

Zera v Court In Ostrotska Poland

CO/1093/2013

High Court of Justice Queen's Bench Division the Administrative Court

18 March 2013

[2013] EWHC 911 (Admin)

2013 WL 1563166

Before: Mr Justice Collins

Monday, 18 March 2013

Representation

The Appellant appeared in person (assisted by a Polish interpreter, Dorota Berent).

Mr D Sternberg (instructed by The Crown Prosecution Service) appeared on behalf of the Respondent.

Judgment

Mr Justice Collins:

1 This is an appeal under section 26 of the Extradition Act 2003 against a decision of District Judge Purdy, given on 28 January 2013, directing the appellant's removal to Poland in order to face a number of charges of essentially fraudulent behaviour. The offences in question were committed (if they were) in 2000, and indeed in some cases before that; they are quite old offences. It seems that a prosecution was indeed commenced in the sense that there were some court hearings in Poland, but the appellant came to this country in 2006.

2 The evidence before the district judge included his signed proof of evidence given in February 2012 that he accepted that having arrived here he had received a summons to appear in court, but he ignored it because he had already found a job here.

3 He recognises that but for the matters which I will refer to in a moment, he has no basis for challenging his removal to Poland in order to face the charges, which he tells me he is contesting and that he is not guilty of them. But the matters that he relies on relate to his ill health. It seems that in December 2011 he was admitted to hospital with acute severe breathlessness and a life-threatening hypoxia (that is to say, lack of oxygen in his bloodstream) and he was suffering from pneumonia. The diagnosis was advanced HIV infection, and effectively he was suffering from AIDS. He was gravely ill, but treatment was given and fortunately it seems that that treatment is having the right effect. The treatment in question is a drug regime, coupled with an indication from the doctor that it is necessary for him to have a diet which includes fruit and vegetables and which again will assist the improvement that is taking place. He also ought to give up smoking, but I do not know whether he has or not.

4 MR ZERA: I do smoke, but only ten cigarettes a day.

5 MR JUSTICE COLLINS: When the matter came before the district judge, there was evidence from the reports from the doctor, the latest of which was a report of September 2012. The appellant tells me that he saw the doctor again last Wednesday, I think.

6 MR ZERA: Yes. Wednesday.

7 MR JUSTICE COLLINS: He received from the doctor an indication that there had been some improvement, in particular there was an improvement from what was 12

per cent in September, that is to say what is called the CD4 count, and it is now up to 18 per cent, and so there is a steady improvement.

8 The application essentially before me is that he should be given a period of three months in order to ensure that the improvement continues and by then he hopes to be in a position that he will be able, notwithstanding what he says are the problems if he is in custody in Poland, to face the prospect of dealing with these charges.

9 There is before the court, and there was before the district judge, a letter from the Polish authorities in which it was made clear that the necessary drug treatment and care would be given. If he is not in prison, the Polish health service will deal with that; if he is in prison, it is said that the Polish prison health service implements the national programme in counteracting AIDS and preventing HIV and provides the necessary therapy. It is confirmed that the drug treatment that is provided for the appellant will be provided in Poland.

10 The appellant indicates that the conditions in Polish prisons are such that he doubts that he will be able to receive the necessary care other than simply the care provided by the drug regime, and it is not only the drug regime that is essential for his purposes.

11 There is no doubt on the doctor's evidence that he is not unfit to travel, nor is he unfit to appear in court; indeed, he has appeared in person before me, and it is apparent that he is perfectly capable of putting his case forward. Nevertheless, there are obvious real concerns in respect of his physical health. However, I have to apply the case law, and it is clear from the evidence that I have (and incidentally, it is evidence that was provided in another case, *Stopyra v District Court of Lublin, Poland* [2012] EWHC 1787 (Admin)) and in that case it was regarded as sufficient, and indeed it clearly is. The test which I have to apply is a high one. It is apparent that the bar to removal constituted under section 25 — that is to say that his physical condition is such as would make it oppressive for him to be returned — is a high hurdle to surmount.

12 I recognise his real concerns. I recognise too that he takes the view that he ought to be given a further time, and it would be only some three months, to ensure that he is really able to face the difficulties that will be created by his removal to Poland. I have to consider though whether on the authorities that is something which as things stand can persuade me that it would be oppressive to return him. I am afraid that I cannot be so persuaded on the basis of the law that I have to apply. It is set out fully in the decision of the district judge and suffice it to say that I agree with the district judge's conclusions and approach.

13 However, what I want to make clear is that the appellant must have provided with him when he returns full details of the medical regime under which he is receiving treatment. No doubt he will receive or take with him at least an initial supply of the drugs that he has to take. It would be desirable that Dr Premchand produces, as I am sure he will, an up-to-date report following the visit that was made on 13 March. Certainly, the reports that are before me and are in the papers must also accompany the appellant so that the Polish authorities are fully aware of the medical situation. What I will do is, through the court, ask that Dr Premchand be notified of the desirability of the up-to-date report, which I imagine need not be very lengthy, being produced so that that too will accompany the appellant to Poland.

14 There is, of course, a delay inevitable before removal can take place. It is at least 24 days before any removal can take place, and so there is time and must be time for the necessary documentation to be provided.

15 Mr Zera, I am afraid that that is all I can properly do for you in the light of the law.

16 MR ZERA: Thank you very much, my Lord, that is not a problem. I had to leave last night to be here by this morning, so my electronic tag has been violated. Is there anything I can do about it?

17 MR JUSTICE COLLINS: I will direct that it is not a violation. Obviously you are entitled to attend court and so it cannot be a violation.

18 MR ZERA: Also today I might not make it on time.

19 MR JUSTICE COLLINS: I do not think you need worry about that.

20 Mr Sternberg, can you ensure that whoever is responsible is notified?

21 MR STERNBERG: Yes. I shall certainly make sure there is notification that the tag is not to apply for last night.

22 MR JUSTICE COLLINS: Certainly not for last night and obviously he has to have a reasonable time to enable him to get back to the north.

23 MR STERNBERG: I think on previous occasions in the lower court it started at midnight on days when he has been in court in London, so if your Lordship is so minded, such a variation to apply for tonight only.

24 MR JUSTICE COLLINS: When you do normally have to—

25 MR ZERA: I can manage by 12.

26 MR JUSTICE COLLINS: By 12. All right. Bail will continue until you are notified that they are ready to remove you. Bail will be on the same terms as you are on bail at the moment.

27 MR ZERA: So I have about 24 days to organise everything and get ready?

28 MR JUSTICE COLLINS: That is right. It may be longer than that, but it certainly will not be less than that.

29 MR ZERA: Thank you so much.

30 MR JUSTICE COLLINS: All right. Subject to that then, the appeal is dismissed.

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