

**\*252 R. v Raymond Leslie Humphrey**

Court of Appeal

23 June 2003

**[2003] EWCA Crim 1915**

**[2004] 1 Cr. App. R. (S.) 39**

(Lord Justice Laws, Mr Justice Gray and Judge Rivlin Q.C.):

June 23, 2003

Animals; Birds; Customs and excise offences; Endangered species; Import controls; Sentencing

H1 *Importing animals and birds of endangered species—importation for gain—length of sentence*

H2 Six and-a-half years' imprisonment for importing birds of prey and other endangered species reduced to five-and-a-half years.

H3 The appellant was convicted of 22 offences of unlawfully importing or dealing with animals and birds of endangered species. The appellant was concerned in importing 23 birds of prey in two suit cases. A search of his premises resulted in the discovery of various other birds and animals, including a gibbon, a golden eagle, and various other birds of prey. Sentenced to a total of six and a half years' imprisonment.

H4 **Held:** the sentencing judge imposed sentence on the basis that the appellant was well aware that his activities were against the law and that they were committed for profit. Some of the birds had been treated with cruelty and the gibbon was from an extremely rare breed. The Court agreed with the judge's observation that the sentence should send a clear message to others minded to commit similar offences. The Court had come to the conclusion that some modest reduction could be made in the sentence; the total sentence would be reduced to five-and-a-half years' imprisonment.

**H5 Cases cited:**

[Canning \[1996\] 2 Cr.App.R.\(S.\) 202](#), [Sissen \[2001\] 1 W.L.R. 902](#)

H6 **References:** importing endangered species, *Current Sentencing Practice* B 9-2.3F

**H7 Representation**

D. Webber for the appellant.

**JUDGMENT**

GRAY J.:

1 On October 18, 2001 the appellant, Raymond Humphrey, stood trial at the Crown Court at Isleworth. He faced an indictment which contained 23 counts. Most of those counts alleged against the appellant offences under the [Customs and Excise Management Act 1979](#) dealing with the unlawful **\*253** importation of restricted goods. In addition, the indictment contained

offences under domestic regulations prohibiting trade in endangered species, namely the [Control of Trade in Endangered Species Regulations 1997](#), or 'COTES' for short. Those regulations were the product of a 1973 Convention on International Trade in Endangered Species. That Convention has two appendices listing the species which are deemed to be critically endangered. Trade in the species in App.1 is generally prohibited; trade in the species listed in App.2 is strictly regulated. There was also one count of theft.

2 With the exception of three counts which concerned an animal, a Golden Cheeked Gibbon, on the Crown's case, and some mammals, the endangered species involved in all the other counts were all rare birds, ranging from Eagle Owls, to Saker Falcons, Brahminy Kites and so on.

3 There were two co-defendants, one of whom was acquitted.

4 On January 17, 2002, after a trial before H.H. Judge Lowen and a jury which lasted, we believe, over two months, the appellant was convicted on all but one of the counts against him. On the following day he was sentenced to a total term of imprisonment of six years and six months. The appellant now appeals that sentence with the leave of the single judge. He also was seeking to renew his application for leave to appeal against conviction following refusal by the single judge, but that application has not been pursued by Mr Webber before us today. We turn therefore straightaway to the appeal against sentence. In order to deal with that we should say more about the offences themselves.

5 One of the co-defendants was a Thai national. There was evidence that the appellant had made a number of trips to Thailand. On July 25, 2000 he met his co-defendants at Heathrow Airport off a flight from Thailand. The two co-defendants had two suitcases containing plastic tubes in which there were 23 birds of prey. A number of them had perished in transit. There were defence admissions that each of those 23 birds was correctly identified as being within the ambit of the European Council Regulations and that they had been imported in contravention of the restriction on importation. The issue before the court on count 1 was whether the appellant had knowingly concerned himself in the importation. The jury found that he had.

6 As a result of the discovery of those 23 birds, Customs and Excise officers searched the appellant's premises, where they found a considerable number of other birds and some mammals which were the subject of other counts.

7 Count 2 related to a gibbon. On the prosecution case that was a very rare species called a golden cheeked gibbon. The appellant disputed that identification. His case was that he had lawfully acquired the animal. But the Crown said that the documents produced by the appellant were forgeries.

8 Count 3 related to the same animal and alleged that the appellant had attempted to sell it.

9 Count 4 related to a golden eagle, the accusation against the appellant being one of theft. The appellant denied that offence also.

10 Counts 6 and 7 related to eagle owls. Again there was a dispute raised by the appellant as to the identification of these birds. \*254

11 Counts 8 and 9 concerned a number of other birds, some of which we have already mentioned. Others were ural owls, turkmanian eagle owls, a lanner falcon and other rare birds.

12 Counts 17 to 23 charged similar offences of importing endangered species contrary to the 1997 regulations.

13 The evidence at trial was that there was a strong market in the United Kingdom for birds of prey, prices varying according to circumstances, with many of these rare birds fetching prices in the thousands.

14 As we have said the judge passed a total sentence of six-and-a-half years. The longest constituent sentence was three years on count 1. Two-and-a-half years was the sentence on count 2. Some of the other sentences were concurrent and some consecutive; but nothing turns, for the purposes of this appeal, on the individual sentences. What is challenged by Mr Webber as being manifestly excessive is the totality of the sentences passed. It is submitted that so long a sentence is out of kilter with the length of sentences passed for other grave crimes, such as rape, manslaughter and supplying Class A drugs. Reliance is also placed on the absence of any

similar previous convictions for this appellant. It is also said that the individual sentences on counts 1 and 2 are excessive.

15 Reliance is placed on two authorities: [Canning \[1996\] 2 Cr.App.R.\(S.\) 202](#) and [Sissen \[2001\] 1 W.L.R. 902](#).

16 When passing sentence the judge, who had ample opportunity to form a view of the appellant during so long a trial, said this:

“I am satisfied that [the appellant] therefore embarked on a course of trading routinely in species of birds in his possession. It is quite clear that throughout the period of his involvement with the bird trade he was very well aware of the legislation regulating commercial activity in relation to the species themselves. It was equally clear that he kept and sold, and offered specimens for sale, with an utter disregard for the law protecting those species from unlawful commercial exploitation.

Before this jury [the appellant] has postured as a conservationist: his own choice of self-description was as a man who does not look at birds and see money but, rather, that he only sees birds. This has been revealed as untrue. As his pretences have been stripped away what has been revealed is that he is an experienced criminal who has again turned to crime for profit.”

Having referred to the appalling cruelty to which some of the birds with which this case is concerned had been subjected, particularly those imported from Thailand, and to the extreme rarity of the breed of gibbon dealt with in two of the counts, as well as to the complete lack of remorse on the part of the appellant and the time which had to be spent at trial unravelling the lies told by him, the judge made this further comment:

“By the sentence which I will pass I intend to send a clear message to those who would reach beyond the law to take for themselves those creatures in the wild which enrich us all by their diversity and survival.” \*255

17 With the judge's remarks we are in complete agreement. We emphasise that in a case such as the present the judge was not only entitled, but right, to pass an exemplary sentence. In [Sissen](#), where the scale of trading in endangered species was far less than in the present case, the defendant had been sentenced to 30 months. That sentence was in fact reduced by this Court due to the personal mitigation available to that appellant. There is no suggestion that any such mitigating features are present here.

18 *Canning* was a case where the Court of Appeal upheld a sentence of 18 months for keeping and selling wild Peregrine Falcons. It is true that the defendant in that case had some previous convictions for similar offences, but on the facts we regard that case as being far removed from the present one in terms of the criminality of the defendant.

19 Plainly the present is a far more serious case than either [Sissen](#) or *Canning*. The feature of this case which is absent from both the other two cases is the extreme and sickening cruelty to which some of these birds were subjected. There is little by way of mitigation available to the appellant. He has no previous similar convictions but his record is nevertheless a bad one. He contested the case.

20 We have been told of a shoulder injury which the appellant suffered last year. Some reliance is placed on that, but it appears to us to have a minimal bearing on the question which we have to decide, which is whether six-and-a-half years as a total sentence was appropriate in this case.

21 We stand back and consider whether that sentence is properly commensurate with the criminality involved in these offences. Despicable though the trade in which the appellant chose to engage undoubtedly was, we have come to the conclusion that some modest reduction in the sentence can be made. We have decided to quash the sentence of six-and-a-half years and to substitute for it a sentence of five-and-a-half years. That we achieve by reducing the sentence imposed on count 1 from three years to two years. To that extent this appeal is allowed.

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