Neutral Citation Number: [2020] EWHC 2305 (Admin)

Case No: CO/937/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 August 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

KRZYSZTOF NIEWINSKI	**Applicant**
- and -	
THE REGIONAL COURT IN WROCLAW (POLAND)	**Respondent**

- -
- -

George Hepburne Scott (instructed by Bark & Co Solicitors) for the **applicant**
Rebecca Hill (instructed by the Crown Prosecution Service) for the **respondent**

Hearing date: 20 August 2020

Judgment as delivered in open court at the hearing

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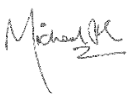
Approved Judgment

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:

1. This is an application for bail in extradition proceedings, bail having been refused by a district judge in the magistrates' court. Bail has also previously been refused in the High Court on 21 November 2019 and 16 July 2020, but it is common ground that the increase in the amount offered as pre-release security constitutes the requisite change of circumstances. As is also common ground my statutory function, pursuant to section 22(1A) of the Criminal Justice Act 1967 involves consideration of bail "afresh": see Tighe [2013] EWHC 3313 (Admin) at paragraph 5. The mode of hearing was a BT conference call. The Administrative Court provides a prior opportunity for the parties' representatives to state any preference or provide any reasons why remote hearing is considered inappropriate. Like the parties' representatives, I was satisfied that a telephone hearing was appropriate. I heard oral submissions in exactly the way I would have done had we all been physically present in a court room. As regards open justice, the hearing and its start time – together with an email address which could be used by any person wishing to observe the hearing – were published in the cause list. The hearing was recorded. This judgment will be released into the public domain. By having a remote hearing, we eliminated any risk to any person, from having to travel to, or be present in, a court. I am satisfied that no right or interest was compromised and that, if there was any interference with or qualification of any right or interest, it was justified as necessary and proportionate.

2. The applicant is wanted for extradition to Poland. He has been on remand since his arrest on 4 August 2019. The EAW is a conviction warrant and it is common ground therefore that no presumption arises in favour of the grant of bail. The essence of the case for granting bail made by Mr Hepburne Scott, in a helpful skeleton argument embellished in oral submissions today, as I see it, really comes to this. The court can very properly grant bail in this case and should do so. The appellant and his partner have been in the United Kingdom for the last 10 years since 2010. He has very strong family ties here and a legitimate business, which his partner is currently operating single-handedly. A sum of pre-release security which is – as Mr Hepburne Scott today put it - "on any view a very considerable amount of money", and said to be "the absolute maximum" which can be identified by the partner, of £50,000 has been put forward. The appellant is vigorously defending these extradition proceedings and his case has now been reopened. He is also seeking clemency in Poland in circumstances where the relevant offending is itself more than 10 years old. He and his partner have worked really hard to build up a business with an extensive client base but which continues to suffer if he remains in custody. He previously admitted an offence committed in the UK in December 2018 and complied on that occasion with bail conditions (as Sweeney J accepted), set in conjunction with those proceedings. That was against the backcloth of previous attempts to extradite him and was therefore compliance in the knowledge of the prospect of extradition (as Hilliard J accepted). He is highly unlikely to breach his bail conditions and leave his partner with the £50,000 pre-release security forfeit, as would almost inevitably happen were he now to fail to surrender. He has a tangible and most compelling incentive to comply with conditions. Stringent conditions are put forward. In addition to the security, a residence condition, a curfew with electronic monitoring, the seizure and retention of his passport, reporting requirements, and prohibitions relating to international travel and international travel documents. In his oral submissions Mr Hepburne Scott adopted everything set out in writing. He emphasised the very deep community ties

which the applicant has and the relationship with his partner, the security, and other proposed conditions. He says bail can properly be granted, looking at this case afresh, and putting the other decisions to one side (except insofar as previous judges in this Court have accepted aspects as indicated already). The proposed bail conditions allay the concerns which arise. Other aspects of what I have said were emphasised, in particular the circumstances in late 2018 and the compliance with knowledge.

3. The respondent opposes bail on the basis that there are substantial grounds to believe that the applicant would, if released on bail, fail to surrender. I have looked at the matter afresh. I have done what Mr Hepburne Scott today in his oral submissions asks, and have put all the other bail refusals to one side. I accept that this is the proper and principled approach. I am not, however, prepared to grant bail in this case. In the light of all the evidence and circumstances, and notwithstanding the points put forward in writing and orally, my own assessment is that there are substantial grounds for believing that – if released and notwithstanding the stringent proposed bail conditions including the very substantial sum of security – the applicant would fail to surrender. The reasons why I have reached that assessment, notwithstanding the points relied on, are as follows.

4. In the first place the period of custody which the applicant faces upon extradition to Poland is a very substantial one. The EAW relates to 13 underlying offences committed by the applicant in Poland between 2006 and 2010. In respect of all of them the sentence was consolidated by the Polish court on 4 June 2018, culminating in an overall aggregate sentence of 6 years custody. Of those 6 years custody, 4 years 9 months and 21 days remain unserved. From that would be deducted the period spent on remand since 4 August 2019. That makes 3 years 9 months as at today, were he released by me on bail. It stands, as Ms Hill put it, as a significant disincentive to comply.

5. Secondly, this is a case in which a district judge – after an oral hearing – reached a clear and unimpeachable finding of fact that the applicant came to the United Kingdom as a fugitive from Polish justice, in relation to this sentence. The district judge found that the applicant had applied in Poland to consolidate his sentences, but then after June 2018 having obtained a consolidated sentence, knowingly failed to surrender in order to serve that sentence. That means that the applicant has already once, as recently as 2018, deliberately acted to avoid the serving of this very sentence, by crossing a border and being joined by his partner. There is also force in the submission emphasised today by Ms Hill that this is all aggravated by the fact that the appellant had previously left Poland knowing about the previously imposed pre-aggregation sentences. He had then taken the steps to invite aggregation, indicating that he would cooperate, but having – as I have said – received the aggregate sentence he acted as a fugitive all over again as the district judge found.

6. Thirdly, the resistance to extradition has now entered what is likely to be perceived as its final chapter. All of the points based on the facts and circumstances of the applicant's individual case, as bases to resist his extradition, have been finally rejected following exhaustive pursuit of his appeal route. It is true that an application has been granted to reopen the case. The applicant's resistance to extradition now rests on a point of principle which I have held in another case (Wozniak) to be reasonably arguable. It was right that the applicant should not be removed, while that point of principle – equally applicable to him – was unresolved. The Wozniak case is listed for

hearing by a Divisional Court towards the end of this year. The applicant is likely to perceive himself as in the 'last chance saloon'. Nothing that he can do can influence the outcome on the point of principle in Wozniak. One alternative, if released on bail, would be to stay and await the Wozniak hearing and its outcome. That case may succeed. But there are, in my assessment, very substantial grounds for believing that the appellant, while in that 'last chance saloon', and facing several years in a Polish prison, will take the course of failing to surrender.

7. Fourthly, there are the events at the end of 2018 in the UK, as have been emphasised. I accept that the applicant pleaded guilty to an offence committed in December 2018, and I am told that he answered to his bail in conjunction with those criminal proceedings in this country. I am also told that there was some real prospect, as at that stage, that he would subsequently face a renewed attempt to extradite him and that he was aware of that. I proceed on that basis. He was convicted and sentenced to 16 weeks custody for that offence. But it is highly relevant, in my judgment, to remember that he was at that time a fugitive through actions a few months earlier in relation to these matters. It is also highly relevant, in my judgment, to bear in mind that the UK offence itself was one which involved having given a false name, date of birth and address to the police following a road traffic accident. The offence which the applicant knowingly and deliberately committed in December 2018, the choice which he made, was an offence of perverting the course of justice. The fact that he made that choice on that occasion is relevant to my assessment of the present circumstances, and needs to be put alongside what has been said about subsequent choices and state of knowledge in relation to compliance with bail.

8. Finally, I accept that £50,000 is a very substantial pre-release security. I also accept that the forfeiture of such a sum may very well put to an end the business enterprise which the applicant's partner is currently single-handedly operating. But I am not satisfied that that condition, or that consequence, or the other conditions viewed alongside the security, allay the concerns that arise in this case in relation to failure to surrender. I am sure it is right that the applicant and his partner can ill afford to lose £50,000 or lose the business. Equally, I am sure that the applicant and his partner can ill afford losing him to face several years of custody in Poland.

9. In all those circumstances and for those reasons my assessment is, as I have said, that there are substantial grounds for believing that if released - and notwithstanding the conditions including the security - the applicant would fail to surrender. Having put them out of the picture for the purposes of consideration afresh, except in relation to findings regarding bail-compliance and knowledge on which reliance was placed, I returned to the other decisions made in this case. This is a case in which bail has previously been refused on at least 7 occasions, at various stages during these extradition proceedings, in each case on the grounds of failure to surrender. The pre-release security offered has materially increased, in stages, through the various bail applications made. The position is that, looking at this matter afresh I have in fact reached the same conclusion as did DJ Goozee on 5 August 2019, the Chief Magistrate on 11 October 2019, DJ Bouch on 18 October 2019, Sweeney J on 21 November 2019, DJ Goozee on 8 July 2020, Hilliard J on 16 July 2020 and DJ Zani on 10 August 2020. Bail is refused.