magistrates' Court of 29 May 2015 ordering his extradition to Poland pursuant to a conviction European Arrest Warrant ("EAW") issued on 9 July 2013 and certified on 15 December 2014 in relation to three offences of fraud committed between 2002 and 2005. The total amount, in today's money, is approximately £12,600. There remains a total of 2 years and 6 months' imprisonment to serve.

2 Before the DJ the Appellant argued that he should not be extradited by reason of section 2 (in relation to offences 1 and 3), sections 10 and 65 (dual criminality), section 20 (not entitled to re-trial), section 14 (passage of time) and section 21 (Article 8) of the Extradition Act 2003 ("EA"). The DJ rejected all grounds of challenge.

3 Cranston J granted permission to appeal on three grounds: dual criminality (section 10 EA); retrial rights (section 20 EA); and passage of time (section 14 EA). Permission was refused in relation to section 2 EA .

4 On this appeal Mr Hall, for the appellant, has pursued the three grounds in relation to which permission was granted and he has renewed the application for permission to appeal in relation to section 2 EA . In addition he has applied to rely on a further ground, namely that the Appellant's extradition would be disproportionate interference with his rights to a private and family life under Article 8 ECHR , and therefore barred

by section 21 EA .

5 For reasons that will become clear I shall consider the appeal under section 20 EA first.

6 Section 20 EA , so far as material, provides:

> "(1) If the judge is required to proceed under this section (by virtue of section 11) he must decide whether the person was convicted in his presence.
>
> (2) If the judge decides the question in sub-section (1) in the affirmative he must proceed under section 21 .
>
> (3) If the judge decides that question in the negative he must decide whether the person deliberately absented himself from his trial.
>
> (4) If the judge decides the question in sub-section (3) in the affirmative he must proceed under section 21 ."

7 In the recent decision of *Podlas v Koszalin District Court, Poland [2015] EWHC 908 (Admin)* Aikens LJ, considering the proper interpretation of section 20(3) EA stated at para 23:

> "… Thirdly, … we accept that, upon its correct construction section 20(3) can only become relevant when, in accordance with the procedures of the relevant requesting state, a 'trial process' has been initiated against the requested person. Whether this 'trial process' has been initiated will be a question of fact in each case. Fourthly, given the terms of section 206 of the EA it must be for the JA to prove to the criminal standard, that the requested person has absented himself from this 'trial process' and that he has done so deliberately. *How* the requested person knows of the process is irrelevant; it is the fact of his knowledge of the process that counts. Fifthly, whether a requested person has absented himself from the trial process 'deliberately' calls for a consideration of what is in the mind of that person: see **Atkinson and Binnington** at [40] per Maurice Kay LJ. A requested person cannot have 'deliberately' absented himself from a 'trial process' if he did not know that that process is taking place or is about to be started. Sixthly, we agree with Mitting J that proof of the fact that the requested person had taken steps which made it difficult or impossible for the prosecuting authorities of the requesting state to serve the requested person with documents which would have notified him of the fact, date and place of the trial or, we would add, the start of the 'trial process', is not of itself proof that the requested person has 'deliberately absented himself from his trial' for the purposes of section 20(3) ."

8 In relation to the service of a summons, the EAW states on page 2:

> "This person was summoned in person on 29.09.2005 (in case VI K 898/05) and on 09.11.2006 (in case II K 584/06) and thus, was informed about the

> fixed dates and place of the hearings which resulted in issuing the decision in case VI K 898/05 and in case II K 584/06, and was informed that the decisions could be issued if he did not appear at the hearing."

Case VI K 898/05 relates to the first offence, and case II K 584/06 relates to the second and third offences.

9 At the full hearing on 1 May 2015 before the DJ the JA stated for the first time that the term " *summoned in person* " meant that the summons had been served on the Appellant personally. Prior to then it had been the Appellant's understanding of those words in the warrant that the summonses had been sent to him (see Mr Hall's skeleton argument dated 10 March 2015 at para 31(a)). In his proof of evidence dated 6 March 2015 the Appellant stated that he had never received any summons (para 25).

10 The Appellant moved to the UK in January 2006 and he only went back to Poland once in 2007. At the hearing he provided evidence of his move to the UK including P60's and registration documents.

11 Following the hearing Mr Hall advised the Appellant to obtain his wage slips for the month of November 2006 (it being the JA's case that he was served with a second summons personally on 9 November 2006), which he did. On 19 May 2015 at 18:21 Mr Hall wrote to the DJ attaching the Appellant's weekly pay slips covering the weeks 26.10.2006-30.11.2006. Each of these pay slips showed that the Appellant worked a 40-hour week during this period, and that he also worked overtime each week. Mr Hall submitted that it would have been impossible, that being so, for the Appellant to have received the summons in person, as contended for by the CPS. As he was not served a summons in person and he did not know about his trial dates, he ought to be entitled to a retrial. The CPS accepted that on the evidence before the court it could not be shown that the Appellant would be entitled to a retrial and therefore Mr Hall submitted that his extradition is accordingly barred by section 20 EA .

12 The DJ replied on the same day at 18:49 as follows:

> "In that you make further arguments as to what inferences can be drawn from the payslips, inferences that were not invited at the hearing, I am unable to consider further argument. I note you have enclosed the payslips themselves which were produced at the hearing and I will of course consider those."

13 At 19:11 on 19 May 2015 Mr Hall replied, thanking the DJ for his swift response. He wrote:

> "These payslips were not available at the hearing. They have only just been provided to me by the RP. I would ask that the court admit them into evidence.
>
> Tax year end summaries were supplied for the court's attention at the hearing.
>
> …

> …if the court requires a formal application more fully outlining the background, with reference to when the s.20 argument was first raised by the defence, when the CPS outlined their position, and why this is the first available opportunity for the defence to respond to the CPS's position, I would be content to write a fuller application and/or address the court orally."

14 In his Decision delivered on 29 May 2015 the DJ stated:

> " **In accordance with directions given at the first hearing parties may NOT** (without leave of the court) submit further evidence after all the evidence has been heard at the substantive hearing including when a case is adjourned for a decision to be given at a later date. To do so would allow endless submissions to be made after all the evidence is heard and make workloads unmanageable. No good reason was given in this case and I found none. I did not therefore consider the contents of the e-mail and new documents sent by Mr Hall."

15 I consider that Mr Hall clearly explained in his e-mails to the DJ why the weekly payslips had not been adduced in evidence at the full hearing. The DJ was not correct in stating in his e-mail of 19 May 2015 that the payslips had been produced at the hearing; it was P60s that had been produced. I accept Mr Hall's submission that the DJ was wrong to refuse to admit the wage slips. There was good reason why the evidence was not before him at the hearing. In my view, in the circumstances, the DJ should have admitted the payslips in evidence and taken into account Mr Hall's observations in relation to them, set out in his e-mails of 19 May 2015, before making his decision. Ms Hinton, for the Respondent, does not suggest to the contrary. It is evidence, which in my view, has an important influence on the result of the case. On that basis I admit it on this appeal (see *Hungary v Fenyvesi [2009] EWHC 231 (Admin)*).

16 In considering the section 20 argument the DJ states in the Decision:

> "… On the evidence before me, I am satisfied that the RP was served personally with both summonses. His argument that he could not have been in Poland in 2006 when it is said that he was served the second summons on the basis that he has a P60 for that year is illogical. He could have been working during that tax year in the UK yet returned to Poland as and when he wished. Despite his denial of any knowledge in his proof of evidence, I also have to say that I found him vague when questioned by Ms Hinton.
>
> The RP says that he went to Poland in 2007 and arrested and held for 4-5 days.
>
> This was after court proceedings had begun. I have to say that I find his version of events that he was still unaware of proceedings inconceivable and just not credible.
>
> I am satisfied so that I am sure that the RP left Poland having been served the first summons. He chose to leave Poland and evade the proceedings he knew

> had begun. The JA say that the summonses were both served 'in person'. I have no reason to doubt what they say. I am satisfied that when he returned to Poland in 2006, he was then arrested and questioned and served the second summons.
>
> I am sure that his absence from the subsequent trial was deliberate and therefore his right of retrial under s.20 does not apply."

17 In my judgment if regard is had, as it should be, to the Appellant's weekly payslip covering the week 09.11.2006 it is not possible to be satisfied to the criminal standard that the second summons was served on him personally on 9 November 2006 as stated in the EAW. Indeed the evidence supports his case that he was not.

18 That leaves the first summons that the JA submit was served on him personally, according to the EAW, on 29.0.2005. He accepts that he was in Poland at that time but denies that he received a summons. It was made clear at the first Directions hearing before the DJ on 27 January 2015, as recorded by the DJ, that the Appellant disputed that he was notified of the hearings in Poland and that that was in issue in the extradition proceedings. The DJ directed that the Defence serve a proof and skeleton argument by 6 and 13 March 2015 respectively, which was done, and that the JA was to respond by 13 April 2015. Ms Hinton informs me that on 10 March 2015 the CPS sought further information from the JA. However no response was received to that request from the JA. Even now there is no evidence in support of the contention that the summonses were served on the Appellant personally.

19 The DJ did not find the Appellant's evidence that he was not served personally with both summonses to be credible. However on the evidence now before the court I am not satisfied, as I have said, that he was personally served with the second summons. Indeed it would appear that he was not. That conclusion must necessarily impact on the view that should be taken of the Appellant's credibility in relation to the first summons. I accept Mr Hall's submission that the findings of the DJ on the Appellant's credibility are fatally undermined by the wage slips which support his evidence that he was not personally served with the second summons on 9 November 2006. The JA has had more than adequate time in which to adduce evidence in support of the assertion that he was personally served with the first summons. In the absence of any such evidence there is no reason, in my view, having regard to the Appellant's evidence as a whole, to reject his evidence that he was not.

20 In conclusion, I am not satisfied that the Appellant was served with either summons. That being so I am not sure that his absence from the subsequent trial was deliberate. It is common ground that he is not entitled to a retrial if returned. It follows, in my judgment, that the Appellant's extradition is barred by virtue of section 20 EA .

21 Having reached the conclusion that I have in the Appellant's favour on the section 20 EA ground, intending no disrespect to counsel, it is not necessary for me to consider the other grounds of appeal, the renewed application for permission relating to section 2 EA , or the application to rely on a further ground of appeal (Article 8 ECHR).

22 For the reasons I have given the appeal is allowed.

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