

***377 R. v Henry Azadehdel**

Court of Appeal

13 July 1989

(1989) 11 Cr. App. R. (S.) 377

(Lord Justice Watkins, Mr. Justice Gatehouse and Sir Bernard Caulfield):

July 13, 1989

Sentences for dealing in endangered plant species considered.

The appellant pleaded guilty to various offences consisting of dealing with specimens of rare orchids, which were protected by regulations made in accordance with the Convention on International Trade in Endangered Species. He had travelled extensively to obtain samples of rare orchids from the wild, with a view to selling them to dealers and collectors. Sentenced to a total of 12 months' imprisonment, with four to serve and the balance suspended, fined £10,000, with a forfeiture order in respect of the specimen plants, and ordered to pay £10,000 prosecution costs. The appellant was fined £200, on other charges.

Held, the sentence of 12 months was too long, bearing in mind that the maximum sentence for the offence was two years, and that the same offence covered dealing in the products of dead animals, such as ivory and rhino horn. The sentence would be reduced to six months, with the balance remaining suspended, and the fine would be reduced to £2,500, in view of the appellant's financial circumstances. The order to pay the costs of the prosecution would be remitted. A fine of £200 on other charges would be unaffected.

M. Aston for the appellant.

GATEHOUSE J.:

This applicant pleaded guilty on June 6, 1989 at the Central Criminal Court before Judge Clarkson Q.C. to four counts on a principal indictment and to a further count on a second indictment involving unusual offences. They concerned, in effect, breaches of the regulations passed by the European Community and by this country in support of what is known as the Washington Convention, the Convention on International Trade in Endangered Species.

The three offences in counts 2, 3 and 4 of the principal indictment, involving offering for sale restricted specimens, being knowingly concerned in the harbouring, keeping or concealing of or dealing with restricted goods and selling restricted specimens, concerned the applicant dealing in rare species of orchids. The orchids concerned were slipper orchids from South America. Over a period of time it is plain from the pleas and the nature of the counts that the applicant has been trading in prohibited species of orchids. He is a considerable expert in his own right. He is an amateur botanist who has obviously become a leading authority on orchids of horticultural merit in general and slipper orchids in particular.

The Convention protects wild life of all kinds. One thinks of it principally, of course, in the context of ivory, rhino horn and crocodile and other reptile skins. But it extends to protect not only animals, but birds, fish and plants of a variety of kinds which are listed in the annexes to the Convention, which deals with it in this way. In the first appendix to the Convention items are listed which are wholly banned so far as trading is concerned. In the second and third appendices trading is allowed on conditions, in particular the grant of a CITES certificate. It is essential in order to import and to deal with and sell protected species—and there are a very large number of them—that the person concerned should obtain a CITES certificate. That is issued by the Department of the Environment. In the case of orchids, with which we are concerned, they act on the advice of the Royal Botanical Gardens at Kew and their experts. This applicant knew very well, and had known for ***378** some years, that he needed a CITES certificate because he had obtained a number of them in the past.

The applicant had been known to the authorities at Kew for some time. He had first come into contact with them, as they understood it, because he was an amateur orchid grower, interested in conservation. But over a period of some 18 months he was so persistently in touch with the Kew experts, and a Dr. Philip Cribb in particular, trying to get opinions on various rare orchids and their

current location in the wild, that Kew began to suspect his motives and they suspected that he was in fact a trader in these species. I should explain that certain orchids are so rare that the countries in which they are found to grow in very small areas take care to keep secret the location. Certain countries, including the People's Republic of China, totally ban the export of, among other things, their rare orchids.

What this applicant was in fact doing was travelling all over the world to orchid-growing countries in his search for wild, rare and beautiful specimens, which he would bring home to this country or would sell from the country of origin direct to other orchid growers in other parts of the world. He was carrying on a trade. He was doing that in breach of the Washington Convention. To put it in a nutshell, he was not a mere amateur benefiting from the collective knowledge of the Kew experts to further his hobby, but he was systematically using the Kew authorities to glean information for his criminal activities, going on trips to steal these wild, rare and beautiful plants from other countries.

The learned judge sentenced the applicant to three concurrent sentences of nine months' imprisonment on each of counts 2, 3 and 4. On count 5 of the principal indictment, which was being knowingly concerned in the fraudulent evasion of the importation of orchids, he sentenced him to three months' imprisonment consecutive, making a total of 12 months' imprisonment. The learned judge directed that he should serve four months and that eight months should be held in suspense. In addition the applicant was fined £10,000 on the third count with six months' imprisonment in default. An order for forfeiture of the specimen plants was made.

After the arrest by customs officers the officers or their agents went to the applicant's home address in the Midlands and took from his home some 348 orchids which on the face of it had been imported in contravention of the Washington Convention. They were taken to Kew and examined. Those orchids were identified by Dr. Cribb as endangered species, being wild-grown and picked. It is apparently not very difficult to tell whether an orchid has been grown in this country from seed or whether it has been imported from abroad, particularly when it has been recently imported. The approximate value of those plants taken from the applicant's home was over £40,000.

On a second indictment the applicant pleaded guilty to recklessly making a statement in answer to a question put by an officer of Customs and Excise. On that count he was fined a further £200 with 14 days in default. Mr. Aston on the appellant's behalf has no argument against that part of the sentence.

The applicant was also ordered to pay £10,000 costs of the Crown Prosecution Service by June 6, 1990, which was within one year of his sentence. No doubt the investigation of these offences had involved a great deal of expense on the part of the Crown Prosecution Service.

The applicant is of Armenian origin. He is 38 years old now. He is married with children. He now runs a grocer's corner shop of the mini-market kind. That is apparently his business now. He was a self-employed adviser on orchid-growing for commercial dealers and, as his plea indicates, he was also trading in endangered species. He is a man of previous good character.

Mr. Aston on his behalf has made submissions against both the term of imprisonment *379 and the financial penalties imposed. As to the term of imprisonment, Mr. Aston says that although it is right that this country should be seen to adhere to and uphold the International Convention there is a great difference between those who deal in prohibited plants, the purpose of which is to keep the plants alive, propagate them and preserve the species, and those who deal in what must come from dead animals, such as ivory and rhino horn. We agree with that approach. Mr. Aston says that the maximum term laid down by the legislation for such offences is two years. He submits that the sentence in this case must surely have been too high because it was on a plea of guilty by a man of previous good character. Therefore 12 months—more accurately nine months for the first three offences plus a consecutive three months—for offences of this type cannot be right because it leaves far too little scope for the sentencing of much more serious offences in breach of the Convention. We think that that is right too.

Secondly, Mr. Aston says that although this applicant may have had a lot of money through his hands through his illegal dealings, the current state of his assets and liabilities is much more precarious. He has, it is true, an equity in his home which, of course, is quite unrealisable because he has got to live there with his family. He has an equity in his shop (which we are not satisfied has been properly valued). But whatever is its value that equity also is unrealisable because this man has got to work and keep his family.

We think in the circumstances that we should mark this series of offences with a fine but at a much

lower level than the learned judge thought appropriate. We think also in the circumstances that it would not be right to visit him with a contribution towards the no doubt costly expenses of the prosecuting authorities.

What this Court has decided is this, that the proper sentence in this case is one of six months' imprisonment, which should be treated as suspended as to the balance of that period from today, which will result in the applicant's immediate release. The fine of £10,000 should be reduced to a fine of £2,500, which is approximately the amount which the applicant says he is able to offer from the profits of his grocer's shop by payments of £200 a month. We do not think it right to order instalment payments, but simply to say that there should be a fine of £2,500 payable in 12 months from today with a two month period of imprisonment in default. There should be no alteration of the additional small fine of £200, making a total financial penalty of £2,700. The order for costs of the prosecution should be remitted. The final result therefore is that the applicant will have a sentence of six months in all (all the sentences being concurrent), so much of which is suspended as to allow his immediate release, fined £2,700 payable in 12 months with two months in default, and no further order.

We therefore grant leave to appeal against sentence. With counsel's consent we treat the hearing of the application as the hearing of the appeal. The appeal is allowed to the extent already indicated.

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