

Neutral Citation No. [2013] NIQB 42

Ref: MOR8831

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 10/04/13

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between:

OSTROLEKA REGIONAL COURT, POLAND

Applicant;

-v-

THOMASZ RZEWNICKI

Respondent.

Before: Morgan LCJ, Higgins LJ and O'Hara J

MORGAN LCJ (delivering the judgment of the court)

[1] The requested person was arrested on 2 November 2012 by virtue of a European Arrest Warrant issued by a court in Poland alleging the commission of drugs offences between 2003 and 2006. The initial hearing was held on 3 November 2012 and on 25 January 2013 the appropriate judge, His Honour Judge Grant, Recorder of Londonderry, ordered his extradition. The requested person appealed to the High Court and his appeal was dismissed by a Divisional Court on 8 March 2013.

[2] Section 36 of the Extradition Act 2003 ("the 2003 Act") governs the time for extradition after an appeal.

"(1) This section applies if –

- (a) there is an appeal to the High Court under section 26 against an order for a person's extradition to a category 1 territory, and
 - (b) the effect of the decision of the relevant court on the appeal is that the person is to be extradited there.
- (2) The person must be extradited to the category 1 territory before the end of the required period.
- (3) The required period is—
- (a) 10 days starting with the day on which the decision of the relevant court on the appeal becomes final or proceedings on the appeal are discontinued, or
 - (b) if the relevant court and the authority which issued the Part 1 warrant agree a later date, 10 days starting with the later date.
- (4) The relevant court is—
- (a) the High Court, if there is no appeal to the Supreme Court against the decision of the High Court on the appeal;
- (5) The decision of the High Court on the appeal becomes final—
- (a) when the period permitted for applying to the High Court for leave to appeal to the Supreme Court ends, if there is no such application; ...
- (8) If subsection (2) is not complied with and the person applies to the appropriate judge to be discharged the judge must order his discharge, unless reasonable cause is shown for the delay."

[3] Section 32 (5) of the 2003 Act provides that an application for leave to appeal to the Supreme Court from the High Court must be made within 14 days commencing with the date on which the decision of the High Court was given. No application for leave to appeal to the Supreme Court was made. It follows, therefore,

that by virtue of section 36 (5) of the 2003 Act the decision of the High Court in this case became final at midnight on 21 March 2013. By virtue of section 36 (3) (a) the required period ended at midnight on 31 March 2013.

[4] The Extradition Unit of the PSNI is responsible for the physical removal of the requested person to the requesting state on foot of the extradition order. Due to an oversight in the Crown Solicitors Office the PSNI Extradition Unit was not informed of the hearing date or the outcome. As a result the requested person was not removed within the required period set out in section 36 (3) (a) of the 2003 Act.

[5] On 8 April 2013 the requested person made an application under section 36 (8) of the 2003 Act to the Recorder of Belfast to be discharged because the required period had elapsed. It is common case that the Recorder of Belfast is an appropriate judge for the purposes of this application. The Recorder did not deal with the application but adjourned it until 4 pm on Thursday, 11 April 2013.

[6] At approximately 6 pm on 8 April 2013 the court received an e-mail from the Crown Solicitors Office requesting the agreement of a later date for the required period pursuant to section 36 (3) (b) of the 2003 Act. The requesting state relies upon Kasprzak v Warsaw Regional Court, Poland [2011] EWHC 100 (Admin) for a number of propositions: -

- (i) Such requests can be made after the expiry of the required period under Section 36(3)(a);
- (ii) The discretion to accede to the request is broad; and
- (iii) In determining whether to agree to such a later date the court should take into account any outstanding application pursuant to Section 36(8).

[7] It is accepted by the Issuing Judicial Authority in this case that the requested person has an arguable case that reasonable cause has not been shown for the delay in extraditing him. In those circumstances we consider that we should decline to exercise our discretion to fix a different required period under Section 36(3)(b) until the determination of the application under Section 36(8). The matter will be listed for mention at 10 am on 12 April 2013.