Neutral Citation Number: [2020] EWHC 2699 (Admin)

Case No: CO/501/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 8 October 2020

Before :
MR JUSTICE FORDHAM
- -
Between :

ADRIAN TUAKLI	**Appellant**
- and -	
JUDGE FOR PRELIMINARY INVESTIGATIONS, COURT OF TRIESTE, ITALY	**Respondent**

- -
- -

George Hepburne Scott (instructed by Lansbury Worthington Solicitors) for the **applicant**
The **respondent** did not appear and was not represented

Hearing date: 8 October 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. The appellant is aged 21 and is wanted for extradition to Italy pursuant to an accusation European Arrest Warrant. The alleged offending took place (in Italy) on 21 and 22 February 2017. It is described as follows: '(1) On 21 February 2017 the appellant had another individual travelled to Padua where the latter purchased 1 kg of marijuana with the appellant acting as his bodyguard. Part of the marijuana was later found by the police at the home of the other individual in Trieste. (2) On 22 February 2017 in Trieste the appellant with two others enter the property of another (the same person referred to in relation to the first offence) and while there stole a pair of Jordan shoes and a quantity of marijuana'. Extradition was ordered on 6 February 2020 by District Judge Zani after an oral hearing on 17 January 2020. Permission to appeal was refused by Cutts J on 11 June 2020. This is the appellant's renewed application for permission to appeal.

2. The mode of hearing was BT conference call. Mr Hepburne Scott was satisfied, as am I, that his client's interests were not prejudiced by that mode. Open justice, in my judgment, is secured by the fact that the hearing and its start time were published in the cause list together with an email address usable by anyone who wanted to observe the hearing. All it would take is the sending of an email and the making of a phone call. By having a remote hearing we eliminated any risk to any person from having to travel to, or be physically present in, a court room. I am satisfied that the mode was appropriate and proportionate.

3. Two grounds of appeal are advanced by Mr Hepburne Scott on behalf of the appellant. He rightly reminds me that all he needs to do today is to satisfy me that there is a reasonably arguable ground of appeal. He says there are two, either one of which would suffice for permission to appeal to be granted. Each ground of appeal ultimately engages a proportionality test, but they are proportionality tests involving different perspectives, which is why they appear side-by-side as distinct bases for resisting extradition in the statutory scheme.

Ground One

4. The first ground of appeal is proportionality described in section 21A(1)(b) read with (2) and (3). The question arising is whether extradition would be disproportionate taking into account specified statutory considerations of which there are three: one is the seriousness of the alleged conduct; the second is the likely penalty that would be imposed on a conviction; the third is the possibility of less coercive measures. A point relating to less coercive measures has, on mature reflection, rightly been abandoned. The focus today is on likely penalty, considered alongside seriousness of conduct.

5. Mr Hepburne Scott submits that the District Judge was right to address the position under the domestic England and Wales sentencing guidelines, as he did. That was because there was no specific information regarding the approach to sentencing in Italy. The District Judge looked at the domestic guidelines and rejected an argument put forward on behalf of the appellant. That argument was that this conduct could be regarded as a 'lesser role'. The District Judge was plainly right to reject that argument and Mr Hepburne Scott does not advance it. The District Judge considered that this was a 'significant role' or alternatively a 'leading role'. The District Judge therefore gave

the domestic sentencing bracket which straddled the two relevant categories for the relevant class of drug. He described a range from the bottom 26 weeks to the top 5 years. He rejected the submission that there would not be custody here and concluded that, whilst it was not inevitable, there may well be custody. He characterised the offending as serious. At those considerations informed his ultimate conclusion that extradition would not be disproportionate on this ground. Mr Hepburne Scott submits as follows: that the most appropriate fit is 'significant role'; that the starting point of 12 months custody can with confidence be taken in this case; and that, as he put it today, it is 'likely' that a sentencing judge here would suspend the sentence having regard in particular to two facts. The first fact is that the appellant has no previous drug convictions. The second is that he was aged 18 at the time of the offending.

6. In my judgment this is not a reasonably arguable ground of appeal. The District Judge was plainly right, in my judgment, to characterise the offending as 'serious' for the purposes of the first of the three statutory considerations and in fairness Mr Hepburne Scott does not attack the case by reference to that consideration. As to likely penalty, I accept Mr Hepburne Scott's submission that this case would most likely fit within 'significant role'. I agree, however, with Cutts J who observed when refusing permission to appeal on the papers that: 'even if the role is regarded as 'significant', the amount involved together with the circumstances of the offence would be such that the case would properly fall at the upper end of the category range'. The range for this category of drugs for a 'significant role' extends up to 3 years custody. It is possible, as the District Judge himself found, that there would not be immediate custody in this case. I accept that it is possible that there would be a suspended sentence. But even assuming everything in the most favourable light to the appellant, in my judgment, it is not reasonably arguable that extradition is rendered disproportionate having regard to the three statutory considerations, and in particular to likely penalty. In my judgment, there is no realistic prospect of this Court on appeal overturning the District Judge's conclusion as to this test of proportionality. It is true that the appellant was only 18 and has no previous drug convictions and that those factor into the assessment. But they do not, in my judgment, even arguably – and when put together with the other circumstances of the case – render extradition disproportionate. It is right that I should record that, although the appellant has no previous drugs convictions, he did, just a couple of months prior to this alleged offending, commit an offence of possession of a bladed article for which he was fined.

7. I cannot accept this as a reasonably arguable ground.

Ground Two

8. The second ground put forward also engages a proportionality test. It is listed distinctly under section 21A(1)(a) of the Act. Here, the question is whether extradition would be incompatible with Convention rights and specifically in this case Article 8. The essence of the Article 8 argument in this case, as I see it, is as follows. It is right that the District Judge considered all (or almost all) of the factors on which reliance is placed before me and that he reasoned out an Article 8 analysis having conducted the requisite balance sheet approach. As the Divisional Court memorably pointed out in the case of Love v USA [2018] EWHC 712 (Admin) at paragraph 26: 'the appellant court is entitled to stand back and say that the Article 8 question ought to have been decided differently because the overall evaluation was wrong; that crucial factor should have been weighed so different significantly differently as to make the decision wrong, such that the appeal

in consequence should be allowed'. That observation, cited in Mr Hepburne Scott's skeleton argument, in my judgment encapsulates the nature of the proposed Article 8 appeal in this case. Its essence is that, having regard to what were originally 9 factors in the skeleton argument and are now 8 factors in oral argument (one having been abandoned), it is reasonably arguable that the District Judge got the Article 8 answer wrong.

9. Some of the factors relied on are uncontroversial and readily found in the District Judge's reasoning. One is that the appellant having had an unsettled childhood is now settled including having a job status and relationship in the United Kingdom. It is right to point out that this is a case in which the appellant was in fact born here in England in 1998 and had moved abroad for a few years with his mother as a child, having then come back here aged 16. He accepts that he was in Italy at the time of the alleged offending there but has given a very different explanation of what happened and denies committing the offences in the accusation EAW. The District Judge in the Article 8 'balance sheet' exercise specifically referred to the fact that the appellant is a UK national having been born here and that (at the time of the hearing) was in employment and had fixed accommodation. It is right to say that both the job offer and the relationship were recent and described as such. The next factor is the appellant's age at the time of the offending which as I have explained was 18. That, again, was explicitly addressed and identified by the District Judge in the balance sheet exercise. Next, reliance is placed on the fact that he is not a 'fugitive' which reduces the weight to be placed on some of the public interest considerations in support of extradition. That was explicitly identified by the District Judge in the balance sheet exercise. The next factor is that the appellant is a British citizen which, as I have already indicated, was again recognised and referenced. Next there is the uncontroversial fact which I have no doubt that the District Judge had well in mind: that the appellant says he has no ties or family in Italy.

10. Next, reliance is placed on what is said to be 'profound hardship' if the appellant were to be extradited. The District Judge recognised that there would be 'some hardship' but did not accept or characterise it as 'profound'. That approach on that issue, in my judgment, was clearly sustainable and open to the District Judge. The penultimate factor is the passage of time which has its well understood dual-effect in Article 8 cases: reducing the weight to be given to public interest in extradition and tending to strengthen and support both UK ties and impact. In my judgment 'passage of time' is a weak factor in this case. The offending goes back to February 2017. The warrant was issued in May 2017 and the appellant arrested in November 2019. 'Passage of time', in my judgment, is not in this case in itself capable of having an effect beyond the following: the regard that needs to be had to the appellant's age at the time of the offending and now; the regard that needs to be had to his circumstances; and the regard that needs to be had to any change in those circumstances over that period. Those matters need to be taken into account in the evaluative exercise, as they were by the District Judge. The final factor is the question of the likely sentence upon a conviction looking at the domestic English and Welsh guidelines, in the absence of information as to Italian sentencing. On that point the appellant does and is entitled to rely on the same factors as have already been rehearsed under the first distinct ground of appeal. The District Judge necessarily had to deal with that and had that well in mind in the light of the first ground.

11. Applying the approach in Love v USA, I have posited this Court considering the matter 'in the round' and 'stepping back' and looking at the 'outcome', by reference to all the circumstances of this case including the 8 factors that are specifically relied on. I have asked myself whether it is reasonably arguable that the District Judge's conclusion, that extradition is Article 8-compatible, was the wrong conclusion. I have asked myself whether there is any realistic prospect that this Court would overturn that conclusion on a substantive appeal. In my judgment, this is not a reasonably arguable ground of appeal; it is not reasonably arguable that the judge got Article 8 compatibility wrong; and there is no realistic prospect that this Court would overturn that conclusion in the circumstances of this case.

12. In refusing permission on the papers Cutts J said this: 'It is unarguable that the judge was wrong to find that extradition was disproportionate to the applicant's Article 8 rights. In coming to his view he adopted the correct balance sheet approach and correctly identified the factors for and against extradition he was entitled to find that the strong and continuing public interest in the UK abiding by its international extradition obligations outweigh the applicant's Article 8 rights. The applicant is living as a single man in the UK whilst he may endure hardship by means of his extradition it is not such as to render extradition disproportionate in this case'. Subject to the qualification that I am prepared to assume that the appellant remains in a relationship, albeit a recent one, I entirely agree with that assessment.

13. In my judgment, the reasons which the District Judge gave for the finding and ruling at the end of his judgment are unimpeachable. He found that it would not be a disproportionate interference with the appellant's Article 8 rights for extradition to be ordered. He found that it was very important for the UK to be seen to be upholding its international extradition obligations. (He referred to 'safe haven' but not in the context of a 'fugitive'; rather, safe haven in relation to avoiding standing trial or serving a prison sentence.) He then observed that the offences are serious and in the event of a conviction here for like conduct a prison sentence may well be imposed. He recorded that this is not a case involving any dependent adult or children. He recognised that hardship would be caused to the appellant as he would lose his job but observed that hardship of itself is not sufficient to prevent an order for extradition. (He then dealt with a point that has been abandoned about the prospect of a prolonged period of pre-trial detention in Italy.)

Conclusion

14. For all those reasons, having examined all the features of this case, I cannot accept that there is an arguable ground of appeal on either of the two points put forward, in his usual succinct and lucid manner, by Mr Hepburne Scott. I will refuse permission to appeal.

8 October 2020