



Neutral Citation Number: [2024] EWHC 337 (Admin)

Case Nos: AC-2023-LON-000228

AC-2023-LON-000348

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 21st February 2024

Before:

FORDHAM J

Between:

IONUT VICTOR CHELU

Appellant

- and -

ROMANIAN JUDICIAL AUTHORITY

Respondent

Andrew Zalewski (instructed by AM International Solicitors) for the Appellant
The **Respondent** did not appear and was not represented

Hearing date: 21.2.24

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.

FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

Introduction

1. The Appellant is aged 33 and is wanted for extradition to Romania. That is in conjunction with a conviction Extradition Arrest Warrant issued on 15 September 2021. It was certified on 23 November 2021, the same date on which the Appellant was arrested. He has been on bail since then.
2. The ‘index’ offending comprises two driving offences. The first was committed by the Appellant on 16 March 2016 aged 25. It was an offence of driving under the influence of alcohol over the legal limit. He was convicted and sentenced in his presence on 14 February 2017, and given an eight-month custodial sentence suspended for 2 years. The second offence was committed by the Appellant on 9 November 2017 aged 27, less than 9 months into the suspended sentence. It was an offence of driving while his driving licence was suspended.
3. Mr Zalewski, in his oral submissions this morning, emphasises a reference in the Further Information, which District Judge Tempia (“the Judge”) recorded in his judgment in this case. It is a reference to the Appellant being “questioned and having given a statement as a suspect” on 4 March 2019. Alongside that, emphasis is also placed on a document which the Judge had, namely a Romanian passport issued to the Appellant in March 2019.
4. There were various trial dates relating to the second offence, from 20 March 2020 through the rest of 2020 (in June, September and November 2020). These culminated in a hearing on 4 February 2021. Three things happened. (1) The Appellant was sentenced to 8 months custody for the November 2017 offence. (2) The eight-month suspended sentence for the March 2016 offence was activated. (3) The two sentences were aggregated so that – with what we would call a reduction for totality – his aggregate sentence was 10 months 20 days, taking effect from 25 February 2021.
5. Extradition was ordered by the Judge on 12 April 2022. That was after an oral hearing on 5 April 2022 at which the Appellant gave oral evidence. The Appellant had insisted in his oral evidence that he had left Romania and come to the United Kingdom in “August 2018”. At that stage extradition was ordered by the Judge, but only in relation to the November 2017 offence (driving while suspended). The Judge discharged the Appellant in relation to the March 2016 offence (driving under the influence of alcohol). That discharge was based on the Judge’s conclusion that Respondent had not performed a necessary conversion exercise to show that the level of alcohol would have breached the applicable legal limit in the UK. At the heart of the ‘necessary conversion’ issue was Czech Republic v Kolman [2017] EWHC 302 (Admin). That discharge was appealed by the Respondent, successfully, and on 7 March 2023 Linden J quashed the discharge and remitted the case to the Judge, who on 16 March 2023 ordered that the Appellant be extradited on the March 2016 offence as well. The Appellant has appealed that second order, and the two appeals combine to raise Article 8 as a challenge to extradition on the two index offence sentences.
6. One of the issues determined by the Judge in April 2022 was that the Appellant’s extradition – in relation to the November 2017 offence only (driving while suspended) – was compatible with the Article 8 ECHR private and family life rights of all those

then affected: the Appellant's partner of two years, who was expecting their first child; her then nearly 6 year old daughter for whom the Judge found the Appellant was a father figure; and the Appellant himself.

Fugitivity

7. The Judge found as a fact that the Appellant had come to the UK in August 2018, as the Appellant had claimed. Mr Zalewski has submitted this morning that, in light of the Further Information referring to the questioning and statement on 4 March 2019, and the passport issued in March 2019, the Appellant must have left Romania after March 2019; or alternatively he had left in August 2018 and had 'returned to cooperate' with the authorities by giving a statement. There was no evidence from the Appellant that he had 'returned to cooperate' by giving a statement. He had insisted that he had left in August 2018. He was legally represented, and his Article 8 case was based on his ties to the UK since August 2018.
8. Mr Zalewski submits that this March 2019 feature of the case, together with the pandemic which in pursuit in 2020, give rise to an arguable intrinsic difficulty in the finding that the appellant left Romania and came to the UK as a fugitive. In my judgment, for reasons which I will explain, there is no reasonably arguable challenge to the finding of fugitivity on that basis. There was no evidence before the Judge of 'returning to cooperate' having already left. The only possible wrinkle on the evidence is as to whether the Judge should have given the Appellant the benefit of counting his UK private life back to August 2018; or rather ought to have found that the Appellant had remained in Romania after August 2018, had been questioned and had given his statement as a suspect, and then left Romania after March 2019. Nothing can turn on that because the key questions relating to fugitivity were about an ongoing obligation on the Appellant to notify a change of whereabouts and to notify a change of address, which the Appellant left Romania knowingly breaching. That was rightly the focus of the Judge's consideration of fugitivity. The Judge had the advantage of the Appellant's oral evidence. She rejected his explanation as to the circumstances. He had denied that obligation. He had denied having knowingly sought to evade the Romanian authorities.
9. When the Perfected Grounds of Appeal were originally filed on 29 April 2022 raising Article 8, Mr Zalewski submitted that the question of proportionality was finely balanced; but that it was just about in favour of the Appellant, relying on the impact of extradition and the November 2017 offence as being of no great gravity. At that stage, there was no challenge to the important adverse finding of fugitivity made by the Judge. Other grounds of appeal were present in the case at that stage. They included a specialty argument and an Article 3 argument, but these have fallen away in light of decisions in other cases. It was later, when filing Perfected Grounds of Appeal on 5 April 2023 to take up the Article 8 extradition bar in the light of the Judge's second judgment (16 March 2023), that Mr Zalewski was emboldened on the issue of fugitivity to submit that the Judge's finding was arguably wrong. In fairness Mr Zalewski was not the barrister who represented the appellant in the April 2022 hearing before the judge and so would have been coming a new to the point recorded in the judgment about the further information and a statement on 4 March 2019, and the March 2019 passport in the court papers.

10. I have described the main points that have been advanced in relation to fugitivity and the question of presence in Romania in March 2019. In addition, reliance has been placed on the absence of any restrictions on the Appellant leaving Romania to come to the UK. As I have mentioned, so far as the hearings in 2020 are concerned, it is said that it would in practical terms have been impossible for the Appellant to attend those hearings in any event, in the context of the Covid-19 pandemic. What is said is that, viewed in the overall context, the feature on which the Judge relied – namely the breach of the ongoing obligation to notify a change of location and an address to the Romanian authorities – becomes insufficient and irrelevant. Fugitivity could not properly be found to have been established to the necessary criminal standard.
11. As I have said, this is not an argument which I can accept as crossing the threshold of reasonable arguability. The Judge found as a fact that the Appellant came to the UK in breach of an ongoing condition imposed upon him, of which he was aware, to notify a change of whereabouts including any new address. She had heard the Appellant's oral evidence and the cross-examination. She disbelieved his explanation that he had left Romania for the UK – he insisted, in August 2018 – for a better life. As she found: he left Romania knowing that he had committed the offence in November 2017 of driving while disqualified; having been arrested, interviewed and having admitted that offence; knowing that this further offending placed him in breach of the conditions of his recent suspended sentence; knowing that he was obliged to notify any change of whereabouts and address; and deliberately choosing not to do so. It is rightly not suggested that there was any misdirection by the Judge as to the applicable legal test – of knowingly placing oneself beyond the reach of the authorities – and the Judge was, beyond reasonable argument, entitled to find that the Appellant was a fugitive. That had – and has – significant implications in terms of the Article 8 proportionality balance sheet and the strength of the public interest considerations in favour of extradition, which the Judge rightly recognised.

Article 8 Proportionality

12. Mr Zalewski has accepted in oral submissions today that, unless he can succeed on the fugitivity point, the Article 8 appeal will be unarguable. Previously, in writing, the position had been that Article 8 was being advanced on a standalone basis, independently of the question of fugitivity. I agree with Mr Zalewski that the Article 8 argument, standing alone, is not one which has any realistic prospect of success. But rather than resting on a concession, I prefer to explain why that is in any event my view.
13. The Judge made these findings: that the Appellant had worked and lived here openly in the UK; that he was of good character in the UK with no convictions here; that there had been no delay in pursuit of matters by the Romanian authorities; that the Appellant had limited ties with Romania; that he had a private life and family life in the UK, including his two-year relationship (from 2020) with the partner who was pregnant with their first child, and as a father figure to his stepdaughter. The Judge recorded that, even in respect of the driving while suspended offence, the Appellant had a relatively lengthy sentence to serve albeit that it would need to be disaggregated. Mr Zalewski relies on all the materials, including putative fresh evidence: it shows that the partner gave birth to the couple's young son on 20 October 2022, so that the son is now 16 months old; and there is updated evidence as to

employment and earnings. All of this is relevant to the question of impact and financial hardship.

14. The standalone argument would be this. Even if sustainably found to have come to the UK as a fugitive, it is reasonably arguable that the Appellant's Article 8 appeal would succeed at a substantive hearing, with the balance revisited and restruck given the changed circumstances. There is the position of the now 16 month old son, and of the now 7 year old stepdaughter; the deeper bonds; and the emotional and economic and other impacts of extradition, on both of those blameless young children and their mother. There is the Appellant's good character in the United Kingdom, now in the extended period of nearly 6 years if he came here in August 2018, or less if it was after March 2019. Mr Zalewski had submitted that neither of the offences were of any great gravity, but rather are "rather trivial".
15. When the Judge considered the position in April 2022, and when Ellenbogen J refused permission to appeal on the papers in August 2022, the position was that the Appellant was facing extradition only in relation to the November 2017 driving offence and its sentence, and the partner was expecting the couple's child. The position now is that the child has been born and is 16 months old; but also that extradition is being pursued in relation to both of the driving offences and the aggregated sentence of 10 months 20 days. As the Judge recorded, there is no delay in this case on the part of the Romanian authorities. The aggregated sentence in light of the activation took effect from 25 February 2021 and within 7 months the Extradition Arrest Warrant had been issued. It was certified, and the Appellant was arrested, within a further two months. The Appellant had come to the UK as a fugitive. He did so, knowing that he was facing being sentenced for the November 2017 offence, which he had admitted; and knowing that he was facing activation of the suspended sentence which he knew he had breached by reoffending shortly into its suspension period. His life in the UK has been built on that basis. I cannot accept, even arguably, the characterisation of the offending as being "rather trivial". The Appellant was aged 25 and 27 at the time of the offences. The second offence is aggravated by the fact that it was committed in breach of the suspended sentence in relation to the first. The sentence, the activation, and the aggregation are all to be respected. There are strong public interest considerations in support of extradition. The impact on the Appellant, and on the three other blameless family members, will be serious and significant. But the young son and stepdaughter will remain with their mother. She will have a support network. She has a brother who and whose family, as the Judge recorded, live at the same address. As the Judge also recorded, the Appellant's brother lives 10 minutes away. The public interest considerations in favour of extradition decisively outweigh those capable of weighing against it. And I can see no realistic prospect at a substantive hearing, even on the basis of conducting the Article 8 balance fresh, in light of the Judge's findings of fact, that this Court would find the outcome wrong and extradition to be a disproportionate interference with the Article 8 rights of any of those individuals affected.

Conclusion

16. For those reasons and in those circumstances, I will refuse permission to appeal in both of these linked cases. Since, in the event, it has proved incapable of being decisive, I will formally refuse permission to rely on the fresh evidence.

21.2.24