



Neutral Citation Number: [2020] EWHC 191 (Admin)

Case No: CO/3858/2017

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**DIVISIONAL COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 06/02/2020

**Before:**

**THE RIGHT HONOURABLE LORD JUSTICE IRWIN**  
**THE HONOURABLE MR JUSTICE SUPPERSTONE**

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**Between:**

**SARUNAS KALINAUSKAS**  
**- and -**  
**PROSECUTOR GENERAL'S OFFICE,**  
**LITHUANIA**

**Appellant**

**Respondent**

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**Jonathan Hall QC and Graeme Hall**  
(instructed by **Lansbury Worthington**) for the **Appellant**  
**James Hines QC and Hannah Hinton**  
(instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 9 July 2019  
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**Approved Judgment**

## Mr Justice Supperstone:

### Introduction

1. The appeal before the court concerns an extradition request from Lithuania. The Appellant is a Lithuanian national (born on 10 February 1989) sought to be returned pursuant to a European Arrest Warrant (“EAW”) for one offence of supply of 30g of cannabis on 9 April 2014 in Lithuania for 750 LTL which at the then exchange rate is approximately £185.
2. The EAW describes the allegation in box (e) as follows:

“Sarunas Kalinauskas has been charged with illegal disposal and distribution of narcotic substances namely: on 9 April 2014 at approx. 16:10hrs near the house No.3 in Jotvingiu St in Kaunas City he illegally sold 10g of narcotic substance i.e. cannabis and parts thereof to Samanta Deltuviene and Denisas Saras for LTL 250. Continuing his criminal activities, on 9 April 2014 at approx. 19:00-19:15hrs near the house No.3 in Jotvingiu St in Kaunas City he illegally sold 20g of narcotic substance i.e. cannabis and parts thereof to Samanta Deltuviene and Denisas Saras for LTL 500. Because of these facts Sarunas Kalinauskas has been charged with the commission of criminal offence specified under Article 260 Paragraph 1 of the Criminal Code of the Republic of Lithuania.”
3. The EAW is based on a “ruling to impose a constraint measure of arrest” made by Kaunas District Court on 3 December 2015 (EAW, box (b)). The EAW states in paragraph (f) that the Appellant “has gone into hiding from trial against him, therefore he has been announced wanted further to the court ruling dd. 3 December 2015”.
4. The EAW was issued on 23 February 2016 and certified by the NCA on 2 March 2016.
5. On 16 August 2017 District Judge Qureshi (“DJ”) at the Westminster Magistrates’ Court ordered the Appellant’s extradition to Lithuania.
6. On 14 December 2017 King J granted permission to appeal on two grounds: (1) extradition would be a disproportionate interference with the Appellant’s Article 8 ECHR rights, contrary to s.21A(1)(a) of the Extradition Act 2003 (“EA”); and (2) extradition would not be proportionate, contrary to s.21A(1)(b) EA.
7. On 30 January 2019 Ouseley J granted permission to appeal on an additional ground that, if extradited, there is an arguable real risk of detention in inhuman and/or degrading conditions in Lithuanian Correction Houses, contrary to s.21A(1)(a) EA and Article 3 ECHR (“the Article 3 ECHR ground”).
8. The Article 3 ECHR ground arose in three other cases (*Bartulis* CO/3734/2018; *Kmitas* CO/3739/2018; and *Ostapiec* CO/3737/2018). The Appellant’s case was accordingly linked with those cases and they all came on for hearing before the court on 9 July 2019.

9. At the hearing we allowed the Appellant's appeal on grounds of proportionality under s.21A(1)(b) EA, and quashed the order for the Appellant's extradition pursuant to s.27(5)(b) EA.
10. It was not therefore necessary for us to determine either the Article 8 ECHR ground of appeal or, in the Appellant's case, the Article 3 ground.
11. We stated that we would give short reasons for our decision at a later date, which we now do.

### **Extradition would not be proportionate, contrary to s.21A(1)(b) EA**

12. Section 21A(1)(b) EA provides that surrender will be barred where extradition would be "disproportionate". Section 21A(2) provides that in making the proportionality assessment, the district judge "must consider the specified matters... so far as the judge thinks it appropriate to do so". Section 21A(3) provides the specified matters which a judge must consider:

“(a) The seriousness of the conduct alleged to constitute the offence;

(b) the likely penalty that would be imposed ...

(c) the possibility of the relevant foreign authorities taking measures that might be less coercive than... extradition.”

13. The DJ was satisfied that the Appellant's extradition would be proportionate. He so concluded for the following reasons:

“44. The conduct alleged is serious offending involving selling drugs to other individuals. I find that this type of offending does not come within the categorisation in [Part 50A of the Criminal] Practice Direction. The table makes no reference to supplying of drugs. Whilst there is no indication from the JA [judicial authority] of the likely sentence in a case of this type, the Sentencing Guidelines in the UK for offences of this type have a starting point of 12 months in custody with a range of 12 months to 3 years. The RP [requested person] has convictions in Lithuania, including sentences of detention, and a relevant previous conviction for possession of drugs. If convicted it is clear the RP would face a custodial sentence of some length.

45. The possibility of the JA taking measures that would be less coercive than the extradition of RP have been considered by the JA and rejected. ...”

14. Mr Graeme Hall, for the Appellant, submits that the DJ was wrong to characterise this offending as serious. The Appellant's evidence was not the subject of an adverse ruling and the DJ annexed a copy of the Appellant's proof of evidence, which the Appellant confirmed as correct in his live evidence, to the judgment. On arrest he admitted selling the cannabis to friends as “they literally begged me to sell them some for their personal

use. I was not a drug dealer and there is no suggestion that I was”, (para 38). The DJ accepted that whilst this involved “street dealing” of cannabis, it was “on a relatively small scale” (Judgment, para 39(b)). The total amount was 30g (not 40g as stated by the DJ).

15. Further, Mr Hall submits, the DJ erred in treating the absence of the supplying of drugs from the Practice Direction as determinative of seriousness. In *Miraszewski v District Court in Torun, Poland* [2015] 1 WLR 3929, Pitchford LJ made clear that the judge is not limited to consideration of the offence categories described as non-serious in the Practice Direction (para 28). The Practice Direction guidance regarding “specified matters” for the purpose of s.21A is a “floor rather than a ceiling for the assessment of seriousness” (para 28; and see para 32). The main components of the seriousness of conduct are the nature and quality of the acts alleged, the requested person’s culpability for those acts, and the harm caused to the victim (para 36).
16. Mr Hall also submits that the DJ was wrong to conclude that the offending would attract a custodial sentence of ‘some length’. The DJ appears to have placed the offending into category 3 of the UK Sentencing Guidelines, for a significant role. However, the DJ erred in stating that the guideline stipulates a sentencing range of 12 months to 3 years for a significant role (Judgment, para 44), whereas the range is in fact 26 weeks to 3 years. In any event the maximum penalty is relevant but of little assistance because it is conduct that must be assessed (*Miraszewski*, para 36).
17. The Appellant has lived in the UK since the Autumn of 2014 and has no convictions in this jurisdiction. The only relevant conviction he has in Lithuania is for possession of drugs in 2009.
18. Mr Hall submits that the offending should have been placed in the category 3, lesser role, which has a sentencing range of a low-level community order to 26 weeks’ custody. However even if the Appellant was correctly sentenced as category 3, significant role, having been remanded in custody since his arrest on 17 June 2017, Mr Hall submits that the Appellant had served significantly in excess of the upper limit under the Sentencing Guidelines.
19. Mr James Hines QC for the Respondent, reminds us of Article 26 of the Council Framework Decision 2002, which provides that any relevant deductions of periods of detention arising from the execution of a EAW from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed will be made in the requesting state after extradition.
20. However, I am left in no doubt that if the Appellant was to be sentenced now for the offending, he would be immediately released.
21. I consider in all the circumstances of this case, having regard to our assessment of the seriousness of the Appellant’s conduct and the fact that he has now served in excess of any sentence that could have been imposed for his conduct, his extradition would be disproportionate.

## **Conclusion**

22. For the reasons I have given, I would allow the appeal, quash the order for extradition and order that the Appellant be discharged pursuant to Section 27(5) EA.

## **Lord Justice Irwin:**

23. I agree.