Neutral Citation Number: [2020] EWHC 1955 (Admin)

Case No: CO/1173/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 July 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

JAKUB WAWRZYNIAK	**Appellant**
- and -	
DISTRICT COURT IN LEGNICA, POLAND	**Respondent**

- -
- -

Martin Henley (instructed by AM International solicitors) for the **Appellant**
The **Respondent** did not appear and was not represented

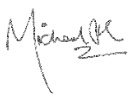
Hearing date: 16 July 2020

Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.



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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is an application for permission to appeal in extradition proceedings. It proceeded by Skype conference hearing, at the request of the appellant's representatives, to avoid unnecessary travel to and physical appearance in the court room. The remote hearing took place in accordance with the current High Court arrangements relating to Covid-19, albeit that we are now in a post-lockdown period. The hearing and its start time were published in the cause list, as was the fact that any person wishing to observe the hearing could contact my clerk (using a published email address) and do so, themselves without having to travel or attend physically in a court room. I heard oral submissions just as I would have done had we all been sitting in the court room. I am satisfied of the following: this constituted a hearing in open court; the open justice principle was secured; no party was prejudiced; and insofar as there was any restriction on any right or interest it was necessary and proportionate.

2. The appellant is wanted for extradition to Poland. Extradition was ordered by the district judge on 18 March 2020 following an oral hearing on 7 February 2020. Permission to appeal was refused on the papers by William Davis J on 5 June 2020. There are 2 European Arrest Warrants (EAWs) in this case. EAW1 dated 10 April 2017 is an accusation warrant. It describes 8 alleged offences which took place in 2015 and 2016, in respect of which extradition is sought so that the appellant can stand trial. EAW2 is dated 17 January 2020. It is a conviction warrant. It relates to a series of offences which took place in 2012 and 2013, and which led to a custodial sentence of 18 months imposed by the Polish court on 20 March 2014. Following a 7 month period of remand incarceration, between 19 August 2013 and 20 March 2014, and a further period of custody post-sentence between 13 November 2014 and 4 February 2015, the appellant had served some 10 months of the 18 month custodial sentence. He was then, on 4 February 2015, released on licence with appropriate conditions. In circumstances of his breach of that licence, extradition is sought pursuant to the conviction warrant EAW2, so that the appellant can serve the 8 months 8 days which is the unserved portion of the original 18-month custodial sentence.

3. There was an oral hearing before the district judge at which the appellant acted in person but assisted by the duty solicitor. He had, on the day of the hearing, been formally arrested in relation to the conviction warrant EAW2, having previously been arrested in November 2019 on the accusation warrant EAW1. He addressed the judge in relation to the circumstances in which he was unrepresented. As Mr Henley has fairly accepted in his oral submissions today, that was linked to a choice he had made, so far as deciding not to pay to instruct a lawyer to represent him was concerned.

The Ground based on Wozniak (and Chlabicz)

4. The first issue with which it is appropriate for me to deal is a familiar set of legal issues raised in other Polish extradition proceedings, in the linked cases of Wozniak CO/2499/2019 and Chlabicz CO/4976/2019. Wozniak is a conviction warrant case raising an issue under section 2 of the Extradition Act 2003 as to whether the Polish authorities still constitute a 'judicial authority'. Chlabicz is an accusation warrant case raising an article 6 fair trial point as to whether on return to Poland to face trial would be a flagrant denial of justice. The cases are linked, because the same facts

circumstances and evidence are relied on in support of each contention. In a written application filed and served yesterday, Mr Henley and his solicitor Anna Matelska on behalf of the appellant in this case gave clear notice of the wish to take the section 2 (judicial authority) Wozniak point on behalf of the appellant in this case. I put to Mr Henley in his oral submissions, and he accepted, that in fact both of the points in the linked cases of Wozniak and Chlabicz are potentially relevant to this case, given that there is both a conviction warrant and an accusation warrant. I do not hold against him, or his client, the fact that that was not spotted when the application to amend was made. There could be no justice in drawing that distinction in the circumstances of this case and I am quite satisfied that whatever is to be done needs to be done in this case in relation to both of the linked points.

5. As to what is to be done, the application made yesterday and before me today is for permission to amend the grounds of appeal to take the section 2 'judicial authority' point (and now the article 6 fair trial point). Very sensibly, Mr Henley does not apply for permission to appeal to be granted today, but rather for a stay of the question of permission to appeal until after the Divisional Court has decided the two linked cases. In a draft order, Mr Henley has made explicit that what is sought is that a single judge would then determine on the papers permission to appeal. I am quite satisfied that that is the appropriate course to take in this case. I am satisfied that it is necessary and appropriate in the interests of justice, notwithstanding that the point has been raised very belatedly, and that that course is the appropriate one. It would be unjust, in my judgment, for this appellant to face surrender while arguable questions of law, equally applicable to his position, are before this court and unresolved.

Adjournment of the other grounds

6. The next question is whether in those circumstances I ought to proceed to deal with the other grounds which are said to be reasonably arguable. Mr Henley has invited me to adjourn. He submits that it is appropriate that one judge consider all grounds together and as a whole and at the same time. In support of that course he submits that this is a complex case. He submits that the various grounds are interlinked. In particular, he contends that the 'rule of law' grounds which are before the court in the two linked cases (ie. Wozniak and Chlabicz) are themselves linked to his ground of appeal on article 8 ECHR. He submits that that very point was made, by his client in person, in a letter which was provided to the district judge and referred to by the district judge. Mr Henley also submits that article 8 has a different and potentially more durable consequence legally than the points raised in the two linked cases. And he submits that his dual criminality ground plays into his article 8 ECHR ground.

7. I am not persuaded by any of those submissions, or by reference to any other feature of this case or the circumstances of the case, or in relation to the points in the two linked cases, that it is appropriate to adjourn consideration of the renewed application for permission to appeal on the other grounds. On the contrary, in my judgment, it would not be appropriate having regard to the interests of justice and the overriding objective to leave over all of the other points in this case, with the consideration of their reasonable arguability only to take place once the two linked cases have been decided. That would be to introduce wholly unnecessary and unjustified delay. There is no reason at all why this court should not, today, consider whether the other grounds are or are not reasonably arguable. That is what would have happened but for the two linked cases.

8. I am unpersuaded that there is any link between the points taken in the two linked cases and article 8. The fact that the appellant linked the points in the letter that he wrote to the district judge does not establish, even arguably, a reason why developments in relation to the court system in Poland play into the article 8 analysis. What they do play into are the two points that are raised in the two linked cases, including the fair trial point relating to the accusation warrant. But those points will fairly and squarely be decided once the 2 linked cases have been decided. It was open to Mr Henley to persuade me of a link to article 8, and then to point to the arguability of the two linked cases, to seek to show that article 8 is reasonably arguable. But I can see no link and have not been shown or persuaded that one exists.

9. I accept that article 8, as an outcome, stands to have a different consequence from the consequence that might arise if the linked cases were to succeed. It could be, for example, that further reform in Poland could remove any problem – if one currently exists – so far as section 2 or fair trial is concerned, whereas article 8 would lead to the more durable conclusion that the appellant that cannot be extradited, now or in the future. I am prepared to assume that that is true. But none of that is a reason for not grappling with whether the article 8 ground is or is not reasonably arguable.

10. So far as the link between dual criminality and article 8 is concerned, that is not a reason to adjourn consideration of the reasonable arguability of those two grounds. If they interlink then it is open to Mr Henley to show me why and how, at least reasonably arguably, they do interlink. But that would be a function of persuading me, today, to give permission to appeal on the basis of reasonable arguability. It does not begin to be a reason to adjourn the case – to kick it off into the long grass – so that reasonable arguability as to dual criminality and article 8 are grappled with by another judge on another occasion.

11. I explained to Mr Henley that I was against him in relation to adjournment and would give my reasons in my ruling. That is what I have now done. Mr Henley has addressed me, in detail, in written submissions supported by putative fresh evidence, and in his oral submissions. I turn to deal with what I made of the submissions and evidence in relation to the reasonable arguability of the various grounds.

A process point

12. I deal first with a process point. Reference has been made in the papers to the fact that the district judge proceeded on the same day as the appellant had been arrested on EAW2. The appellant was content that the district judge did proceed, as the district judge recorded in his judgment. The district judge, moreover, gave the appellant the opportunity – which he took – to make written submissions in relation to EAW2. And those submissions were then taken into account by the district judge in his ruling. There is no potential ground of appeal, whether freestanding or linked to the other grounds, in my judgment that arises from the fact that the district judge proceeded.

Putative fresh evidence

13. Mr Henley has relied on fresh evidence which he accepts to some extent overlaps with the material that was before the district judge. Section 27(4) of the 2003 Act provides an avenue for this appeal court to consider fresh evidence and the well-known Fenyvesi case [2009] EWHC 231 (Admin) deals with the basis on which fresh evidence will be

admitted on an extradition appeal: if there is "good reason" why it was not relied on below; and if it is "capable of being decisive". As the respondent points out in the respondent's notice and submissions, that avenue does not begin to provide a blanket permission for an appellant who acted in person to adduce fresh evidence on appeal: see Beshiri [2018] EWHC 91 (Admin) at paragraph 22. I am satisfied that the appropriate course in this case is to consider all of the evidence that is before me as putative fresh evidence and consider all the submissions that are made about all of the various features of the case. That will then lead to 'the proof of the pudding' so far as whether the material is "capable of being decisive" is concerned. Only if it was will there then need to be consideration of whether there could be said to be "good reason" for adducing it only now, in circumstances where there was a hearing at which the appellant was giving oral evidence, having made the choice not to instruct a legal representative.

Dual criminality

14. There is one other process aspect of this case. It forms a first limb of the ground of appeal put forward by Mr Henley so far as dual criminality is concerned. Mr Henley submits that the district judge was in breach of a statutory duty to enquire specifically as to dual criminality in the context of each of the various offences in the two EAWs. He submits that the judge failed to discharge that duty because dual criminality was only addressed by reference to the offence which the duty solicitor identified as the only candidate for a dual criminality issue. Mr Henley submits that there was a fundamental error in the district judge's approach which is itself fatal. He submits that it is nothing to the point whether, had the judge gone through the list of further offences, he would or should have found a problem in relation to dual criminality. He submits that there was a fatal breach of duty.

15. I put to Mr Henley that that approach is impossible to square with the appeal court's jurisdiction under section 27 of the 2003 Act. That section constrains this court to either allow or dismiss an appeal. It constrains this court to allow an appeal only if the statutory conditions are met. Those statutory conditions necessarily involve looking at (a) whether the judge ought to have decided a question before him differently and (b) whether, if the judge had decided the question the way they ought to have done, they would have been required to order discharge. In my judgment it is perfectly plain that what Parliament envisaged was that this court would grapple with the substance of any issue in which, on appeal, it is argued that the district judge went wrong in his or her approach. Mr Henley did not dispute that so far as appeal is concerned. His submission was that this court should reconstitute and treat the appeal as a judicial review. That is on the basis of his characterisation that the 'fatal error' by the district judge meant that there was never a lawful decision by the district judge which is the premise for a section 27 appeal. In other words. his contention was that there was something here so fundamental and serious that the district judge's action was a nullity, which the court on judicial review should recognise and quash. Even if I were to overlook the procedural implications of that new application, it is in my judgment a hopeless submission. Judicial review is a remedy which arises where there is a material error by a public authority or inferior courts. And if this were a judicial review it is, in my judgment, obvious that the court would want to examine whether there was substance in the point.

16. In my judgment, there was therefore a regrettable diversion in the legal contentions compared to the way in which it was put in the perfected grounds of appeal. The submission made in writing was that the district judge only considered the one offence and then, in the same paragraph, this: "had the judge considered the conduct for all the offences as he has mandated to do, he would have found the following offences were not extradition offences and he should have discharged them …" There is then a discussion of four offences. Putting to one side whether a point not raised below can be relied on this appeal and addressing the substance as I am anxious to do, I have considered whether Mr Henley is, reasonably arguably, right about those four offences or any of them.

17. The one offence that the district judge dealt with, because it was the only one raised before the district judge, was offence 3 in EAW2. The district judge characterised this as satisfying dual criminality on the basis that the conduct described would constitute the offence of handling stolen property. On the papers, William Davis J concluded that the judge was not arguably wrong to do so. I agree with William Davis J. The warrant describes the appellant as acquiring a mobile phone from a named individual as to which phone and based on accompanying circumstances he should know that it was obtained in 'a forbidden act'. Mr Henley submission is that it cannot be inferred, as an impelled inference, that that is a description of conduct in which the mobile phone was stolen. I do not agree. That point, in my judgment, is not reasonably arguable. I turn to the matters which the district judge did not address, because the duty solicitor could see no dual criminality or difficulty arising from them.

18. I start with the two theft offences. These are found in EAW1 as offences 3 and 5. Offence 3 relates to the appellant's mother's laptop. Mr Henley concedes that he would be 'in difficulties' as to dual criminality if this had been the laptop of a third party but he emphasises that this was the laptop of "a close family member". The description of the conduct in the EAW states that the appellant wilfully took a laptop being property of a named person for misappropriation in which he caused losses to that person. In my judgment, Mr Henley was right to concede that it would be harder for him to complain on dual criminality grounds absent the close family member. In my judgment, it would be impossible to complain, even arguably. That is because the description of the conduct, on its face, does drive an inference that is sufficient for the elements of theft, emphasising wilfully misappropriation the causing of loss and to the detriment. The submission made is that this was a laptop that was pawned with no intention permanently to deprive. But that is a classic illustration of a factual matter which would arise for consideration in the context of what is being alleged. It is sufficient that the conduct as described matches the elements of the domestic offence as a matter of necessary inference.

19. Offence 5 relates to silver products. Mr Henley's point is that the warrant does not spell out that these products were unlawfully appropriated by the appellant or disposed of by him. Like William Davis J, I am satisfied that – as with the laptop – there is nothing in this point. The description of conduct explicitly states that what is being alleged is that the appellant took the products having been entrusted with them. It spells out that he took them wilfully and it spells out that he acted to the detriment of a named person. I am quite satisfied that that actually supports the necessary inference so far as dual criminality is concerned.

20. The final dual criminality point relates to the same arrest warrant EAW1 and offence number 8. Here Mr Henley submits that this is a description of conduct which involved merely the keeping of documents namely a passport and a car registration document and does not describe conduct of taking them or of disposing of them or of using them. William Davis J was satisfied that, reading the description as a whole, with the emphasis on the appellant acting where he had no right to dispose and where he acted to the detriment, that there is sufficient here to be satisfied on dual criminality that there is the equivalent to the domestic offence of theft. In the respondent's notice, the respondent goes on, in any event, to make the additional point that domestically so far as the passport is concerned and therefore so far as this offence is concerned there is a statutory offence based on possession of another person's passport without reasonable excuse. The EAW description of the conduct is keeping documents of another and keeping them hid, and doing those to the detriment of the relevant named individuals. In the document subsequently filed with the court by Mr Henley, no answer was given in relation to the respondent's invocation of the statutory offence which arises under section 6 of the Identity Documents Act 2010. In his oral submissions Mr Henley pointed out that is an offence that requires possession "without reasonable excuse". I am quite satisfied, both for the reason given by William Davis J but in any event by reference to the section 6 offence, that reading this allegation sensibly there is within it the irresistible inference sufficient to support the dual criminality requirement. I imagine the duty solicitor looked at the allegations and warrants and could see one only as the candidate for dual criminality. I am satisfied that nothing was missed, whether by the duty solicitor, or by the judge. of any substance.

21. I add this. Mr Henley has not taken me through each of the other offences because he does not contend in relation to any of the others that there is any candidate for any substantive conclusion as to the lack of the prerequisite statutory dual criminality. I do not intend to embark on an enquiry of considering each of the other offences for that purpose. I say that in the light of the complaint and criticism that has been made of the district judge who relied on the duty solicitor identifying a candidate offence raising an issue as to dual criminality. I am quite satisfied that so far as this appeal court is concerned , and equally so far as a judicial review court were I reconstituted as belatedly invited, I am entitled to look to Mr Henley to identify the offences that he said arguably give rise to a difficulty in relation to dual criminality. I am quite satisfied that there is nothing in the dual criminality grounds and that it is not reasonably arguable. I am also satisfied that there is no knock-on impact, therefore, so far as article 8 considerations are concerned from the contention that some offence or offences failed the dual criminality test.

Article 8 ECHR

22. I turn to the other ground that was advanced orally before me namely article 8 ECHR. This is a human rights context and human rights cases are also always appropriate for anxious consideration. On the other hand, I have the careful evaluation of the district judge having heard oral evidence and having considered the materials that were before him. I have had regard to the fresh evidence that has been put forward and to all of the arguments based on all of the evidence. I have in mind, in particular, the guidance of Lord Burnett CJ in Love [2018] EWHC 172 (Admin) at paragraph 26 where the Lord Chief Justice explained: "the appellant court is entitled to stand back and say the question ought to have been decided differently because the overall evaluation was

wrong: crucial factor should have been weighed so significantly differently as to make the decision wrong, such that the appeal in consequence should be allowed". I have also had regard to the fact that the Court can allow an appeal on the basis of fresh evidence, if satisfied that the article 8 outcome is wrong and should have been decided and should now be decided differently. Finally I have also remembered, of course, that this is a permission hearing Mr Henley only has to satisfy me that the article 8 ground is reasonably arguable.

23. The essence of the article 8 ground, as I see it, really comes to this. The appellant has been in the United Kingdom since February 2016. He has no convictions in the United Kingdom. His life has undergone a remarkable turnaround here, compared to what preceded that. He has a relationship in this country and has a young child here, now aged 2. In his latest evidence, he describes an ongoing relationship and intention to marry. He provides support to his young child and support to the child's mother. He has settled employment here, which he would lose where he extradited. This is a case involving a significant lapse of time indeed a 3½ year delay before EAW2 was issued in January 2020, which is unexplained and moreover that which is a situation arising where the 2 warrants – nearly 3 years apart – were issued by the self-same court. The appellant has been straightforward, and brutally honest, with the authorities as to his wrongdoing in Poland including the acceptance that he committed some of the crimes described in the accusation warrant. The offending in Poland took place when he was much younger, aged 18 and then aged 20. There is a graphic and indeed a moving description of the very significant family bereavements that had taken place: his father dying in May 2012 when he was 17; and then, shortly afterwards, his uncle on whom he was strongly reliant committing suicide; and then there was then a further family bereavement; and then since he has been in the United Kingdom his brother has died in very tragic circumstances. His proof of evidence before me describes the drug and gambling habits to which he attributes the offending. As I have already said the series of offences that led to the original sentence was offending at the age of 18. The proof of evidence describes the periods of custody up to the release in February 2015 as having 'saved the appellant's life' and got him off drugs.

24. All cases turn on their particular facts. I have not been persuaded in this case by the written materials, the evidence and submissions, and the oral submissions made by Mr Henley, that there is a reasonably arguable article 8 ground of appeal. In my judgment this is a case in which, including having regard to the further and fresh evidence, there is no realistic prospect that this court, at a substantive appeal hearing, would overturn the judge's decision in relation to article 8. Notwithstanding the various matters that are put forward which I have endeavoured to encapsulate, as to how I saw their essence, it is not in my judgment reasonably arguable that the judge came to the wrong conclusion as to the article 8 balance.

25. There are strong public interest considerations which always apply and which apply in this case in support of extradition. This is a case in which the appellant came to the United Kingdom as a fugitive: a factor which triggers further strong public interest considerations, relating to fugitives and safe haven. The matters to which the two EAWs are concerned are, on their face, serious and significant sequences of criminal conduct. The first series of conduct, it is true, concerns the period aged 18 and the period in which the appellant describes himself as being in the throes of a drug addiction and following the appalling and sad consequences for him of the death of his father and his

uncle. On the other hand, this was a long sequence of multiple criminal actions including: dealing in drugs; forgery; burglary of a car radio; fraudulently obtaining a loan; possession of drugs; receiving a stolen phone; burglary of a dwelling. That seriousness is reflected in the nature of the custodial sentence, the balance of which the Polish authorities are seeking to have the appellant return to serve. The authorities of this country, including this court, in the article 8 balancing afford appropriate respect to the decisions and autonomy of those judicial authorities as to the appropriateness of the pursuit of extradition and the serving of the balance of the sentence.

26. But this case goes much further than those considerations. This is a case in which the appellant was detained on remand through his 19th birthday, was then convicted and was sentenced and then served a further 3-month period which he said on his own evidence meant that he was able to kick his drug habit. He was then released on licence in February 2015 in which month he had his 20th birthday. There is then the accusation warrant and the series of offences for which the Polish authorities properly seek extradition so that he can stand trial. That, on the face of it, is a further series of serious matters. Those matters include, leaving aside the mother's laptop: the burglary and theft from a slot machine on two occasions in 2015; the attempted fraud on a bank; the theft of the silver products to which I have already referred; and two burglaries from basements. One of those appears at least to be a dwelling because it describes the taking of a TV from a basement room, and it may very well be that both are dwelling burglaries. But even if both were non-dwelling burglaries there is, in my judgment, clearly here between the ages of 20 and 21 a series of serious and significant further criminal acts, some of which the appellant to his credit has accepted. It was at the end of that second series of criminal conduct, having turned 21, that the appellant came to the United Kingdom.

27. Having regard to all the circumstances, including the undoubted harm that will ensue for all those concerned from the extradition of the appellant, and having carefully considered the judge's reasons and analysis on the evidence that was before him, and the submissions that are made to me and the evidence that is before me, I regard this as a clear case in which extradition cannot be said to be disproportionate in article 8 terms.

Section 21A proportionality

28. In writing, including in his latest perfected grounds of appeal, Mr Henley had submitted that alongside article 8 ECHR there was also a breach in this case by reference to section 21A proportionality. He realistically accepted in his oral submissions that no freestanding section 21A proportionality point could, even arguably, avail him on this proposed appeal. I therefore deal with the matter very briefly. The district judge dealt impeccably with the statutory test and the statutorily relevant considerations and came to the unimpeachable conclusion that there was no lack of proportionality in section 21A terms in the extradition of the appellant in this case.

Conclusion

29. For the reasons I gave at the start of this ruling the appellant will not be removed as a result of my rejection today of his further grounds of appeal. I do, however, dismiss all of those further grounds of appeal. The points that remain, including the additional fair trial point which I raised at the start of this hearing, are points that he is entitled to await the resolution of. Whether he is extradited will depend on how those points are resolved

in the two linked cases. I am however quite satisfied, not only that it was appropriate for me to grasp the nettle and deal with the other points that have been put forward, but also that – as William Davies J found last month in considering this case on the papers – those grounds give rise to know reasonably arguable appeal. For those reasons they are dismissed. I will discuss with Mr Henley the terms of the order that I should make and I will then embody those terms as a final paragraph in my written judgment.

The duty solicitor

30. Before turning to my order, Mr Henley made a submission relating to the duty solicitor, arising out of what I have said in my judgment. Mr Henley's position is that the duty solicitor would not have considered EAW1 which was before the district judge at the hearing, but would only have considered EAW2 on which the appellant had been arrested on 7 February 2020 the day of the hearing. If that is right, it has the consequence that the district judge would not have been looking to the duty solicitor to make any submission in relation to EAW1, and so far as EAW1 was concerned the appellant was unrepresented and unassisted at the hearing. I accept what Mr Henley tells me so far as what the role of the duty solicitor was or would have been. Mr Henley was anxious that there ought not to be a factual misapprehension within my judgment, and initially invited me to deal with it by appropriate editing. I consider the better and more transparent course to take is to leave the judgment as I expressed it ex tempore, but with this additional paragraph to explain what I have been told. Mr Henley does not suggest that it is a point that can make a difference to the analysis and that is plainly right: I have dealt with the points arising out of both of the EAWs and dual criminality on their substantive merits and by reference to whether or not any arguable point arose on the face of the 2 EAWs.

Order

31. I made the following order:

UPON the Appellant's renewed application dated 10 June 2020 for permission to appeal on the Perfected Grounds of Appeal dated 3 April 2020

AND UPON the Appellant's application dated 15 July 2020 expanded upon orally, seeking (1) permission to amend the grounds of appeal to add (i) the s.2 (judicial authority) point in Wozniak (CO/2499/2019), namely the Polish courts have ceased to be judicial authorities for the purposes of section 2 of the Extradition Act 2003 (see Wozniak [2020] EWHC 1459 (Admin) at §§4, 6, 9-11, 14-15); s.2 (judicial authority) and (ii) the Article 6 (fair trial) point in Chlabicz (CO/4976/2019), namely that there would be a flagrant denial of justice if the Appellant in relation to an accusation warrant case were extradited to face trial in Poland; and (2) a stay of the application for permission to appeal on that ground, pending resolution of Wozniak and Chlabicz to be determined thereafter by a judge on the papers (draft Order paras 3 and 6).

AND UPON the Respondent, by an email dated 15 July 2020 at 14:03, confirming its adoption of a neutral position as to the application for a stay

AND UPON hearing from Counsel for the Appellant, Martin Henley

AND UPON giving an oral judgment, an approved written version of which will be available

IT IS ORDERED THAT:

1. Permission to appeal is refused, on the grounds on which it was advanced in the Perfected Grounds of Appeal dated 3 April 2020, and paragraphs 1-18 of the Amended Perfected Grounds

of Appeal dated 15 July 2020, namely: dual criminality (sections 10, 64), Article 8 (section 21) and proportionality (section 21A).

2. The Appellant has permission to amend his grounds of appeal, with an extension of time, to rely on (i) the s.2 (judicial authority) point in Wozniak (CO/2499/2019), namely the Polish courts have ceased to be judicial authorities for the purposes of section 2 of the Extradition Act 2003 (see Wozniak [2020] EWHC 1459 (Admin) at §§4, 6, 9-11, 14-15); s.2 (judicial authority) and (ii) the Article 6 (fair trial) point in Chlabicz (CO/4976/2019), namely that there would be a flagrant denial of justice if the Appellant in relation to an accusation warrant case were extradited to face trial in Poland, as a ground of appeal in this case. As to (i) such ground being set out in paragraphs 19-20 of the Amended Perfected Grounds of Appeal dated 15 July 2020. As to (ii), those Grounds to be treated as having been amended to include the text set out above, with no need for a further document to be filed. The need for any further or amended Respondent's Notice is dispensed with.

3. The Appellant's application for permission to appeal on the ground referred to at paragraph 2 above shall be stayed pending the judgment of the Divisional Court in the appeals of Wozniak (CO/2499/2019) and Chlabicz (CO/4976/2019). The Appellant shall, within 14 days following the date on which the judgment of the Divisional Court in those cases is handed down, (a) inform the Court and the Respondent whether he intends to pursue an application for permission to appeal on the ground referred to at paragraph 2 above; and (b) if such an application for permission to appeal is to be pursued, file and serve written submissions in support of that application. The Respondent shall within 14 days of those written submissions file and serve any written submissions in response. The question of permission to appeal to be considered thereafter by a judge on the papers.

4. Pending consideration of the application for permission to appeal on the ground referred to at paragraph 2 above, which application is stayed pursuant to and in accordance with paragraph 3 above, the Appellant shall not be extradited pursuant to the order made at Westminster Magistrates' Court (in this case, on 18 March 2020).

5. The parties shall have liberty to apply, in writing and on notice, to vary or discharge paragraphs 3 and/or 4 of this Order, such application to be considered in the first instance on the papers.

6. No order as to costs, save for detailed assessment of the Appellant's publicly funded costs.

20 July 2020