

Neutral Citation Number: [2011] EWCA Crim 2093

No. 2011/02435/A8

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Monday 25 July 2011

B e f o r e:

LORD JUSTICE RIX

MR JUSTICE STADLEN

and

MR JUSTICE MADDISON

REGINA

- v -

ARKADIUSZ BOGUSLAW WROBLEWSKI

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Wordwave International Ltd (a Merrill Communications Company)
165 Fleet Street, London EC4
Telephone No: 020 7404 1400; Fax No 020 7404 1424
(Official Shorthand Writers to the Court)

Mr T Dyke appeared on behalf of the Appellant

Mr J Barker appeared on behalf of the Crown

Judgment
As Approved by the Court

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Monday 25 July 2011

LORD JUSTICE RIX:

1. On 5 April 2011, in the Crown Court at Warwick, before His Honour Judge Thomas QC, the appellant, Arkadiusz Wroblewski, pleaded guilty to being knowingly concerned in the fraudulent evasion of duty payable on the importation of goods, namely a million or so cigarettes, contrary to section 170(2)(a) of the Customs and Excise Management Act 1979. He was sentenced to twelve months' imprisonment. He now appeals against sentence by leave of the single judge.

2. The appellant is a Polish national. He was employed as a lorry driver. On 7 June 2010 his lorry was stopped at Dover by customs officers. Inside the lorry three pallets were found. Two contained car parts for which the appellant had the relevant documentation. However, the third pallet was found to contain over a million cigarettes for which there was no documentation. It was marked "Frozen Vegetables". The lorry had no freezing equipment. The duty evaded came to just over £200,000. When questioned about the load the appellant made no comment.

3. In November 2010, having answered his bail, the appellant handed in a prepared statement in which he said that he thought he was bringing in foodstuffs without the knowledge of his boss.

4. The appellant was born on 9 February 1963. He had no previous convictions.

5. In his sentencing remarks the judge noted the absence of previous convictions and the appellant's personal mitigation in the form of health problems, financial problems and family responsibilities back in Poland. He said, however, that the importation of counterfeit cigarettes was becoming prevalent and that there were many reasons why it was a serious offence. It was conducted by professional organised criminals, caused immense loss to the Revenue and put products of unknown source and possible danger through contamination on the market. Those who involved themselves in such a trade had to expect to be punished. The appellant's personal mitigation was accepted, but lorry drivers who were tempted had to know that they would suffer if they took part in professional crime such as this. The judge remarked on, and accepted, the appellant's courage in coming to this country and to court on each of the three occasions on which he was required to do so, including the third occasion on which he was sentenced. He was given full credit and "more than the normal credit for your plea and the dignity with which you have faced this case", even though the evidence was overwhelming. The judge said that he had considered R v Czyzewski [2003] EWCA Crim 2139; [2004] 1 Cr App R(S) 49 as being the authority from which he took the appropriate guidelines. He said that it therefore followed that after a trial the appropriate sentence would have been eighteen months' imprisonment, but with credit for the plea the sentence was reduced to twelve months' imprisonment.

6. The grounds of appeal are that the sentence was manifestly excessive, given the lack of aggravating features, the appellant's mitigation, and the guidelines laid down in Czyzewski. In the judgment of the court in that case given by Rose LJ those guidelines were essentially based upon the amount of the duty evaded. Thus separate categories were suggested for duty evasions of under £1,000, between £1,000 and £10,000, between £10,000 and £100,000, and

above £100,000. For present purposes the category in which we find ourselves is that of £100,000 to £500,000, where a sentencing range of nine months to three years is suggested.

7. In his written submissions Mr Dyke relies upon the comment of Rose LJ, emphasising this court's judgment in R v Kefford [2002] 2 Cr App R(S) 106, where it was said that sentencers had to take into account the increasing size of the prison population, that only those who need to be sent to prison are sent there, and are sent for no longer than is necessary, and that "in the case of economic crimes, prison is not necessarily the only appropriate form of punishment", particularly in the case of those who have no record of previous offending. Mr Dyke relies upon those observations. However, in our judgment, this case crosses the custody threshold and makes a suspended sentence inappropriate because, although there is no clear case that the appellant is himself an established part of a professional criminal gang, he has nevertheless lent his help and complicity, for whatever reward tempted him, to something that was clearly a professional operation. That makes a suspended sentence inappropriate and clearly undermines the fact that a sentence of custody was an entirely appropriate sentence.

8. However, we accept the submission that in a case such as this the sentence should be kept as short as it possibly can be. In circumstances where the appellant is a man nearing 50, without previous convictions, in employment, with the personal mitigation to which the judge and we have referred, and to the additional strong personal mitigation represented by the way in which the appellant, not once but three times, has attended court in this country to face his responsibilities, and having in mind the judge's view that he deserved all of the normal full credit, but something more as well, and bearing also in mind Czyzewski and Bryan (which was dealt with in Czyzewski), we consider that the sentence of twelve months' imprisonment is manifestly excessive.

9. Bryan was very similar to the instant case. It related to an English lorry driver (34 years of age) with no previous convictions, who had imported not quite as many (but almost as many) cigarettes and had evaded therefore not quite as much (but almost as much) duty as is involved in this case. He had pleaded guilty. He was given leave to appeal. The duty evaded was £164,000. He was sentenced to two and a half years' imprisonment. That sentence was reduced to nine months' imprisonment.

10. We consider that, if nine months' imprisonment was the right sentence in Bryan, on the judge's sentencing remarks the appellant should come somewhere below that mark.

11. Bearing in mind all the matters to which we have made reference in this judgment, we think that the appropriate sentence is one of seven months' imprisonment. As Mr Dyke has informed us, this is to some extent an academic exercise because the appellant has already been released and deported back to Poland.

12. Nevertheless, for the reasons which we have given we consider that the right sentence in this case would have been one of seven months. We therefore allow this appeal and substitute for the sentence of twelve months' imprisonment one of seven months' imprisonment. To that extent this appeal is allowed.
