

Westlaw UK Delivery Summary

Request made by:	IPUSERCP3396247981 IPUSERCP3396247981
Request made on:	Tuesday, 20 November, 2007 at 02:55 GMT
Client ID:	ukadvlegal-245
Title:	R. v Feng (Zhu Hui)
Delivery selection:	Current Document
Number of documents delivered:	1
Document(s) e-mailed to:	j.lam@antislavery.org

© 2007 Sweet & Maxwell Limited

Regina v Zhu Hui Feng

No: 2007/02713/A9

Court of Appeal Criminal Division

18 October 2007

[2007] EWCA Crim 2567**2007 WL 3236275**

Before: Mrs Justice Dobbs DBE Her Honour Judge Goddard QC (sitting as a judge of the Court of Appeal, Criminal Division)

Thursday, 18th October 2007

Representation

- Mr A Farrow appeared on behalf of the Appellant.
- Mr P Shorrocks appeared on behalf of the Crown.

Judgment

Mrs Justice Dobbs:

1 On 3rd May 2007 in the Portsmouth Crown Court, this 24-year-old appellant was convicted after trial of two counts of facilitating the arrival into the United Kingdom of another person for the purposes of sexual exploitation and two counts of facilitating travel within the United Kingdom of another person for the purposes of sexual exploitation. He was sentenced to 8 years on each count to run concurrently. A recommendation for deportation was made.

2 He appeals against sentence by leave of the single judge.

3 The facts are these. In 2005 the appellant contacted a man called Rocha in Brazil and asked him if he knew of any girls who would like to work in his restaurant in England. Rocha asked M D O if she wished to do so and she agreed. She in turn asked her friend S D A, and she also was keen to go. Money was put into Rocha's account by the appellant to buy passports and clothing for the young women, and the plane tickets to Heathrow were paid for. At São Paulo Airport in Brazil, the women were met by unknown persons who gave them some sterling, in order to trick United Kingdom immigration into believing that they had enough money to support themselves when they applied for a visa.

4 On 5th May 2005 the women arrived at Heathrow where, after obtaining tourist visas, they were met by the appellant. He took them to London and introduced them to a man called Chua. They went for a meal in Chinatown, and then the women were taken to a shop where they were bought lingerie. At that point they became suspicious. Their passports were taken from them and they were told they would have to work as prostitutes. The appellant then handed them over to Chua and he took them to a brothel in Portsmouth. M D O then was forced to work as a prostitute, but she was not physically threatened. But her friend S D A refused, so she was taken back to London, handed back to the appellant who took her to a house in Manchester.

5 On 19th May the police raided the brothel in Portsmouth, and as a result the story emerged.

6 This appellant, being 24 years of age, was of previous good character. There were no reports in front of the sentencing judge, but some prison reports described his conduct as excellent, that he was polite and courteous to all. The reports from staff were described as very good.

7 When sentencing the judge noted that although the offences were specified offences, he found that it was not possible to find that the appellant posed a significant risk and thus the dangerousness provisions did not apply.

8 The judge made a recommendation for deportation, noting that the appellant was close to the

action in this case, and thus his remaining in the United Kingdom would be a potential detriment. We will deal with that aspect later.

9 Turning to the main ground of appeal, which is that the sentence was too long, counsel relies on the following. This was a single transaction, which was accepted by the sentencing judge. The offences were not aggravated by violence or threats of violence. No coercion was used on the women. They were not falsely imprisoned, nor badly treated, and were not kept incommunicado. Each had a mobile phone in order to keep in contact. The lady who worked sent money back to Brazil, and therefore was able to keep some of her earnings. The appellant had limited involvement and he had no role in running the brothel. The only gain identified to him was some £1,200 paid into his account by Mr Chua. He was of previous good character and he had a good work record since arriving in this country in 2002. He is a family man.

10 Counsel points out that the Sentencing Guidelines Council Guideline suggests a starting point of two years where there has been no coercion, with a range of one to four years on conviction. The higher bracket has a sentencing range of four to nine years, with a starting point of four years.

11 It was accepted that there was a relatively high degree of planning and two victims, and their passports confiscated. But it is submitted that the offences fall on the border of the two categories contained in the guideline, where four years was appropriate.

12 We take the view that there is force in counsel's arguments with regard to the length of sentence. It is not clear whether the guideline was available to the judge at the time, although not in force until some ten days after the date of sentence. If it had been drawn to the judge's attention, we have no doubt that the sentence would not have been as high.

13 Taking into account both the mitigating and aggravating features in this case, in our judgment the appropriate sentence is one of 4 years' imprisonment. We quash the sentence of 8 years and substitute for it a sentence of 4 years.

14 We now turn to the second issue in the grounds of appeal, namely the recommendation for deportation.

15 We note, first of all, that this is a recommendation which is in the judge's discretion. The court has to consider the potential detriment of the offender remaining in the jurisdiction. Even if the offender has no previous convictions, a recommendation can be made where the offence is a serious one, of a deliberate character, and one which can undermine public policy.

16 The offences for which this appellant was convicted are serious. However, within themselves they are not the worst of this category of offence, as has been demonstrated by the result in the first half of this appeal.

17 The judge noted when sentencing that offences of this kind are in effect a form of modern slavery. However, in this particular case those aggravating features akin to slavery were not present. Whilst the appellant was associated with the person who ran the brothel, that person has now fled the jurisdiction and there is no evidence that this appellant was in any way involved with the brothel.

18 Although reference was made to the appellant's character and personal circumstances, there was no assessment of his future behaviour, the judge not having the benefit of a pre-sentence report in front of him. He needed therefore to make such an assessment himself. If he did make an assessment and balancing act, he failed to express clearly and in detail the factors which militated in favour of the recommendation and why.

19 In our judgment, given the facts of the offences, strong mitigation and the lack of evidence pointing to any future concerns about this appellant, the recommendation was not apt. We therefore quash the recommendation for deportation. We point out, however, that by doing so it does not follow that this appellant will not ultimately be deported, as that will be a decision for the Secretary of State in the light of the conviction, whether it be with or in the absence of a recommendation by this court.

20 To that extent, this appeal against sentence is allowed. Thank you very much Mr Farrow.

© 2007 Sweet & Maxwell Ltd

