

Neutral Citation Number: [2013] EWHC 930 (Admin)

CO/802/2013

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

Royal Courts of Justice  
Strand  
London WC2A 2LL

Wednesday, 20 March 2013

**B e f o r e:**

**MR JUSTICE COLLINS**

**Between:**

**BIALEK\_**

**Appellant**

v

**CIRCUIT COURT IN WARSAW POLAND\_**

**Respondent**

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**Mr M Grandison** (instructed by Hodge Jones & Allen) appeared on behalf of the **Appellant**  
**Mr N Hearn** (instructed by the Crown Prosecution Service) appeared on behalf of the  
**Respondent**

J U D G M E N T  
(As Approved by the Court)  
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1. MR JUSTICE COLLINS: This is an appeal against the decision of the district judge ordering the appellant's removal to Poland to face a conviction warrant. The warrant in question sought extradition to enforce a sentence of 4 years and 7 months imposed for offences of assault, criminal damage, making threats to kill and robbery, the offences in question having taken place between May 2006 and May 2007. The appellant has been in custody in this country pursuant to the execution of the warrant now for over a year. He was arrested on 2 or 3 March and brought to the Westminster court on 3 March.
2. There were problems created by, among other things, the appellant's psychiatric condition. He had undergone treatment, and there were available a number of reports upon his condition which eventually were produced to the district judge. Essentially, and I do not need to go into huge detail, he suffers from what is variously described as schizophrenia or what I think may be somewhat similar, a condition which is close to schizophrenia. Be that as it may, his conduct in custody included destroying fittings in the cell in which he was detained and other activities which showed that he was indeed suffering from a relatively severe mental condition.
3. The latest report (because the immediate application before me was to adjourn in order to enable the medical position to be finally sorted out) is that of Dr Khan, a forensic psychiatrist. The position was that the appellant was transferred from prison under section 48 of the Mental Health Act as a result of his conduct, and it was decided by the Secretary of State that he should be transferred to a mental hospital as a result. As I say, that was done recently and he has been admitted to the medium secure care facility in the hospital, which I think is in Birmingham. His diagnosis there is that he is suffering from what is called a schizoaffective disorder. That is a disorder that I have described as being akin to schizophrenia. It is a mental disorder within the meaning of the Mental Health Act 1983.
4. He apparently suffered a relapse in prison, possibly as a result of his failure to comply with the antipsychotic medication which had been prescribed. He has been receiving treatment, albeit for a very short time, and on 13 March, the date of Dr Khan's report, she says that he has anti-social traits and even when well, in terms of his mental illness tends to display difficult and challenging behaviour. That is clearly established. The aim of his admission to hospital is to stabilise his mental state enough to make him fit for extradition, and in her opinion if he responds to medication as well as he did last time he was admitted compulsorily to a mental hospital, he should not be there for more than four to six weeks, and then it would be perfectly reasonable for him to be extradited. It was on that basis that the application was made that the matter should be adjourned in order to be sure that he was indeed sufficiently recovered to justify his extradition.
5. The problem with that application is that it does not require that he is in that sufficiently stable state to make extradition a reasonable possibility, or indeed to make extradition something which should occur. The Polish authorities have been asked to confirm, and have confirmed, that necessary treatment will be available and will be administered in Poland if he is extradited in accordance with this request, and is available to those serving sentences in Polish prisons. The result of that is that the regime of treatment

can properly be continued in Poland. Accordingly, on the law as established in a number of cases which I do not need to cite, it is clear that the condition of the appellant is not in itself necessarily a bar to his being removed to Poland.

6. However, there is another twist, and that is that he has, I am told, applied for asylum. Counsel is not aware of the precise basis for that claim. Apparently he has been interviewed by Home Office officials, but no decision has yet been made, and the Extradition Act prevents removal until any such claim is decided. Section 39 of the Act makes clear that it does not affect the power of the court to order extradition, nor to deal with an appeal and, if so persuaded, to dismiss the appeal. All it means is that the actual extradition cannot take place until the asylum claim is disposed of, and that of course will include, if there is a right of appeal, any appeal against the refusal of asylum. I say "if there is a right of appeal", because it is open to the Secretary of State to certify that there is no merit in effect in the asylum application. It may well be that that is the position here, because one must of course bear in mind that Poland is a signatory to the European Convention on Human Rights and it would be surprising if it really could be shown, even arguably, that there is a real risk of a breach of what would have to be Article 3 of the European Convention on Human Rights.
7. Nonetheless, asylum claims are becoming all too prevalent in cases where those requested be extradited simply want to delay the inevitable extradition. It may well be, I suspect, that this case is in that category. However, I make no judgment on it because I do not have the necessary information.
8. It seems to me clear that there is no bar to extradition, and indeed counsel has not really suggested in principle that there is. It is merely a question of timing, important of course so far as the appellant is concerned, but essentially that is what this boils down to. As I say, Dr Khan's view is that by the end of April he should be able to be extradited. I imagine that so far as his compliance with the treatment regime is concerned, that is a matter which, as he is in a semi-secure unit, the hospital can make sure is followed. Certainly one hopes that that is the position.
9. Having considered the sensible way of dealing with this, and bearing in mind that we are coming up to Easter and the court vacation, it seems to me that the sensible thing for me to do is to dismiss this appeal but to order that that dismissal shall not come into effect until the beginning of next term, 9 April.
10. I hope that in the meantime the Home Office will make a decision on the asylum claim. They have, I gather, all the necessary information to enable that to be done and the sooner that is done the better, because extradition turns upon it. But, if this dismissal does not come into effect until 9 April, the reality is that there is no chance that he will actually be removed before the end of April, so that does give the necessary time which is asked for by Dr Khan and, as I hope and think, a pragmatic way of dealing with this matter and avoiding any further expense which otherwise would be incurred if an adjournment were granted by further attendance of legal representatives to deal with this matter. Accordingly, I will dismiss the appeal on that basis.

11. I would only add this: it is essential that when he is extradited there go with him full details of his medical condition, which will mean such reports as have been put before me, together with, no doubt, an up-to-date report from those handling his care until he is extradited, together with sufficient medication of whatever form to enable him to continue his treatment until the Polish authorities can provide their own medication, which may or, I suppose, may not be precisely the same as that which is prescribed here. That will depend, of course, upon the view taken by the medical experts in Poland. I have no doubt whatever that there are psychiatrists in Poland who are perfectly capable of ensuring that appropriate treatment is given to the appellant for the mental condition under which he suffers.
12. As I say, on that basis, accordingly, this appeal is dismissed.
13. Can I ask you both to provide the associate with the necessary detailed order.
14. MR GRANDISON: I am very grateful.
15. MR JUSTICE COLLINS: You want the usual order, which you can have.
16. MR GRANDISON: Yes, thank you.