

**\*404 R. v Jeffrey Paul Lendrum**

Court of Appeal (Criminal Division)

1 February 2011

**[2011] EWCA Crim 228**

**[2011] 2 Cr. App. R. (S.) 69**

Lord Justice Moore-Bick , Mrs Justice Cox and Sir Christopher Holland

February 1, 2011

Criminal record; Illegal exportation; Protected species; Sentence length

H1 *Attempting to export eggs of protected species—attempting to export 14 peregrine falcon eggs—length of sentence*

H2 Thirty months' imprisonment for attempting to export 14 peregrine falcon eggs reduced to 18 months.

H3 The appellant pleaded guilty to dealing with goods with intent to evade the prohibition or restriction on their exportation, contrary to the [Customs and Excise Management Act 1979 s.170](#) . The appellant was involved in carrying eggs of peregrine falcons with intent to evade the prohibition on their exportation. The appellant was seen by a cleaner at an airport acting suspiciously in the departure lounge. The cleaner called the police who searched the appellant and found that he had 14 peregrine falcon eggs wrapped in socks strapped to his chest with bandages. Various items, including an incubator and egg wrappings, were taken from his possession. The appellant admitted that he had taken the eggs from nests and intended to take them to South Africa to hatch and breed. He admitted that he had no permit for the export of the eggs. The eggs were still in good order, 12 of the eggs were hatched and 11 birds survived and were returned to the wild. **\*405** Sentenced to 30 months' imprisonment with an order for the forfeiture of various items.

H4 **Held:** the sentencing judge noted the rarity of Peregrine falcons which were at the highest level of wild and endangered species. The eggs might have been sold on the black market for £70,000. The sentencing judge observed that the appellant was motivated by commercial profit and had previous convictions abroad for offences connected with similar actions. It was submitted for the appellant that the sentence was manifestly excessive and out of step with sentences imposed in earlier cases. The Court was satisfied that the sentence was excessive and a sentence of 18 months would be substituted.

**H5 Case cited:**

[Sissen \[2001\] 1 W.L.R. 902; \[2001\] Crim. L.R. 232; \(2001\) 98\(5\) L.S.G. 36](#)

H6

**References:** Current Sentencing Practice B9-2.3G

**H7 Representation**

Miss N. Purchas for the appellant.

## Judgment

Sir Christopher Holland:

1 Jeffrey Paul Lendrum is now aged 49. On August 29, 2010 at Warwick Crown Court he pleaded guilty to a count on an indictment alleging dealing with goods with intent to evade the prohibition or restriction on their exportation contrary to [s.170 of the Customs and Excise Management Act 1979](#) . The particulars alleged that he on May 3, 2010 was knowingly concerned in carrying certain goods, namely the eggs of Falco Peregrinis, which were goods with respect to the exporting of which the prohibition or restriction was for the time being in force, with intent to evade such prohibition or restriction. There was a further summary offence dealt with by the court. This had been committed pursuant to [s.41 of the Criminal Justice Act 1988](#) . It was admitted by him; the offence amounted to taking the egg of a wild bird contrary to the provision of the [Wildlife and Countryside Act 1981](#) . He was sentenced on count 1 to 30 months' imprisonment and with respect to the summary offence to four months' imprisonment. The court directed that those sentences should be served concurrently and that 106 days should be discounted therefrom as representing the period he had already spent in custody. Further, there was an order for forfeiture of a number of items.

2 He appeals against that sentence with the leave of the single judge.

3 The facts were these. At around noon on May 3, 2010 a cleaner at Birmingham International Airport noted the appellant acting suspiciously in the departure lounge. He kept spending periods of time in the shower area but he did not appear to be using those facilities. The cleaner found two egg boxes in the shower area: one was empty and the other had an egg inside. It was feared that this had something to do with terrorist activities and the police were called. They apprehended the appellant. They searched him and strapped to his chest with bandages were 14 peregrine falcon eggs wrapped in socks. The socks were utilised to separate individual eggs.

4 The appellant gave fatuous excuses and explanations to the police who did not accept them. The police looked at his luggage and found a Leica viewing scope, \*406 a thermometer, binoculars, a GPS system, a walkie-talkie, a golf ball retriever, an insulated bag, £5,000, 3,500 US dollars and some South African Rand. His car was searched. Various items were recovered, including an incubator, a cool bag, egg wrappings, a backpack containing other equipment and a satellite navigation unit. At a storage facility in Northampton belonging to him they recovered an incubator top, three syringes and another incubator.

5 Further investigations showed that he had a conviction in Canada for dealing with wild bird eggs and he had an earlier conviction in Zimbabwe for a like activity.

6 In interview he told the police that he had taken these eggs from wild peregrine falcon nests from four sites in Wales and he thereby admitted the summary offence. He had climbed to these nests unaided or abseiled down. He was going to take the eggs with him to South Africa to hatch and breed. When he got to the airport he thought the eggs had died but decided to take the eggs for his collection. He wrapped the eggs to protect the shells, not to incubate them. He admitted that he had no proper permits for the export of the eggs. The money he was carrying was from a recent sale of a house. Happily, the eggs were still in good order. They were passed on by the police to an expert and the expert managed to hatch 12 of the 14 eggs, of those 12, 11 birds survived and were returned to the wild.

7 The court took note of the rarity of peregrine falcons; that is that they come under the highest level of wild endangered species. Expert evidence suggested it was likely the appellant would have sold these eggs on the black market in the Middle East. Had all 14 eggs hatched, the birds might have been sold for £70,000.

8 In sentencing the judge addressed him in these terms:

“There can be no explanation for your criminal actions other than commercial profit. The amount that you would have needed to expend, on equipment, on travel and in preparation, in my judgment proves that, as does the likely profit that you could have made from this criminal enterprise. You have had two previous warnings of the consequences of dealing in protected wild birds and their eggs; convicted in 1984 in Zimbabwe; and in 2002 in Canada and, from correspondence I have seen, with other people knowing of the conviction of those people in the United Kingdom in the 1990s.

Now you have come to the United Kingdom and offended here and these offences plainly pass the custody threshold for the reasons that I have mentioned, and pass it by a long way. I have seen the sentencing decisions of the Court of Appeal as supplied by the prosecution in the plea and sentence form and of course, I take guidance from those decisions. The aggravating features of your case, apart from the potential effect on the environment, and upon this particular species of falcon, are the commercial nature of your criminal actions and your previous convictions.

The mitigating features are your pleas of guilty tendered here in the Crown Court at the first opportunity in this court and of course the family circumstances in South Africa about which I heard.”

9 In the course of those remarks the judge referred to previous sentences as reported and respectively set out in a form.

10 It is submitted now on behalf of the appellant that in deciding to impose a 30-month sentence the judge was passing a sentence that was manifestly excessive and out of step with the sentences imposed in earlier cases. It is possible that he was influenced by the sentence passed at first instance in the case of [Sissen \[2001\] 1 W.L.R. 902](#) \*407 which was, indeed, 30 months, but he unfortunately overlooked the fact that in this Court that sentence was reduced to one of 18 months.

11 For our part we are entirely satisfied that this sentence was excessive and that just as in [Sissen](#) the reduction that was made from 30 months to 18 months this is the course that we propose to take in this case. We note that by so reducing the term of imprisonment we, in the event, align this case with the general pattern of sentencing that was put before the judge by way of the selection of cases set out on the form that he referred to. Thus it is that for that reason we allow this appeal, we quash the sentence of 30 months on count 1 and we substitute a sentence of 18 months. To that extent this appeal succeeds. \*408