



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2018] HCJAC 15
HCA/2017/000024/XM

Lady Paton
Lord Brodie
Lord Turnbull

OPINION OF THE COURT

delivered by LADY PATON

in

APPEAL UNDER SECTION 26 OF THE EXTRADITION ACT 2003

by

RADOSLAW KISIEL

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: Party

**Respondent: D Dickson (sol adv) for the Lord Advocate on behalf of the Polish Authorities;
Crown Agent**

26 January 2018

[1] We refer to the sheriff's report concerning the hearing on 23 November 2017. We note the considerable number of court hearings involving Mr Kisiel prior to that date, namely 10 August, 17 August, 24 August, 14 September, 12 October, 19 October, 2 November and 16 November all 2017. We note that Mr Kisiel had the services of an interpreter on each occasion. We note that he had the services of experienced extradition

lawyers, first Mr Dunne and then Mr Stewart, the latter being dismissed by Mr Kisiel on 23 November 2017.

[2] Mr Kisiel appeared before us today seeking leave to appeal the sheriff's judgment. He advised us that he regretted dismissing Mr Stewart, and that he thought that a Matthew Berlow would represent him at today's hearing, although he had apparently not arrived. Mr Kisiel confirmed that he had received a letter advising him of the date of the appeal ie today Friday 26 January 2018. He confirmed that, in the Polish translation of the letter, he was advised:

"You will be required to get counsel to represent you for this appeal, or alternatively you will be required to represent yourself and be prepared to present your appeal yourself".

[3] Mr Kisiel had lodged four grounds of appeal: (1) overcrowding in Polish prisons and potential threats from the prisoners there; (2) the passage of 14 years since the offence; (3) the fact that he had been living a normal life in Scotland, giving him a sense of security and (4) ill health as a bar to extradition.

[4] Mr Dickson on behalf of the Polish authorities addressed each ground. On the first ground he pointed out that in terms of section 27(4), no evidence had been placed before the court to disturb the sheriff's ruling at paragraphs 7, 10 and 11 of his report. In relation to the second ground Mr Dickson confirmed that the decision involving Mr Kisiel only became final on the 6 May 2010 at a hearing attended by Mr Kisiel with a lawyer. On 20 December 2010, when notified to attend prison, it was found that Mr Kisiel was no longer in Poland and the court authorised a European arrest warrant. The warrant was certified on 28 March 2012 but the police involved, on the information provided to them, were unable to locate Mr Kisiel (ie when using the name "Kisiel" and the addresses which were made available to them). That was an important sequence of events when considering "passage of time" since

the offence. These events were also relevant for the third ground of appeal, which was the fact that Mr Kisiel points out that he has been living a normal life in Scotland. As Mr Dickson put it, Mr Kisiel had been living a normal life in Scotland as a fugitive from justice, and it was only when fresh information, names and addresses, were provided to the police in early 2017 that he was able to be found. In relation to the fourth ground, ill health, Mr Dickson submitted that no cogent or compelling evidence had been placed before the court to suggest anything other than custody in convention-compliant conditions with appropriate medical treatment if necessary.

[5] In all the circumstances, we agree with Mr Dickson's submissions. We refuse leave to appeal, and we refuse the appeal.