

Westlaw UK Delivery Summary

Request made by:	IPUSERCP3396247981 IPUSERCP3396247981
Request made on:	Tuesday, 20 November, 2007 at 02:06 GMT
Client ID:	ukadvlegal-245
Title:	Attorney General's Reference (Nos.129 and 132 of 2006), Re
Delivery selection:	Current Document
Number of documents delivered:	1
Document(s) e-mailed to:	j.lam@antislavery.org

© 2007 Sweet & Maxwell Limited

Status:  [Judicial Consideration or Case History Available](#)

Regina v Elisabeth Delgado-Fernandez Godwin Zammit

Regina v Thanh Hue Thi

No. 2006/05914/A3, 2006/05916/A3, 2006/05966/A3, 2006/06056/A1, 2006/06199/A1,
2006/06456/A8

Court of Appeal Criminal Division

6 March 2007

[2007] EWCA Crim 762

2007 WL 2041801

Before: The Lord Chief Justice of England and Wales (Lord Phillips of Worth Matravers) Mr Justice Hedley and Mr Justice Pitchers

Tuesday 6 March 2007

Attorney General's Reference Nos. 129 & 132 of 2006 under Section 36 of the Criminal Justice Act 1988

Representation

- Mr M Kenny appeared on behalf of the Applicant/Offender Elisabeth Delgado-Fernandez.
- Mr C W D Aylett appeared on behalf of The Attorney General.
- Mr N Corsellis appeared on behalf of The Applicant Godwin Zammit.
- Mr P Sutton appeared on behalf of The Applicant/Offender Thanh Hue Thi.
- Mr N Hilliard appeared on behalf of The Attorney General.

Judgment

Tuesday 6 March 2006

The Lord Chief Justice:

Introduction

1 We have heard together applications in two cases because they involve the same criminal conduct, namely the trafficking of women into the United Kingdom for the purpose of exploitation and the controlling for gain of those women who have come to this country in order to offer their services as prostitutes. The growth of such trafficking and the reaction on the international stage led Parliament to make it an offence under [section 224 of the Criminal Justice Act 2003](#) In each of these cases we are confronted by the unusual combination of applications by applicants for leave to appeal on the ground that they have received sentences that are manifestly excessive and applications by the Attorney General pursuant to [section 36 of the Criminal Justice Act 1988](#) for leave to refer sentences on the ground that they are unduly lenient. The applicants' applications have been referred to the full court by the Registrar. We propose at the outset to summarise the facts in each case.

R v Elisabeth Delgado-Fernandez and Godwin Zammit

2 On 26 October 2006, in the Crown Court at Kingston, before His Honour Judge Mitchell, the applicants and their co-defendant, Adrian Zammit, were sentenced as follows: for conspiracy to traffic into the United Kingdom for sexual exploitation (count 1), Miss Delgado-Fernandez, five years' imprisonment and Mr Godwin Zammit seven years' imprisonment; for conspiracy to control prostitution for gain (count 2), Miss Delgado-Fernandez, three years' imprisonment concurrent,

Mr Godwin Zammit, four years' imprisonment concurrent and Mr Adrian Zammit, two years and nine months' imprisonment; and for conspiracy to facilitate a breach of immigration law (count 3), Miss Delgado-Fernandez, five years' imprisonment concurrent and Mr Godwin Zammit, seven years' imprisonment concurrent.

3 The time spent on remand by each applicant (362 days) was taken into account towards the sentence, and all three defendants were recommended for deportation.

4 Mr Godwin Zammit pleaded guilty to the offences at an early stage, as did Mr Adrian Zammit. Miss Delgado-Fernandez was found guilty after a trial that lasted from 7 August 2006 to 6 September 2006.

5 Miss Delgado-Fernandez is Spanish and was born on 25 December 1978. She had worked as a prostitute in Spain before arriving in the United Kingdom. It was in that capacity that she met Godwin Zammit and she began a relationship with him. He is a Maltese national, born on 15 June 1958. He came to the United Kingdom in 1999 and set up the First Omega Escort Agency. Adrian Zammit is Godwin Zammit's nephew. He was born on 4 November 1984.

6 The two applicants were involved in an enterprise with Adrian Zammit which enabled women from Spain, South America and Eastern Europe to enter the United Kingdom in order to work as prostitutes. Once the women had arrived in the United Kingdom, the three defendants controlled the work they undertook and received 60% out of their earnings, out of which they paid substantial expenses. Miss Delgado-Fernandez's role was primarily to recruit women from Spain and South America and to help them enter this country illegally. Godwin Zammit took on a similar role in relation to recruiting women from Eastern Europe. They both ran the agency with the day-to-day help of Adrian Zammit, who took telephone calls and allocated the work among the women.

7 Miss Delgado-Fernandez placed advertisements on the internet inviting women to come to the United Kingdom to work as prostitutes. She also scoured personal advertisements placed in Spanish newspapers and contacted people she had known from her time when she worked as a prostitute in Spain. Fees were offered to those introducing women to her and she selected those she thought the most suitable. Godwin Zammit also paid finders' fees in relation to those he recruited in Eastern Europe and Russia. These recruitment activities formed the basis of count 1.

8 The police mounted a surveillance operation from April to October 2005. Miss Delgado-Fernandez was first seen arriving at Heathrow Airport with a Brazilian woman, Katia Correa. Godwin Zammit had arrived to meet them. Miss Correa was refused entry into the United Kingdom. Thereafter, women from South America who were already working in Spain were instructed by the applicants to fly to Dublin and told what they should say to immigration officials on arrival, which was that they wanted to go to Liverpool as tourists. They were then collected by one or other or both applicants and taken to Hollyhead by ferry. This was observed by surveillance officers on six occasions between May and October 2005. They were able to identify the women in question as prostitutes who were then advertised by the agency as soon as they reached London. This aspect of the applicants' conduct formed the subject matter of count 3.

9 Count 2 alleged that the three defendants had conspired to control the women for the purposes of prostitution. Godwin Zammit had provided a number of flats for use by the women. Miss Delgado-Fernandez encouraged the women to offer a wider range of sexual services than originally appealed to them, took them to photographers' studios to obtain photographs for display on the agency website and on occasions accompanied Godwin Zammit on visits to the flats each night to collect his share of the takings.

10 An analysis of Godwin Zammit's bank accounts during the surveillance period suggested that the agency's daily income was about £1,900, of which he took 60%, giving him a total of about £240,000 over this period. Miss Delgado-Fernandez received 5% of the earnings of each woman whom she had recruited. There is some dispute about these figures, but it is beyond dispute that the takings of the enterprise were very considerable.

11 Godwin Zammit was seen to ferry the women between the flats and to deposit money on a regular basis.

12 On 26 October 2005 the applicants were arrested. Miss Delgado-Fernandez, who speaks very little English, declined to comment in her interview. Although she pleaded not guilty, she admitted

in cross-examination that she had been involved in the recruitment of at least fourteen women and that she had helped all but one to evade immigration controls.

13 Godwin Zammit from the outset admitted involvement in running the agency, although he initially denied the immigration offences. He pleaded guilty to counts 2 and 3 on arraignment on 26 April 2006. There was then some discussion as to whether it was appropriate for him to face the count 1 charge but this was resolved on 15 June 2006, whereupon he changed his plea to guilty in respect of that charge also.

14 Adrian Zammit pleaded guilty on arraignment to count 2.

15 Evidence was given by a number of women involved at the trial that none of them had been coerced into coming to the United Kingdom or into working as a prostitute. All were over 18 and were already working as prostitutes. Two alleged that they had been persuaded to indulge in sexual activities that they would not originally have been prepared to do.

16 Miss Delgado-Fernandez was found guilty on all three counts on 6 September 2006.

R v Thanh Hue Thi

17 On 29 September 2006, at the Crown Court at Southwark, before His Honour Judge Rivlin QC, the applicant pleaded guilty and on 3 November 2006 was sentenced as follows: for conspiracy to traffic into the United Kingdom for sexual exploitation (count 1), five years' imprisonment, and for controlling prostitution for gain (count 3), two-and-a-half years' imprisonment concurrent. Count 2, a charge of conspiracy to traffic within the United Kingdom for sexual exploitation, was left on the file.

18 The time spent on remand (177 days) was taken into account towards the sentence and the applicant was recommended for deportation.

19 Co-defendants who also pleaded guilty were sentenced as follows: Kenny Low (on counts 1 and 3), three-and-a-half years' imprisonment; three others received fifteen months' imprisonment on count 3, and the fourth received twelve months' imprisonment on count 3. Charges had originally been brought against the applicant's wife, Mee Pang, but she became very seriously ill with AIDS and was hospitalised. In these circumstances the charges against her were dropped.

20 The applicant was involved in the trafficking into the United Kingdom of Malaysian women for the purposes of prostitution at brothels in both London and Birmingham. One of these women, Miss Joo, made a complaint to the police in January 2005 that she had been persuaded by an ex-boyfriend to take a holiday in London. Her travel from Malaysia was paid for her by her boyfriend. She was escorted by another man. On arrival she was taken to 13 Camden Hill Gardens, where she was told by the applicant that she would have to work as a prostitute to repay the people in Malaysia who had funded her coming. She was prevented from leaving that house and over half her earnings were taken by the applicant.

21 On 19 January 2005, the police attended premises at 12 Avenue Road, NW8, where the applicant lived with his wife. It was discovered that he had rented this house at a rental of £10,000 a month since April 2002, and 13 Camden Hill Gardens (under another alias) for over £8,000 a month since September 2004. Prostitution was carried on on a large scale in each house. The police closed down each of these brothels.

22 The police then commenced observation of the Avenue Road premises, which remained the applicant's home. In June 2005 the applicant took a lease of 18 Hyde Park Street, W1, at a rent of £6,000 a month and began to use these premises for running a brothel.

23 The police had found documents linking the London brothels to premises at 1 Hay Park, Birmingham. These premises were let to a Chinese man who gave his name as Rod Mok. They were also placed under observation. It became apparent that these premises were used as a brothel. The applicant was observed by the police at both premises, and also observed (as were some of his co-defendants) transporting prostitutes from one set of premises to the other. Kenny Low was responsible for the day-to-day running of the Hyde Park Street brothel.

24 Enquiries also established that the applicant and Kenny Low had paid invoices for advertisements for massage services in Chinese newspapers in both London and Birmingham.

Kenny Low was seen distributing business cards for these services.

25 On several occasions the applicant was seen to deposit large amounts of cash into various banks, to a total of about £470,000. He also was attracted to gambling. He placed large sums in bets. One bookmaker estimated that he had received about £36,000.

26 On 26 April 2006, the applicant and his wife met two couples who had arrived at Heathrow Airport from Singapore. One of the women told Customs officials that she was accompanying her partner on a business trip, but the applicant left the two men in London and took the two women to the Birmingham brothel. This appears to have been the usual method of bringing prostitutes into the country. The following day the men returned to Heathrow with one of the co-defendants. Their baggage was searched and they were found to be carrying £4,000 in cash.

27 On 10 May 2006, the applicant and his wife were arrested. The co-defendants were also arrested.

28 A number of the prostitutes working at the brothels made statements. These confirmed that they knew that they were coming to the United Kingdom to work as prostitutes; that the applicant and his wife were the bosses; that their return tickets were removed from them when they arrived; and that they were told that they needed to work to pay off their debts. Two of them said that they had been met at the airport by Kenny Low.

29 Documents seized on the arrests included work sheets which established that the two brothels had received revenue of close to £2 million over the period of surveillance and that the applicant was the principal organiser. A safe deposit box relating to Kenny Low contained £59,000 in cash and telegraphic transfer details to Malaysia and more cash were found at his address.

The Nature of the Offences

30 While a number of the charges with which we are concerned are for conspiracy, what is significant in these cases is the nature of the substantive offences. Potentially the most serious of the offences common to each case is that of trafficking into the United Kingdom for the purpose of sexual exploitation. The full terms of this offence, as set out in [section 57 of the Sexual Offences Act 2003](#), are as follows:

“A person commits an offence if he intentionally arranges or facilitates the arrival in the United Kingdom of another person (B) and either —

(a) he intends to do anything to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence, or

(b) he believes that another person is likely to do something to or in respect of B, after B's arrival but in any part of the world, which if done will involve the commission of a relevant offence.”

31 The maximum sentence for this offence is fourteen years. It is right to note, however, that the offence can be dealt with on summary trial. The Sentencing Advisory Panel, in its advice to the Sentencing Guidelines Council, provided a helpful commentary on this offence as follows:

“182. Trafficking for the purposes of sexual exploitation is a significant problem in many parts of the world and international agreements such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (to which the United Kingdom is a signatory) have been reached in a unified effort to tackle it. Trafficking for sexual exploitation involves several elements. Firstly it requires the recruitment of people from one place to work in another, whether this is between countries or within territorial boundaries. Some victims are recruited by strangers who may, or may not, be known to friends or relatives; others are virtually ‘sold’ into prostitution by friends or family members. The recruiting process may involve deception of the victims as to the nature of the work they will ultimately be doing, with those trafficked often believing that they are coming to work as au pairs, waitresses or exotic dancers. Others are fully aware that they are to work in prostitution but may be deceived about the conditions of work, the number of ‘clients’ for whom they are expected to provide services, and the amount of

money that can be earned. Often, trafficking from abroad is arranged as a 'package' with fees charged for travel, accommodation and 'management' in the UK. This can create a form of debt bondage that can never be fully paid.

183. The next step in the trafficking process is arranging or facilitating the transport of the person from the place of origin to the destination. Where this involves the crossing of international borders, it may also involve immigration offences. The arranging or facilitating of trafficking may involve the creation of false papers, or assistance in securing transport, or the provision of food or shelter en route.

184. The final element is the managing of sex workers at the destination. Individuals are often held in circumstances which effectively restrict their freedom: passports and other forms of identification may be confiscated, there may be limits on their ability to refuse clients or certain sexual practices and violence may be used to control them. Victims often face significant 'costs', for example for food, accommodation and cleaning services, which means that they receive very little money for themselves. Trafficking is a growing international industry within which victims are treated as commodities and operators can make vast sums of money. UN figures for trafficking in women for sexual exploitation are set at \$7 billion a year — equivalent to the global drug trafficking market. As the fight against drug trafficking becomes more and more effective, criminal syndicates are turning to the trafficking of women as an easier and equally lucrative option."

32 The seriousness of the offence will depend upon the circumstances of the various elements of the offence. In each of the cases before us there is a separate charge in relation to the "relevant offence" that formed the object of the enterprise. The offence of controlling prostitution for gain contrary to [section 53](#) of the 2003 Act carries a maximum penalty of seven years' imprisonment.

33 The Sentencing Guidelines Council has published draft guidelines for the purpose of consultation. These do not yet have statutory effect and, for this reason, must be approached with caution. They do, however, helpfully set out aggravating features of the trafficking offence, most of which are equally applicable to the offence of controlling prostitution for gain. These are:

- "1. large-scale commercial operation;
2. high degree of planning, organisation or sophistication;
3. large number of people trafficked;
4. substantial financial (in the region of £5,000 and upwards) or other gain;
5. fraud;
6. financial extortion of the victim;
7. deception;
8. use of force, threat of force or other forms of coercion;
9. threats against the victim or members of the victim's family;
10. proved or admitted abduction or detention (unless separately charged);
11. restriction of the victim's liberty;
12. inhumane treatment;
13. confiscation of the victim's passport."

Precedent

34 Before considering the sparse authorities that relate to these recent statutory offences it is helpful to refer to Attorney General's Reference No 6 of 2004 (R v Plakici) [2005] Cr App R(S) 19 , which dealt with a series of individual offences that amounted to an extremely serious case of

trafficking. The offender had arranged for the illegal entry of women and young girls into this country in circumstances that involved both deception and coercion and forced them to work as prostitutes. Counts of illegal entry attracted sentences of five years, of living on immoral earnings five years, of kidnapping ten years, and of incitement to rape eight years. A total sentence of 23 years was imposed.

35 Turning to offences under the 2003 Act, in [R v Maka \[2006\] 2 Cr App R\(S\) 14](#) sentences totalling 18 years were upheld, on a guilty plea, in the case of a man who trafficked a 15 year old girl into this country and repeatedly sold her to others for the purposes of prostitution. This court endorsed the comment of the sentencing judge that human trafficking was a degrading activity producing untold misery around the world and that the case had echoes of slavery with the girl being sold from one procurer to another. It added that the offence was intended to embrace a wide variety of different forms of conduct, identified as trafficking for sexual exploitation.

36 Much closer to the facts of the cases with which we are concerned is [R v Roci and another \[2006\] 2 Cr App R\(S\) 15](#) In that case there were very late guilty pleas as the jury was about to be sworn. The appellants were concerned in the importation and the control in this country of prostitutes from Lithuania. While the women came to this country willingly, they were then coerced to work in unpleasant circumstances and ways contrary to their wishes and to pay over most of their earnings. The sentence on the appellant who was concerned in all these matters was reduced by this court from eleven years to nine years' imprisonment.

Elisabeth Delgado-Fernandez and Godwin Zammit

37 We turn to the first of the cases before us. In sentencing the judge made these general comments in relation to both applicants:

“... there is no offence committed when a woman sells her body for sex or indeed a man paying that woman; it is what accompanies it inevitably, and that is the degree of exploitation. It is a repugnant situation This was well organised, as I have already said. It exploited a weakness in the immigration system which no doubt was looked into by Godwin Zammit and discovered to be what one might describe as a loophole — efficient because the girls were put to work very quickly.

But the real reason behind all this is not to provide some social service for anybody but commercial gain, to make money, and to make it in large or very large quantities, not of course subject to any tax. It means making money, without doubt, and a lot of money, in a way which, as I have already said, is repugnant to right-thinking people, and that is why the Act is there to deal with it.

...

This was well organised importation of essentially vulnerable people because they come from countries which suffer from considerable poverty.”

In relation to Miss Delgado-Fernandez the judge added this:

“... it is quite clear that this organisation needed fresh girls. A supply was very necessary and you, for money — because nobody acts in this really in the management side without seeking some sort of gain from it, and indeed it seems to me you were quite open about that in your evidence — you conducted well-organised researches, and indeed each entry had comments upon it after you made contact with those girls.”

The judge commented that Miss Delgado-Fernandez had admitted all the offences in the course of her evidence, but stated that she did not consider herself guilty. The judge said that it was a pity that she had not pleaded guilty but that he would treat her, perhaps over-generously, as having not done so out of stupidity. She had been responsible for recruitment, but was less financially involved than Godwin Zammit. Whereas he received a sentence of seven years, hers would be five years. He added that this was less than she really deserved because she was a major part of the recruitment.

The submissions on behalf of the Attorney General

38 For the Attorney General Mr Aylett submitted that it was appropriate to consider first the third count, for on the facts of this case this was where the gravamen of the offence lay. The applicants had been responsible for assisting in the illegal immigration of thirteen people. He referred us to the decision of this court in R v Van Binh Le and Rudi Heinrich Stark [1999] 1 Cr App R(S) 422. In that case the position was that the relevant appellant had pleaded guilty to facilitating the illegal entry of nine persons and had been paid 4,400 Deutschmarks for doing so. He had imported the immigrants closely crammed into a van. He was sentenced by the trial judge to five years' imprisonment. The court observed that it was an aggravating feature where the offence had been committed for financial gain, or where the illegal entry had been facilitated for strangers as opposed to a spouse or a close member of the family. In cases of conspiracy it was an aggravating feature where the offence had been committed over a period, and, whether or not there was a conspiracy the offence was aggravated by a high degree of planning, organisation and sophistication. Plainly the more prominent the role of the defendant, the greater the aggravation of the offence. The offence was further aggravated if it was committed in relation to a large number of illegal entrants, as opposed to one or a very small number.

39 Mr Aylett submitted that all of these aggravating features were present in this case. Van Binh Le related to a time when the maximum sentence for this offence was seven years' imprisonment. A sentence of three-and-a-half years (the sentence to which the five years was reduced), with full credit for a guilty plea, had been imposed in that case. The maximum was now fourteen years, and a seven year sentence after a guilty plea was justified by the immigration offences alone. In considering the appropriate sentence for trafficking, Roci provided the appropriate guidance. The facts of that case were comparable to this. The sentence in Roci represented a ten year starting point before allowing for the guilty plea. The sentence imposed on Godwin Zammit was thus well merited — indeed it was lenient. It provided the starting point for considering the sentence imposed on Miss Delgado-Fernandez.

40 As to her sentence, Mr Aylett submitted that it was unduly lenient. She had been fully involved at every stage of the enterprise. She did not have the benefit of a guilty plea. A sentence that was equivalent to half that imposed on Godwin Zammit was much too low.

The submissions on behalf of the applicants

41 On behalf of Godwin Zammit, Mr Corsellis submitted that his sentence was manifestly excessive. He relied upon the applicant's plea of guilty and his good character. He repeated submissions made to the trial judge to the effect that this case lacked almost all the features that can make trafficking such a serious offence and that existed in Plakici and Maka. He submitted that there was no suggestion of coercion, corruption or deception as to the women's roles. They all came to the United Kingdom knowing full well the purpose of their visit. The women were all over 18, being between 23 and 28. They were all experienced prostitutes before they came to the United Kingdom. Whilst they were vulnerable by definition of being prostitutes, they were not particularly so. For example, they were not recruited while living on the streets. There were never more than four or five women working from abroad at any one time. They were always free to leave either the country or the arrangement at any time. They received their 40% share of the takings. They were given clean and hygienic premises. No violence or intimidation was ever inflicted or threatened. They were not kept in poor living conditions or with very little money.

42 Mr Corsellis referred us to a series of cases where the offences consisted of living off the proceeds of prostitution, culminating in R v Elul [2001] 2 Cr App R(S) 681. The facts of that case were that the appellant pleaded guilty to four counts of living on the proceeds of prostitution. He and his wife were involved in the business of providing sexual services. Over a period of several months by advertising in newspapers they recruited about twenty women from South Africa to come to the United Kingdom to act as prostitutes. The women knew that they were to act as prostitutes when they came. The appellant's premises were used to provide a variety of sexual services. There was no suggestion of any corruption or coercion in relation to any of the premises and the establishments were hygienically run. The appellant took 50% of the monies earned at the flat each day. This court reduced the sentence of 18 months' imprisonment imposed on the appellant to twelve months.

43 Mr Corsellis submitted that the facts of that case bore close similarities to the latter part of the offending in the present case. He also challenged Mr Aylett's submission that the gravamen of this case was the offence of facilitating a breach of the immigration law. The prostitutes only

entered this country for a relatively short period, leaving it with their earnings to be replaced by others. There were only four or five women here at any one time. Finally, Mr Corsellis submitted that there was an unfair disparity between his client's sentence and that of Miss Delgado-Fernandez.

44 This was challenged by Mr Kenny on behalf of Miss Delgado-Fernandez, who submitted that she played a subordinate role in the venture. While Godwin Zammit received £242,000 during the indictment period, her share was only £18,000. He relied on the same mitigating features of the offence as had Mr Corsellis. He submitted that the judge had ample justification for discriminating between Miss Delgado-Fernandez and Godwin Zammit. She was under the control of Zammit. He had offered her the choice, if she stopped working as a prostitute, to work as an agent, and he was about to put her back to work as a prostitute.

Conclusions

45 The immigration offence before us is not comparable to that in *Van Binh Le*, which was an example of the commercial business of smuggling into this country illegal immigrants who are likely thereafter to remain here. In this case the nature of the immigration assistance was first of all to inform the prostitutes that the easiest way of entering the country was via Ireland, and then to instruct them to fill in their immigration forms with the false information that the purpose for which they were entering the country was tourism. They were then provided with visas to enter the country on that basis. Most of them left before those visas expired. However, instead of spending their time in this country in innocent tourism, they spent their time working as prostitutes. They then returned home, so that there was no long-term increase of illegal immigrants in this country, and indeed never more than four or five at a time as a result of the applicants' activities. It seems to us that the immigration offence was part and parcel of the trafficking offence and, of course, it aggravated that offence.

46 The remaining elements of the trafficking offence lacked most of the aggravating factors identified by the Sentencing Guidelines Council. There was no deception or coercion. There was assistance for prostitutes who wanted to come to this country — assistance with their entering the country illegally and organisation of their business while they were here on a substantial scale and for a substantial profit.

47 In these circumstances we have reached the conclusion that the sentences imposed on Godwin Zammit were manifestly excessive. We shall grant his application for leave to appeal and we shall reduce the sentences on both count 1 and count 3 from seven years to five years' imprisonment, to be served concurrently, so that the overall sentence is reduced to five years' imprisonment.

48 We consider that the judge was entitled to treat Miss Delgado-Fernandez more leniently, despite the fact that she did not plead guilty. She was very much under the control of Zammit and only received a modest share of the profits of the enterprise. Far from being unduly lenient, we consider that her sentence also was manifestly excessive. We will allow her application and reduce the sentence to four years on counts 1 and 3, to be served concurrently, so that the overall sentence is reduced to four years' imprisonment. The Attorney General's application is dismissed.

Thanh Hue Thi

49 In sentencing the applicant Thanh Hue Thi the judge said this:

“... the most serious features of this case, that is the aggravating features ..., which in the main bear upon count 1, but also spill over to count 3, are as follows: First, the scale of this offending; this was business and very large sums of money were involved. Secondly, this undoubtedly involved the importation of girls into this country for the purposes of prostitution. Third, although I do believe that the prosecution have been unable to establish that there was widespread coercion, there was coercion in some instances, perhaps very few, that can actually be proved, but there is no doubt that these girls were under very strict instructions as to the manner in which they should behave and that all of this resulted in their serious exploitation.”

A little later, in addressing the applicant, he said:

"I also bear in mind that sadly your wife is gravely ill but you were, as I have indicated, by far the most deeply involved in all of this, and the evidence shows that you were involved at least on some occasions — I am prepared to accept that the evidence does not go beyond perhaps one or two occasions — you were involved in serious coercion. Even apart from that, I have no doubt that it was you, perhaps together with the woman with whom you are involved, I do not know, but you certainly imposed strict and ruthless control over what was going on. Moreover, I have not the slightest doubt, and indeed the evidence certainly reveals this, that you personally benefited to a very large extent, having access to substantial sums of money, many thousands of pounds, and ready access to such sums."

The Submissions on behalf of the Attorney General

50 Mr Hilliard on behalf of the Attorney General submitted that the sentence imposed was unduly lenient. He put at the forefront of his submissions the very large scale of this enterprise, which involved receipts of something like £2 million. Added to that, there was the strict and ruthless control, and in one case there was coercion in prostitution. Anticipating an argument that there was disparity between the sentence imposed on the applicant and that imposed upon his co-defendant Low, he submitted that there were grounds for distinguishing between the two: Low had had nothing to do with the incident of coercion and he had played a lower role in the hierarchy. He referred us to Attorney General's Reference No 6 of 2004 (*R v Maka*), where it was emphasised that this was a degrading offence which produced misery and called for a deterrent sentence. He also referred us to *Roci* where, before allowing for a plea of guilty, the sentencer must have had in mind a sentence of ten years in circumstances which, he submitted, were very similar to those in this case. He submitted, however, that the incident of coercion in this case made it more serious than *Roci* so that, even after a plea of guilty, the appropriate sentence should have been at least eight years.

Submissions on behalf of the Applicant

51 For the applicant Mr Sutton first joined issue in relation to the judge's finding that there had been coercion in the case of Miss Joo. He drew attention to some strange features of her statement: that she had been invited by an ex-boyfriend to come to this country with another man for the purpose of sight seeing and that her ex-boyfriend paid for this. Mr Sutton submitted that it was difficult to reconcile this with the story of an innocent woman who had been deceived and then coerced into prostitution. He told us that, unfortunately, Miss Joo had been repatriated to Malaysia and he was therefore not able to require her to tender her evidence for cross-examination.

52 The judge found on the evidence that Miss Joo was an unwilling participant in this brothel and that she had been coerced into acting as a prostitute. Her evidence was that her situation reduced her to tears day after day. We can see no proper basis for challenging the finding that there was this one case of coercion. Although the judge referred to "possibly one or more" such cases, we are not aware of any evidence showing that there was more than this single case. Putting that to one side, Mr Sutton submitted that this also was a case which lacked most of the aggravating features that are so often found in relation to this offence.

53 We have compared the facts of this case with those in *Roci*. Although here there was the single case of coercion, the picture in *Roci* is of a much more rigid regime of exploitation, albeit lacking the gravity of the single aggravating feature that we have to deal with. Overall we consider that two cases are comparable and that the appropriate starting point in this case should have been ten years. From that starting point there fell to be a full reduction for the guilty plea, and then there was the further reduction made by the judge to reflect personal mitigation. Initially we were sceptical as to its justification. However, we are told that the applicant's wife, whose life expectancy is very limited, has returned to Malaysia where she is likely to die in circumstances where the applicant will not see her again.

54 In these circumstances, having regard to that item of mitigation and to the principle of double jeopardy, we have reached the conclusion that while this was a lenient sentence, it did not amount to a sentence that was unduly lenient so that it should be increased. For that reason we propose to leave the sentence as it stands.

Crown copyright

© 2007 Sweet & Maxwell Ltd

