



23 January 2013

PRESS SUMMARY

Zakrzewski (Respondent) v The Regional Court in Lodz, Poland (Appellant) [2013] UKSC 2

On appeal from: [2012] EWHC (Admin) 173

JUSTICES: Lord Neuberger (President), Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption

BACKGROUND TO THE APPEAL

Where an application for a European Arrest Warrant (“EAW”) is made, and the defendant has been convicted and sentenced in the requesting state, section 2(6)(e) of the Extradition Act 2003 (“the Act”) requires the EAW to include particulars of the sentence(s) imposed. This enables the requested court to determine whether the sentence is equal to or exceeds the minimum sentence required to constitute an extradition offence. Section 65(3)(c) of the Act applies to offences in the requesting state which would constitute an offence in the UK if it occurred there, provided that a minimum sentence of four months was imposed.

Many EU states provide for the aggregation of successive sentences imposed on different occasions to produce a single sentence for all of the offences committed, which usually has the effect of reducing the overall period of imprisonment. Earlier case law establishes that where each of the original sentences is for conduct that satisfies all the other requirements of an extradition offence, it is enough for a EAW to specify the cumulative sentence rather than all of the individual sentences. This appeal concerns the converse: what happens if a EAW specifies only the original sentences, but after it has been issued they are aggregated and their totality reduced?

Lukasz Zakrzewski was convicted on four occasions in Poland of various offences of dishonesty or violence. His sentences were initially suspended and then activated by further offences or breaches of probation terms. On 24 February 2010, Mr Zakrzewski having absconded, the Regional Court in Lodz issued a EAW against him based on these four convictions specifying the sentences passed. He was then arrested in England on 28 September 2010 and brought before the City of Westminster Magistrates’ Court the same day. However, as he was facing further criminal charges in England, the extradition proceedings were adjourned. During this adjournment, Mr Zakrzewski applied to the District Court of Grudziadz in Poland to have the four sentences aggregated. The court duly aggregated them and on 19 April 2012 imposed a cumulative sentence of 22 months imprisonment (as opposed to the aggregate of 45 months of the original sentences). When the extradition proceedings resumed, Mr Zakrzewski claimed that the aggregation order meant the EAW was no longer gave the particulars required by s.2(6)(e) because the only relevant sentence now included was the cumulative sentence. The warrant was therefore invalid, and no longer gave proper, fair or accurate particulars.

District Judge Rose rejected Mr Zakrzewski’s arguments and granted an extradition order. However, this was overturned by Lloyd Jones J in the High Court on the basis that the EAW must relate to the current operative sentence in force not to earlier individual ones subsumed in an aggregated order to enable the requested court to know the length of imprisonment the requesting state had ordered. The Regional Court in Lodz appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal and restores the extradition order of District Judge Rose. Lord Sumption gives the judgment of the Court.

Just before this judgment was due to be delivered, the Court was informed that Mr. Zakrzewski had returned voluntarily to Poland after the argument on the appeal and been arrested there. Accordingly, the warrant has been withdrawn by the court which issued it. This does not affect the issue which the Court has to decide. But it does mean that, formally, the appeal must now be dismissed: see section 43(4).

REASONS FOR THE JUDGMENT

The purpose of the European Council Framework Decision 2002/584/JHA of 13 June 2002 (“the Framework Decision”) and Part 1 of the Act was to create a simplified and accelerated procedure based on mutual recognition [7]. The courts of states being asked to consider EAWs should generally take information contained in them at face value. An EAW’s validity depends on whether the prescribed particulars are found in it, not on whether they are correct. A defendant cannot normally challenge its validity by reference to extraneous evidence. If this is true of information in an EAW which was wrong at the time of issue, it is true for information which was correct at the time of issue but ceased to be correct due to subsequent events. A EAW is either valid or not valid. It cannot change over time [8]. It does not follow that nothing can be done to correct prescribed particulars that have become incorrect but the remedy must be at the stage when the court is deciding whether to extradite [9].

Lord Sumption drew attention to two safeguards against unjustified extradition in this context. The first was mutual trust between parties to the Framework Decision to ensure information in a EAW is true. The requesting authority has the right to forward additional information at any time and the requested UK authority has the right to receive it and to request further information [10]. The second safeguard is the court’s inherent right to ensure its process is not abused, for example, where an EAW has been obtained for improper purposes [11]. A court can question statements made in EAW on the grounds of an abuse of process. However, Lord Sumption noted that: (a) this jurisdiction is exceptional; (b) the facts needed to correct the error must be beyond legitimate doubt and abuse of process must not become an indirect way of challenging the factual basis of conduct alleged in a EAW; (c) the error must be material to the operation of the statutory scheme. It is inconsistent with the Framework Decision to refuse to execute a EAW, in which the prescribed particulars were included, because of immaterial errors [13].

In the present case, the EAW was valid when it was issued to Mr Zakrzewski. It did not become invalid when the aggregation order was made. The particulars of sentence were no longer complete but they were not wrong. The evidence is that in Polish law the original sentences remain valid but the cumulative one determines what period of imprisonment will be treated as satisfying them [14]. The fact that the imprisonment period which would satisfy the four original sentences was shortened was immaterial, as even the shorter sentences were longer than the minimum of 4 months required for disclosing an extradition offence under the Act [15]. The sentence of the court will rarely be the current operative sentence since the period to be served will be affected by factors such as remission or parole as well as aggregation. Criminal procedures vary from one jurisdiction to another without affecting the ordinary criteria for extradition or undermining the purpose of the Framework Decision or Part I of the Act [16].

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html