



APPEAL COURT, HIGH COURT OF JUSTICIARY

**[2026] HCJAC 24
HCA/2026/3/XM
HCA/2026/4/XM**

Lord Matthews
Lord Armstrong
Lady Carmichael

OPINION OF THE COURT

delivered by LORD MATTHEWS

in

appeal under section 26 of the Extradition Act 2003

by

AB

Appellant

against

THE LORD ADVOCATE (representing the Republic of Poland)

Respondent

Appellant: Party

Respondent: Lindhorst; Crown Agent

19 June 2026

The background, the history of the case and the sheriff's decision

[1] On 22 January 2026 the sheriff at Edinburgh ordered the appellant's extradition to Poland. He now seeks permission to appeal against that decision. Although he is technically an applicant, we shall design him as the appellant for present purposes.

[2] The appellant faces two warrants. The first is an "accusation" warrant by which the Republic of Poland seeks his extradition to face trial for being an accomplice to the

fraudulent obtaining of US\$33,750 through impersonation, and various other crimes of impersonation and money laundering. The second is a “conviction” warrant for the appellant to serve a sentence of 30 months’ imprisonment for embezzling scaffolding worth PLN 306,000.

[3] The appellant first appeared at Edinburgh Sheriff Court on 26 September 2023 when he was refused bail. There followed a lengthy procedural history.

[4] On 15 February 2024 a Case and Argument drafted by a solicitor was lodged, contending that extradition would be incompatible with the appellant’s rights to private and family life (Article 8 European Convention on Human Rights) and also due to the risk of violence from other persons due to affiliations he formed at the time of certain previous convictions (Articles 2 and 3 of the Convention).

[5] On 14 May 2024 bail was sought given that certain enquiries were said to be necessary, but it was refused. The enquiries were said to be into the recent death in custody of a witness, all in connection with the claim that the appellant would be at real risk of violence from non-state actors while in detention in the requesting state.

[6] Bail was again refused. There was no reason to suppose that the death was suspicious on the basis of the information which was then available.

[7] On 4 July 2024 the court granted the appellant’s opposed motion postponing proceedings, on the basis that there was said to be documentary evidence that a person had died in prison and that his death was being investigated by the public prosecutor. The proceedings thus far were in connection with the accusation warrant.

[8] On 14 November 2024 the appellant appeared in court on the conviction warrant.

[9] On 13 January 2025 there was lodged documentation from Poland dated 19 February 2024 to the effect that the prosecutor had decided to open an investigation into the “culpable

homicide” of a man called CD caused by persons responsible for his care. It was said that he had been discharged from hospital, following what appears to be a gallbladder removal, and was generally in good health. He died in a detention centre shortly afterwards and the cause of death needed to be established.

[10] On 22 April 2025 there was lodged in court a copy of a decision of 5 February 2025 postponing the date for issue of a report into the death until 19 April 2025. As it happens, no post-mortem results have ever been lodged in the sheriff court.

[11] A Case and Argument drafted by counsel was lodged on 13 January contending that extradition would be incompatible with the appellant’s rights due to the risk of violence in prison (ECHR Articles 2 and 3). It was said that the appellant worked for CD when he lived in Poland. The case against the appellant relied in large part on incriminatory statements made by this gentleman. It was understood that following the results of the post-mortem examination the death was considered to be the result of murder. CD had expressed fear for his life shortly before he died. His fears had to do with the case for which the appellant was now sought for extradition. CD had communicated his fears to his daughter and to the appellant, through a mutual friend. He warned that the appellant should not return to Poland because he would be at risk of being killed.

[12] Nothing was said as to the appellant’s health, family or personal connections to the United Kingdom in terms of an Article 8 assessment. That was unsurprising given the fairly modest time the appellant had been in the United Kingdom.

[13] At a hearing on 20 February 2025 it was noted that there were four potential witnesses for the appellant, all resident in Poland. They had yet to be precognosed. On the same day, a letter, dated that day, from the Polish authorities was lodged by the Crown. Amongst other things it is said that the investigation was into “unintentionally causing ...

the death”, and that the suggestion that the death might potentially be intentional homicide was incorrect. The case was being investigated as one of medical error.

[14] On 3 April 2026 the case called for a preliminary hearing and on the appellant’s unopposed motion it was continued for 2 weeks to allow time for a revised Case and Argument to be lodged and for clarification as to a potential witness for the appellant.

[15] On 16 April no revised Case and Argument having yet been lodged, an application for a Commission and Diligence was lodged for the appellant seeking certain documents seized from his home by the police. Following a continuation until the next day, the hearing was again continued until 24 April to allow counsel to appear.

[16] On 24 April, having heard counsel and the Crown, the sheriff refused the application. The basis was that no material recovered would be likely to assist in support of the grounds of opposition to extradition.

[17] On 1 May 2025 a full hearing was due to take place but was discharged for want of court time. It was said then by counsel, that the only evidence to be led would be from the appellant himself.

[18] On 22 May 2025 the case called for a full hearing but the solicitor said that the appellant had withdrawn his instructions. The sheriff refused a request by the appellant to adjourn the hearing in order to secure alternative representation but, as it happens, it had to be adjourned for want to court time.

[19] On 26 June 2025 a new solicitor was involved. A further preliminary hearing was fixed for 17 July and at that hearing it was said that counsel (the same counsel) was once again instructed and the Case and Argument previously lodged was to be relied upon. The case was continued to a full hearing on 7 August 2025.

[20] At the outset of that hearing the new agent withdrew. The sheriff required the appellant to proceed. In doing so he worked on the basis that the only real issues which were likely to arise were identified in the Case and Argument.

[21] The appellant maintained that the accusation warrants were somehow “not valid” and that all cases had been “resolved” but none of these arguments had any relevance to the validity of the warrants, particularly a suggestion that a co-accused or alleged accomplices had now been released. We need not refer to this again.

[22] The appellant gave evidence on his own behalf. He asserted that counsel was never his lawyer and she had lied to him. Nonetheless, the bulk of the Case and Argument was correct “more or less” according to him. He indicated that there were witnesses who could speak to the threat to his life. All of them were living in Poland. His wife and two daughters could also provide testimony. He made complaints about both counsel and one of his former agents. The sheriff decided to give them an opportunity to comment, to which course the appellant acceded. The sheriff explains that he may have made a remark about an issue of defective representation potentially arising and thinking it better to address any such concern at that stage rather than leave the matter to arise later on appeal.

[23] The response of counsel was that she had consulted with the appellant and that agents had obtained precognitions from the various witnesses, who did not have direct evidence about the threats. There was not enough evidence to support an argument under Articles 2 and 3 ECHR and she understood the agents to have advised the appellant accordingly. The agent confirmed that that was the case and the appellant then chose to dispense with his services. Advice about Article 8 had also been given.

[24] The full hearing resumed on 19 September 2025 but was continued until 9 October 2025. There was no interpreter available on 9 October 2025 and the sheriff asked the Crown

to write to the appellant in Polish to confirm the adjourned diet, 11 December 2025, and to tell him to arrange any witnesses to attend that day.

[25] On 11 December, the appellant returned to the witness box. He said there had been no mention of the main witness, the daughter of CD. There was a belief that the appellant had the same information as CD, which was not true. Many acquaintances were looking for him and there had been many unpleasant incidents. His rented home in Poland had been vandalised and threats had been directed against the owner, who could come to Scotland to give evidence.

[26] For the last 20 years he had suffered problems with his health, which was getting progressively worse. He required frequent treatment in hospital and had had three heart attacks. His partner and daughter, who lived in Scotland, would visit him in Poland and encourage him to leave there and live with them. He finally did so after an episode when he required defibrillation and could not walk more than ten steps without resting. No one had ever contacted him about the accusation warrant. He was questioned only once in 2020 or 2021 as a witness. He knew of the proceedings underlying the conviction warrant. A lawyer was monitoring it and an appeal had been lodged. One had to wait for an invitation to present for imprisonment and once that was received it was intended to ask for imprisonment to be postponed, pursue the appeal process and inform the authorities that he was in Scotland for medical treatment. The appeal was not however, "valid" any more. His daughter had helped obtain an expert summary report about his health. He had provided some medical records but the records of his treatment in Poland had been taken by the police when he was arrested in the UK.

[27] He relied upon Articles 3 and 8 ECHR.

[28] In cross-examination he reiterated that CD was murdered. His main reason for resisting extradition was, however, his health. He received various medications in Scotland which were the same as in Poland, albeit with different names.

[29] Under questioning by the sheriff, he said his health was getting worse and he was very scared that he would suffer a fourth heart attack. The care he received in prison was better than he would receive in the best Polish hospital.

[30] His partner gave evidence through an interpreter. She had first arrived in the UK in 2012 and lived with her two children. The appellant asked her to say what she knew about the death of CD and she indicated that she knew people in Poland were looking for the appellant. She was told this by the landlord of their home. CD's daughter was still waiting for information about the cause of death. The witness had heard from different acquaintances that five people could testify as to the threats being made.

[31] She also explained that the appellant's health was very poor. He had experienced issues with his heart for years, having suffered three heart attacks and had been diagnosed with diabetes. His legs were always swollen, he was unable to walk and he got very tired after very short walks. After his arrest in Scotland he was diagnosed with diabetes.

[32] The appellant's daughter also gave evidence as to his state of health. This generally confirmed what had been said before. She did not know anything about any threat to the appellant's life apart from what she had heard from the appellant himself.

[33] The appellant lodged a sheaf of medical notes which the sheriff described as redolent of the kind of document that is seen more and more in recent times generated by artificial intelligence. There was no witness to speak to them. However, they appeared to confirm that the appellant had had longstanding health problems along the lines to which he and his family had spoken. It was impossible to take any more from them than that.

[34] The appellant submitted that his extradition should not be stopped permanently but merely postponed until his health improved. He had lived in the United Kingdom openly and had never been in hiding before he was arrested.

[35] It was submitted by the procurator fiscal that there needed to be evidence that any threatened ill-treatment reached a threshold of sufficient seriousness when a claim was made under Article 3. The evidence as to CD having been murdered was second-hand and a finding as to the cause of his death was still awaited. There was no investigation of an intentional homicide. If there was any threat to the appellant, the Polish authorities could offer him protection. There was a presumption that the medical needs of the appellant would be met appropriately: *W v Spain* [2020] EWHC 2278 (Admin), paragraphs 64 and 65. As far as Article 8 was concerned, the appellant had been in custody on remand for over 2 years without evidence of there being any exceptional hardship to his family.

[36] The sheriff pronounced an oral judgment on the same day. There was no reliable evidence of a real risk to life, of serious harm or danger to the appellant's life. Poland would be able to discharge their responsibility towards individuals to protect them from violence. The evidence as to the appellant's family life was not sufficiently strong to outweigh the very substantial public interest in his extradition. It appeared that he had lived largely separately from his wife and daughters.

[37] However, the sheriff was concerned as to whether he was fit to be removed and continued the case with a view to the Crown obtaining assurances from the Polish authorities and a medical report.

[38] On 22 January 2026 the case called again and the sheriff had regard to a letter, dated 16 December 2025 from the NHS Lothian Primary Care Team at HMP Edinburgh, listing the appellant's current medications and stating that he had been deemed fit to fly with no

medical concerns. A letter of 14 January 2026 from the deputy charge nurse at the prison listed his medications again, noted his medical history, including three heart attacks, Type 2 diabetes and high blood pressure but deemed him fit to fly. A letter from the regional prosecutor in Gdańsk dated 19 January 2026 stated that there would be a qualified medical professional present in the convoy taking him to Poland.

[39] In all these circumstances the sheriff ordered the appellant's extradition.

[40] In his report to us, the sheriff highlighted the cases of *KK (Article 3, Standard of Proof, Non-State Actors)* [2001] UKIAT 18, paragraph 12 which held that a "real risk" is a "relatively low" threshold but one that is "more than a mere possibility", carrying the same risk as "reasonable chance" or "serious possibility". In extradition cases a real risk meant "more than a mere possibility" (*Lodhi v Secretary of State for the Home Department* [2010] EWHC 567 (Admin), paragraph 10; *Lord Advocate (United Arab Emirates) v Black* [2017] 11 WLUK 425, Sheriff T Welsh QC, 17 November 2017, paragraph 69).

[41] Reference was also made to *Ireland v United Kingdom* (1978) 2 EHRR 25, European Court of Human Rights, 18 January 1978, paragraph 162; *R (Bagdanavicius) v Secretary of State for the Home Department* [2005] UKHL 38, [2005] 2 AC 668, in connection with the Article 3 argument; as well as *Dean v Lord Advocate* [2017] UKSC 44, 2018 SC (UKSC) 1, paragraphs 26 to 27. Putting matters shortly, even if the appellant was at real risk of serious harm, if the Polish state offered systemic protection to its populous, including its prison population, by means of a general system of criminal prosecution, then to extradite the appellant would not (as a generality) be incompatible with his rights under the Convention.

[42] There was no attempt by the appellant to gainsay the propositions derived from these authorities.

[43] In any event, we observe that there was simply insufficient evidence which would have entitled the sheriff to hold that there was any threat to the appellant at all.

[44] Furthermore, his findings as to Article 8 are not only unassailable but were not challenged during the application for permission to appeal.

The application

[45] At the hearing before us the appellant once again represented himself. He sought an adjournment on the basis that he had been unable to obtain a solicitor, that he had serious health issues, that he had applied for asylum in the United Kingdom and that he should be granted bail. He sought to introduce some new material about his family ties in the United Kingdom, although Article 8 did not feature in his Note of Appeal. He also needed access to a number of documents of a financial nature which showed the close contact he had with the person who had been murdered. As we have indicated, there was no evidence that any one had been murdered or that there was any threat to the appellant's life. He had had ample opportunity to obtain legal representation and had twice dispensed with the services of experienced and competent advisors. The fact that he had applied for asylum would prevent his removal until the asylum claim was resolved but did not affect the issue. See *Marcoci v The Lord Advocate* [2026] HCJAC 1.

[46] In all the circumstances we refused to grant an adjournment.

The grounds of appeal

[47] The appellant's grounds of appeal may be taken fairly shortly.

[48] The first is that he was not allowed properly to defend himself. Important documents directly relevant to the case were taken by the police at the time of arrest and

had never been returned. As a result, he was prevented from relying on key material in support of his defence during extradition proceedings. None of these documents is specified. Insofar as the sheriff refused to grant Commission and Diligence he found that there was no likelihood that the information sought by the appellant would assist any ground of opposition to be advanced. This reasoning discloses no error of law.

[49] Ground two is described as procedural unfairness. It is to the effect that the sheriff failed properly to consider the appellant's applications for bail. This is irrelevant. It has nothing to do with the decision on whether or not to order extradition and the appellant had a right to appeal the refusal of bail to the Sheriff Appeal Court.

[50] The third ground is that his fitness for extradition by air was assessed only on an opinion given by an NHS nurse rather than an independent medical expert. Given his serious medical conditions the assessment was inadequate and unsafe. This is no more than an assertion. There is no suggestion and no evidence that the NHS nurse who assessed his fitness reached the wrong conclusion. It was open to him to obtain his own medical report. The Polish authorities had confirmed by their letter of 19 February 2026 that a medical professional would accompany him if he were extradited. There is nothing in this ground.

[51] Ground four is to the effect that there was ineffective legal representation. It is said that after the involvement of his first solicitors, the handling of the case deteriorated. Although he changed legal representatives, a previous solicitor (probably meaning counsel) reappeared in the proceedings despite the appellant having clearly stated that he did not want that person to act. This caused confusion and undermined his ability to present his case. This is analogous to an appeal against conviction on *Anderson* grounds (*Anderson v HM Advocate* 1996 SCCR 114). Such an appeal will only succeed where the effect of the alleged defective representation is that the appellant's case is not put before the

decision-maker. The allegations of defective representation were put before the sheriff and he granted an adjournment to investigate them. He found that there was no support for the appellant's contention. He was entitled to do so. The crux of the appellant's argument is that he should not be extradited due to the alleged risk from his former acquaintances in Poland and his health issues. Both arguments were fairly and squarely before the sheriff.

[52] The fifth ground is the late disclosure of medical evidence. It is said that medical documentation, which had been requested long before the extradition hearing, was only provided after the final hearing and after the extradition order had already been made. As a result, relevant medical evidence was not available to the court when the decision was taken. It is not entirely clear what this all means. The sheriff tells us that no application was ever made to the court to secure medical records. It was open to the appellant to secure such documentation as he thought appropriate. There is, again, nothing in this ground.

[53] The sixth ground is that the sheriff made comments suggesting that it was unprecedented for an appellant to raise concerns about the conduct of a former legal representative. These comments contributed to an atmosphere of unfairness and discouraged the appellant from properly advancing his case. The sheriff thinks that the appellant may be alluding to what was said either on 22 May or on 7 August at hearings on those dates. He does not recall making any comment that criticism of a lawyer was unprecedented. He accepts, however, that he made some remark about impugning a legal professional's conduct being a serious matter. It is apparent from the steps taken to obtain comment from former representatives that the sheriff took the appellant's complaints seriously. The suggestion that the appellant was discouraged from properly advancing his case is nothing more than an unvouched assertion.

[54] Ground seven is to the effect that the sheriff indicated to the prosecutor that certain arguments should be removed (*sic*) so that the appellant would be unable to pursue an appeal. This interfered with his rights of access to the appellate process. The sheriff tells us that he made no remarks about preventing the requested person from appealing. It may be that the appellant is referring to what was said about the desirability of addressing concerns about legal representation at the time rather than waiting for the matter to arise on appeal. In any event, the appellant has in fact entered into the appellate process, as he puts it. Furthermore, there is nothing wrong with the sheriff proceeding in a manner which would not provide a basis for complaint on appeal.

[55] The eighth ground of appeal is that, at the hearings on 9 October 2025, proceedings took place without a Polish interpreter. He was unable therefore to understand the proceedings or effectively participate.

[56] The sheriff tells us that nothing of substance was done at that hearing. That was expressly because of the absence of an interpreter. As we have indicated, all that happened was that, by the time the sheriff was ready to hear the case, it was realised that no interpreter had been booked. The sheriff asked the Crown to write to the appellant in Polish to confirm the date to which the case was adjourned and to tell him that should he wish to lead witnesses on his behalf he would have to arrange for them to be present. A letter to that effect was indeed sent on the following day by the Crown. Once again there is nothing in this ground.

[57] The last ground, if it can be called a ground, was that the appellant sought a direction that he be produced for the hearing of the appeal so that he might participate effectively. That is what in fact happened.

Decision

[58] The appellant has produced nothing to suggest that he can satisfy the court that his appeal could arguably meet the conditions set out in section 27(3) and (4) of the Extradition Act 2003. These are as follows:

- “(3) The conditions are that—
 - (a) the appropriate judge ought to have decided a question before him at the extradition hearing differently;
 - (b) if he had decided the question in the way he ought to have done, he would have been required to order the person’s discharge.

- (4) The conditions are that—
 - (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
 - (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
 - (c) if he had decided the question in that way, he would have been required to order the person’s discharge.”

[59] In these circumstances permission to appeal is refused.