

IN THE WESTMINSTER MAGISTRATES' COURT

B E T W E E N:

THE REGIONAL COURT IN KALISZ, POLAND

-v-

JACEK WITKOWSKI

JUDGMENT

1. The surrender of Jacek Witkowski is sought by an EAW issued on 21st May 2013 and certified on 13th March 2014. He was arrested by appointment on 14th April and appeared before this court later that day. This is a conviction warrant. A sentence of one year's imprisonment was imposed on 7th November 2003. That sentence was suspended for two years with a requirement that a fine, costs and compensation were paid by 7th November 2004. As the financial condition was not met the suspended sentence was activated on 5th April 2005. The domestic arrest warrant was issued on 11th December 2008.
2. The original offence is set out in Box E of the Warrant. There is no dispute that the particulars comply with Section 2 of the Act. The first issue in the case is whether the offence is an extradition offence within the meaning of Sections 10 and 65(3). The Requested Person asserts that this is a civil dispute. However careful reading of the warrant leaves me in no doubt that the Requested Person deceived the owner of the vehicle into believing him that he would pay the full value of the vehicle after paying the initial deposit all the while having no intention to do so.

3. I am quite satisfied that there is a proper inference from the wording of the warrant that where it is said that the Requested Person was without intention to pay the remaining amount that he had a dishonest intent and that he would be guilty in this jurisdiction of obtaining property by deception.
4. The second challenge is under Section 14. The Requested Person disputes that he was aware of these proceedings at any stage. He states that he left the jurisdiction in September 2003 and that at the time of doing so he was of course unaware of any ongoing process. He specifically denies that he is a fugitive from justice. The Judicial Authority relies on three factors to establish that he was a fugitive.
5. The first was the close proximity of his departure without his family to the proceedings themselves, secondly Box D of the EAW which states that the Requested Person had been summoned in person on 17th October 2003. And thirdly further information contained in the letter dated 21st May 2014 in which it was said that the Requested Person “was informed during the court proceedings about the necessity to appear at court at any motion.”
6. At first blush that seems to be a very strong series of factors supporting the Judicial Authority’s case and of course I approach the EAW itself on the basis of mutual trust and respect. However I have a concern in this case since as one reads down in the further information, it is apparent that when the Judicial Authority say that the Requested Person was informed that they could be referring to letters sent to his address which, under the Polish penal code, are considered served. That ambiguity feeds back into the wording at Box D of the Warrant and I am not sure that when the Judicial Authority state that the Requested Person was summonsed in person whether they mean summonsed by post.
7. The evidence which I have received which has not been disputed is that the procedure in Poland is that for court documents to be delivered by post but only to the person named within them and to no one else. The Requested Person had left the jurisdiction on his evidence by September 2003 before he would have been summonsed in person referring back to Box D itself. It seems to me that there is a possibility here is that what the JA mean is that in accordance with

their code letters have been sent placing obligations on the Requested Person which he then did not receive since he did not collect them. As a consequence I have doubt as to whether he is a fugitive. It is not argued under Section 14 that it would be unjust. It is argued that it would be oppressive.

8. The threshold is a high one. I am satisfied that the circumstances of this case do not meet that threshold. The third issue in the case is under Section 20. My findings in respect of Section 14 feed into the Section 20 issue. He was absent from his trial. I have to ask myself that he was deliberately absent. I cannot be sure that he was deliberately absent. As a consequence of that finding I have to ask myself whether I am satisfied that he would be entitled to a retrial under subsection 5 and there is no information that he would be entitled to a retrial and the consequence is that I must discharge the Requested Person under Section 20(7).
9. On fourth issue- Article 8- The Requested Person and his family's Article 8 rights are clearly engaged. I have to conduct the proportionality test. If the Requested Person were a fugitive and had deliberately sought to evade justice and not to pay compensation that was due that would clearly heavily weigh against him. Having said that the undisputed evidence is that the offence itself is now 13 years old. The original offence merited a suspended sentence and the Requested Person has resided in this country permanently since May 2006.
10. He has lived a blameless life in this country. He is a married man who holds down two jobs to try to provide for his family. His wife also works. But her income will not be sufficient to pay the rent on their home in the event of the Requested Person's surrender. The Requested Person has two children (19 and 16). Both will remain in full time education and of course will require financial support in the very least.
11. If I had ruled that the Requested Person had deliberately sought to frustrate the proceedings I would have found so far as his Article 8 rights were concerned that it would be proportionate. It is not right to condone the type of behaviour described. However I still would not have ordered his surrender because of the disproportionate consequences to his family who face the loss of their home and

significant disruption to their children's education therefore if I am wrong about Section 20 I would still have discharged under Section 21.

Michael Snow

Appropriate Judge

11th July 2014