

Neutral Citation No. [2019] EWCA Crim 751

No: 201900485/A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 29 March 2019

B e f o r e:

MR JUSTICE JEREMY BAKER

THE RECORDER OF GREENWICH

HIS HONOUR JUDGE KINCH QC

(Sitting as a Judge of the CACD)

R E G I N A

v

ARLIND MEHMETI

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Miss Fergus-Simms appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

MR JUSTICE JEREMY BAKER:

Introduction

1. On 21 January 2019 in the Crown Court at Snaresbrook, Arlind Mehmeti pleaded guilty to an offence of possession of an identity document with improper intention, contrary to section 4(1) and (2) of the Identity Document Act 2010. He was sentenced to 10 months' imprisonment.
2. He appeals against sentence with the permission of the single judge.

The circumstances of the offence

3. The offence took place on 22 December 2018 when the police required the appellant, who had been driving a Ford Titanium motor vehicle along Southgate Road in North London, to stop. The appellant failed to do so and the police followed the vehicle for a distance before it came to a halt. The police alighted from their own vehicle and asked the appellant for his driving licence. The appellant handed over a Portuguese driving licence in the name of Luis Diarra, which when checked was found to be a counterfeit document. The appellant then ran off from the scene and had to be chased on foot for a period of about ten minutes before being apprehended. In his subsequent police interview the appellant admitted having entered the United Kingdom illegally as an Albanian citizen.

Antecedents

4. The appellant had one previous conviction in 2016 for possessing criminal property relating to an incident which took place on 12 August 2016, when he and a co-accused were found in possession of £100,000 in cash, three mobile phones and a counterfeit Greek driving licence. In his subsequent police interview at that time the appellant admitted that prior to this offence having taken place he had entered the United Kingdom illegally as an Albanian citizen. The appellant was sentenced at Inner London Crown Court to a period of 12 months' imprisonment for the offence of possessing criminal property (namely the £1,000 in cash), he also admitted the offence of possession of an identity document with improper intention, contrary to section 4(1) and (2) of the 2010 Act and asked the court to take it into consideration.

Sentencing remarks

5. In her sentencing remarks in respect of the more recent offence under appeal, the judge noted that having been deported from the United Kingdom following his previous conviction, the appellant had once again entered the United Kingdom illegally and had swiftly acquired another false driving licence for which he was to be sentenced. She indicated that although she had been assisted by being referred to two previous decisions of this court, it was apparent that there were factual differences between those cases and this one. Accordingly, after providing 25 per cent credit for the timing of the appellant's plea of guilty at the pre-trial and preparation hearing, the sentence which was imposed was one of 12 months' imprisonment.
6. After pronouncing her sentence, it was pointed out to the judge that the appellant had indicated his intention to plead guilty to the offence in the Magistrates' Court. The judge indicated that in those circumstances she would revise her sentence and after providing a full 33 per cent credit to take this into account she stated that the sentence would be reduced to one of 10 months' imprisonment.

Grounds of appeal

7. Miss Fergus-Simms, who appears on behalf of the appellant, as she did in the lower court, submits that the sentence of 10 months' imprisonment is manifestly excessive. She refers us to the same two cases she referred the sentencing judge and we have also read one other. She submits that the sentence is out of line with the sentences imposed in those cases for the same type of offence. She seeks to criticise the judge for having been overly influenced by the previous offence of possessing an identity document with improper intention, which the appellant had admitted and asked to be taken into account when he had been dealt with at the Inner London Crown Court. Moreover, she submits that the judge insufficiently took into account the mitigation available to the appellant, namely his remorse and the fact that he was supporting members of his family in

Albania, some of whom were ill and unable to provide for themselves.

Discussion

8. We can deal with the latter two submissions shortly in that we consider the judge was entitled to have regard to the fact that the appellant not only had a previous conviction for a serious case of possessing criminal property, but he had also admitted and asked to be taken into account a previous offence of possession of an identity document with improper intent. Moreover, although it may be that belatedly the appellant had expressed some remorse for his offending, it is apparent that the judge took this and his personal circumstances into account which in any event we do not consider amounted to substantial mitigation in this case.
9. The two previous decisions of this court to which the judge was referred were *Hoxha [2012] EWCA Crim. 1765* and *Piccha [2014] EWCA Crim. 2771* .
10. The first of these involved an Albanian citizen who had been living in the United Kingdom perfectly lawfully since 1988 but who was found to be in possession of a forged Albanian driving licence. The court noted that where false identity documents are used for immigration purposes a custodial sentences of between 12 and 18 months duration are likely to be imposed. However, that was not such a case and although he had a previous conviction for forgery, it was of a different kind and he had also done the right thing by having gone out and got himself a provisional English driving licence which showed some willingness to comply with English rules. The court indicated that he should understand that if he continued to use false documents then he was likely to be locked up for very much longer. However, on this occasion the period of eight months' imprisonment originally imposed was reduced to four months.
11. In the course of his judgment in that case, Hughes LJ (as he then was) stated:

"If you set out to drive habitually when you are not allowed to do so, have not passed a test, if nobody knows whether you are safe or not and you have no insurance, if you go and buy a false driving licence to provide yourself with some sort of cover you are very likely to have to go to prison and there is nothing wrong in principle with a short sentence of imprisonment for doing so."
12. In the second case, an Italian citizen with no previous convictions pleaded guilty to fraudulent evasion of the prohibition on the importation of 22 kilograms of

cannabis and possession of an identity document with improper intention. He was sentenced to two years' imprisonment for the drugs offence and four months consecutive for the identity document offence. The identity document in question was a false Italian driving licence which he explained he had in his possession because he had lost his genuine one, which lawfully entitled him to drive. Moreover, he also had in his possession a genuine Italian identity card. The Court of Appeal took into account his possession of a genuine identity card and reduced the consecutive sentence imposed in respect of the identity document offence to one of two months' imprisonment.

13. We have also looked at a further case, namely *Ovieriakhi [2009] EWCA Crim. 452* which involved an overstayer of otherwise good character who used a false passport to obtain what was described as "necessary and worthwhile employment." The court indicated that there was a spectrum of such offences ranging from the most serious where the false identity document was used for immigration purposes, to the situation where the false document was used to obtain work or the like. In the event the court reduced the sentence which had been imposed after the offending offender had pleaded guilty from 12 months' imprisonment to one of six months' imprisonment.
14. In the course of delivering the judgment of the court, Clarke J (as he then was) indicated that wherever the case under consideration is on the spectrum a custodial sentence is likely to be imposed, save in exceptional circumstances.
15. The present case is not one in which the false identity document was used by this appellant for immigration purposes. On the other hand, this was not a case in which the appellant was of good character and lawfully entitled to be in the United Kingdom, nor was it a case in which a long term lawful resident of the UK had done the right thing by obtaining a provisional English driving licence. On the contrary, the appellant had previously entered the United Kingdom illegally; he committed not only a serious offence of possession of criminal property, for which he had been imprisoned for 12 months, but he had also admitted and asked to be taken into account a previous offence of possession of an identity document with improper intention and had been deported. The appellant had then re-entered the United Kingdom illegally and once again obtained a false driving licence to seek to provide himself with some sort of cover for the fact that he was not allowed to drive on the roads which he was doing when he was eventually stopped by the police.
16. Taking all of these matters into account, whilst we consider that the circumstances relating to the present case are significantly more serious than those to which this court was dealing in the two earlier cases to which we have been

referred, we do consider that the judge's selection of a post-trial figure of 15 months' custody was too long and that a figure of nine months after trial would have sufficed, which when discounted for plea results in a period of six months' imprisonment.

17. We should add that bearing in mind the length of the period of custody we have considered whether this period can be suspended. However, having regard to the Sentencing Council's Definitive Guideline on the Imposition of Community and Custodial Sentences and having regard to the observations of Hughes LJ in *Hoxha* and Clarke J in *Ovieriakhi*, we consider that in the present case, having regard to the repetition of the appellant's conduct, appropriate punishment can only be achieved by immediate custody.

Conclusion

18. Therefore, the appeal will be allowed to the extent that a sentence of six months' imprisonment will be substituted for the previous period of 10 months.

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