

***551 R. v Peora Jungthirapanich**

Court of Appeal

8 October 2002

[2002] EWCA Crim 2259

[2003] 1 Cr. App. R. (S.) 107

(Lord Justice Judge, Mr Justice Butterfield and Judge David Clarke Q.C.):

October 8, 2002

H1 *Importing restricted species—importing wild birds of prey in conditions causing death and suffering to birds—length of sentence*

H2 Twenty two months' imprisonment for importing wild birds of prey in conditions causing death and suffering to birds reduced to 15 months, partly on account of mitigating circumstances.

H3 The appellant pleaded guilty to being knowingly concerned in the fraudulent evasion of the restriction on the importation of wild birds. The appellant was concerned in smuggling 23 wild birds from Thailand. The appellant and another man arranged for wild birds of prey to be exported from Thailand secreted in plastic tubes concealed in two suitcases. The appellant arrived at Heathrow airport with the two suitcases and was later arrested by Customs officers. Twenty-three wild birds of prey, six of which were dead, were found in the suitcases. The birds which survived had suffered asphyxia and hypothermia as the result of being transported in the hold of the aircraft. The birds were a protected species. Sentenced to 22 months' imprisonment.

H4 Held, the case presented a difficult sentencing problem as little guidance could be found in decisions of the Court in respect of the offence. The offence was a serious one which merited imprisonment, because it caused suffering to the birds, and it was carefully and deliberately planned. The appellant's co-defendant was commercially motivated. It was said that the appellant's co-defendant had exercised a degree of influence over him and, for that reason and in view of the appellant's plea of guilty, the Court considered that the proper sentence was 15 months' imprisonment.

H5 **References:** importing restricted species, *Current Sentencing Practice* B 9–2.3F ***552**

H6 Representation

L. Henderson for the appellant

Judgment

Judge David Clarke Q.C.:

1 On October 22, 2001, in the Crown Court at Isleworth before H.H. Judge Lowen, the appellant pleaded guilty to a charge of being knowingly concerned in the fraudulent evasion of a restriction on the importation of goods. The goods were 23 wild birds smuggled into this country from Thailand. On January 18, 2002, after a very lengthy trial of two co-defendants, one of whom was Raymond Humphrey, the appellant was sentenced to 22 months' imprisonment.

2 Raymond Humphrey is a much older man. This appellant is aged 23, Raymond Humphrey is in his 50s. Humphrey, at the end of the trial, was convicted on that count and also on 21 other counts, all of which concerned birds and other wild animals: offences relating to importation, selling and keeping for sale and also one count of theft. He was sentenced to a total of six and a half years' imprisonment, which included a sentence of three years' imprisonment on the count to

which this appellant had pleaded guilty. The other counts in respect of Humphrey attracted consecutive sentences. A third defendant, Wayne Standley, was acquitted.

3 The facts of this appellant's involvement in this activity arise in this way. He is a Thai national, but he had been educated in England. He was at the material time a student at a university in Scotland. When not at university, he lived with Humphrey and shared Humphrey's interest in birds of prey and was involved in Humphrey's business known as "Clouds Falconry", which involved the sale of wild birds and other animals.

4 In 1999, the two of them travelled to Thailand and enquiries were made there about the possibility of exporting birds of prey to Britain. It was clear that they would not be able to do this legitimately, and they developed a plan to smuggle them. The appellant, while still in Thailand, sent a faxed message to Humphrey setting out how the operation would work. The birds were to be secured in plastic tubes and then placed in suitcases. The appellant bribed officials at Bangkok Airport to ensure that the suitcases would get through the security system there.

5 On July 10, 1999, Humphrey travelled to Thailand. He returned three days later with a consignment which included Brahminy Kites. Standley, the other defendant (eventually acquitted) went out to Thailand and met the appellant there.

6 On July 25, 2000 the two of them arrived at Heathrow Airport with luggage which contained two large suitcases. They walked through the 'Nothing to Declare' channel, where they were met by Humphrey. The suitcases were loaded into the car which he had brought. Customs officers had been observing the men and arrested all three soon after they arrived at the car.

7 What was found was 23 wild birds of prey, concealed in plastic tubes in the suitcases. Six of the birds had died in transit. The birds were examined by a vet. All the birds had been alive at the start of the journey, but, in the opinion of the vet, three had not been fit to travel. The rest had sustained pressure injuries *553 from being in the plastic tubes in the suitcases. The birds had suffered asphyxia and hypothermia consistent with being transported over a long distance in the unpressurised and unheated hold of an aircraft. The vet's opinion was that the birds had suffered gross cruelty and suffering. A further bird died overnight. It was estimated that the value of this consignment of birds, if sold in the United Kingdom, was of the order of £25,000. These birds were protected species under what is called CITES (The Convention on International Trade in Endangered Species), the purpose of that Convention being to prohibit or regulate commercial trade in such endangered species. Needless to say, no export licences had been granted.

8 The appellant was not sentenced for his part in this offence, as we say, until after the trial of the co-defendant. He was then sentenced without a pre-sentence report, the judge considering that he had all the necessary information about his character, which was an entirely good character, and his antecedents.

9 Undoubtedly this was a difficult sentencing problem, this being an offence on which very little guidance can be found in decisions of this Court. It is not in issue in the advice and grounds of appeal that the offence was a serious one, meriting imprisonment, both because of the acts of the appellant and Humphrey causing such suffering to the birds, but also because of the careful and deliberate nature of the crime, as well as the commercial motivation which led at least Humphrey to commit it. It was always contended on behalf of this appellant that he did not share that commercial motivation.

10 The judge, having presided over this long trial, addressed lengthy sentencing remarks principally to Humphrey, of whom he had clearly formed a most unfavourable view in the course of the long trial. It is the question of disparity with Humphrey's sentence which gives rise to the written principal ground of appeal on behalf of the appellant. The appellant had pleaded guilty, though only on the day of trial. The judge, however, accepted that he had acted throughout under the influence of the aggressive and bullying character of Humphrey, as Humphrey's subordinate, and that he may not have been acting for personal profit. That being so, bearing in mind also that the judge expressed his sentence as allowing a third discount for the plea of guilty and only taking a further two months discount to arrive at the sentence of 22 months, this gives rise to the submission that there should have been a substantially greater disparity.

11 This submission, standing alone, might not have led this Court to interfere, bearing in mind that the sentence on Humphrey was only part of a total sentence of six and a half years which might have been computed in a different way. Furthermore, although the judge said he was

giving a one-third discount, he need not have done so having regard to the lateness of this plea.

12 We are, however, persuaded that, having regard to the degree of influence that Humphrey had over him and the nature of this appellant's motivation, that there is sufficient substance in those matters, together with the personal mitigation, to justify us in interfering.

13 The appellant, as a result of his foolishness in going along with Humphrey in these activities, missed an entire academic year of his university course. He is of otherwise exemplary character. When the case came to trial, he pleaded guilty. *554 He thereby declined to go along with what must have seemed in the course of the trial a preposterous defence mounted by Humphrey, and it does seem to us that substantial credit is justified. That, together with the other matters of personal mitigation set out, does persuade us that the 22-month sentence here was manifestly excessive. In our judgment the proper sentence here is one of 15 months' imprisonment. That will be substituted for the sentence passed by the judge. The appeal is allowed to that extent.