

Neutral Citation Number: [2003] EWCA Crim 2922
IN THE COURT OF APPEAL
CRIMINAL DIVISION

No: 03/4568/A2

Royal Courts of Justice
Strand
London, WC2

Tuesday 21 October 2003

B E F O R E:

LORD JUSTICE LATHAM

MRS JUSTICE HALLETT

and

SIR EDWIN JOWITT

- - - - -
R E G I N A

-v-

ABDULLAH AL-BUHAIRI

- - - - -
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MR FRANCIS GILBERT appeared on behalf of the APPELLANT

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J U D G M E N T
(As Approved by the Court)
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1. MRS JUSTICE HALLETT: On 17th July 2003 at the Sheffield Crown Court before His Honour Judge Moore the appellant, Abdullah Al-Buhairi, aged 36, was convicted of an offence of conspiracy to handle stolen goods. His Honour Judge Moore sentenced him to eighteen months' imprisonment. He appeals against sentence by leave of the single judge.
2. A co-accused who appeared with him called Otmani pleaded guilty on rearraignment to the same offence. He also faced a count of forgery. He received a sentence of two years' imprisonment in all.
3. The background to the offence is as follows. The conspiracy involved the theft of Mercedes motorcars. These were initially hired in continental Europe during the years 2001 and 2002. They were not returned to the owners. They were brought to the United Kingdom, where they were given new identities and numberplates. The co-accused Otmani then sold the cars to this appellant, who is a Saudi Arabian national. He was arrested at his home in Sheffield on 17th September 2002. On his driveway was a car which had been hired and then stolen in France just a few days before, on 9th September.
4. The appellant could be directly linked to four cars. The first was exported by him to Saudi Arabia in November 2001. The second and third cars were en route to Saudi Arabia when he was arrested. They were recovered. The fourth was the car we have already mentioned found in the appellant's driveway. A fifth car was shown to the appellant but no sale had taken place by the time of arrest.
5. The recovered cars had fraudulent French log books which showed the appellant as the owner and gave his address as a residence in Paris where he had never lived. They bore false registration numbers. The three recovered cars were valued at around £56,000. The appellant had paid £38,000 for them. This money was not recovered. The first car and the fifth car, which were not bought by the appellant, were together valued at £43,500.
6. In interview the appellant claimed that the cars had been purchased in good faith for himself, his brother and people that he knew. He said that he did not think there was anything strange about the system of changing the numberplates or of exporting the vehicles.
7. As far as the appellant's background is concerned, he was a captain in the Saudi Arabian army, a non-combatant officer practising as a dentist. He was in Sheffield on secondment to the university there to gain a masters degree. Evidence was put before the sentencing judge and put before this court to indicate his positive good character.
8. In his written grounds of appeal Mr Gilbert, on behalf of the appellant, submitted that insufficient account had been taken of the following features of the case. Firstly, the offence was non-violent, non-sexual and non-frightening. Secondly, the learned judge accepted that the appellant was not a major player in the organisation behind the offence, and Mr Gilbert argued he therefore took advantage of, rather than help establish, this sophisticated conspiracy. It was also said that the appellant had lost many thousands of pounds, his good character and his standing in Saudi Arabia. Lastly, it was argued that as a foreign national the appellant would have to serve his sentence in a foreign prison miles from home and that he would also be liable to serve twice as long as an English national. This argument was based upon the home detention curfew scheme. Under the Criminal Justice Act 1991 section 34A as amended, Mr Gilbert argued that, had the appellant been an English national, he would in all probability serve but four-and-a-half months of an eighteen month sentence. For the remaining 135 days he would be subject to an electronically monitored scheme. As a foreign national, Mr Gilbert submitted, this appellant could not easily be made the subject of tagging.

Since his grounds of appeal were submitted the appellant has been notified that because he is eligible for deportation he will not be considered for the early release scheme. Therefore, Mr Gilbert argued, he is likely to serve twice as long as a UK national had a UK national been standing in the dock next to him and been sentenced to the same term. For that reason, if for no other, Mr Gilbert argued, the sentence should be reduced to reflect the fact that this appellant cannot benefit from these new arrangements.

9. We deal first of all with the appropriate length of sentence for an offence of this kind. This was a well-organised, professional car ringing conspiracy. High value motorcars were stolen, disguised and exported. This appellant was linked plainly on the evidence to at least four of those cars. The appellant deserves no credit for admitting his involvement in the conspiracy. Thus we are not persuaded that eighteen months' imprisonment in these circumstances can be described as manifestly excessive following a contested trial. In our judgment it is well within the range of sentences available to the learned judge for an offence of this kind. Arguably the learned judge has already discounted the sentence he imposed to reflect the personal circumstances of this appellant.
10. We ask ourselves, therefore, whether or not it is incumbent upon a sentencing judge to reduce what would otherwise be a perfectly proper sentence because he may or may not be eligible for early release under this new administrative procedure. We remind ourselves that release on home detention curfew is a matter for the discretion of the governor of the relevant prison. He or she is charged with the responsibility of assessing the circumstances of each case and of each prisoner and then coming to the decision as to whether or not to release. Plainly the governor must exercise that discretion rationally and reasonably. But it is not the case that necessarily all foreign nationals will be excluded from the scheme: it will depend upon their circumstances. There is no certainty as to the release of any particular prisoner, whatever their nationality. The governor is obliged to carry out a risk assessment and decide whether or not it is likely the prisoner will complete the period of curfew successfully.
11. Having considered all those matters we are satisfied that this is far too speculative an area and basis upon which this court should direct sentencers to proceed. It would leave sentencing judges all over the country in an impossible position when asked to speculate as to when any particular accused person may or may not be released under this scheme. Accordingly we are not persuaded that this sentence is excessive. Similarly we are not persuaded that it would be appropriate in the circumstances of this case to make any allowance for the fact that this appellant will not benefit from this procedure. This appeal is accordingly dismissed.