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No: 2008/6027/A3 and 2008/6652/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2

Date: Thursday, 18th December 2008

B E F O R E:

MRS JUSTICE RAFFERTY DBE

MR JUSTICE ANDREW SMITH

R E G I N A

-v-

MONTGOMERY STANLEY PANGETTI

OCTAVIA PANGETTI

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Mr S Perkins appeared on behalf of the **Applicant Montgomery Pangetti**

Mr S Alexander appeared on behalf of the **Applicant Octavia Pangetti**

J U D G M E N T

1. MR JUSTICE ANDREW SMITH: On 10th November 2008 the applicants, man and wife, were sentenced to terms of imprisonment, in the case of Mr Pangetti a total term of 12 months and in the case of Mrs Pangetti a total term of 18 months. In each case there were concurrent sentences of this length on each of the counts against them. They had pleaded guilty the previous month to offences of using a false instrument, obtaining a pecuniary advantage by deception and fraud. In Mr Pangetti's case there were also counts of possession of false identity documents and failure to notify a change of circumstances to obtain a benefit.
2. The applicants are Zimbabweans. They arrived in the United Kingdom on 4th December 2003 on a 6-month visitor's visa. They brought their two daughters with them, the daughters now being aged about 11 and seven. The younger daughter is severely disabled, having severe congenital brain abnormalities.
3. The applicants, having entered the country on visitor's visas, had no right to work or to claim benefits. They applied for asylum 12 days after their arrival, but their applications were refused in February 2004. There were a number of appeals and rehearings. Eventually, their applications were rejected.
4. October 2007 the authorities made enquiries about their finances. It emerged that Mrs Pangetti had obtained a forged Zimbabwean passport and a forged Home Office letter that purported to give indefinite leave to remain in the country and to obtain employment. The applicants had used the false documents to obtain employment. Between them they earned something in the order of £60,000, and for practical purposes they can be said to have earned similar amounts. He worked as a food inspector and a packer. She worked mainly in a care home.
5. Over the period they also received certain benefits to which they were entitled because on their arrival they had been destitute. They were given accommodation, which we are told had a value of some £45,000. They also received cash support of some £32,000.
6. The applicants are aged 37 and 36. They are of good character. They left respectable jobs in Zimbabwe and sought asylum here. They admitted the offences promptly. There is no reason to doubt that their remorse is sincere and profound. Mr Pangetti explained that they wanted to provide for the family, to avoid the older daughter being stigmatised as coming from a family of asylum seekers and to support the desperately disabled younger daughter. They remitted money to Mr Pangetti's father in Zimbabwe, where he was terminally ill and where the health care system is failing.
7. The judge described this as a difficult case and rightly said there had to be a custodial sentence for both applicants. He said, again rightly, that there is a deterrent consideration in sentencing offending of this kind. He referred in passing to the "ingenuity" of the applicants' solicitors in the context of the extended asylum procedures, and referred to the applicants "freeloading on this country". But it must be recognised that there is no evidence of impropriety in the pursuit of the asylum applications and appeals, and they face no charge with regard to the benefits that they

received. They were lawfully in the United Kingdom. They unlawfully worked to support themselves and their family, and used false documents to do so.

8. Ordinarily cases of this kind require an immediate custodial sentence, even though the only purpose of having and using documents is to work for a living. These cases are often sad and often invoke sympathy, but that in itself is not good reason to depart from the usual course. However, an immediate custodial sentence is not always required: see Attorney-General's Reference Nos 1 and 6 of 2008 [2008] EWCA Crim 677, [2008] 2 Cr App R(S) 99, and R v Carneiro [2007] EWCA Crim 2170, [2008] 1 Cr App R(S) 95. If the sentence is appropriately short, a suspended sentence is sometimes justified.
9. We deal first with the length of the sentences. The judge considered that Mrs Pangetti's offending called for a more severe sentence than that of her husband because she had a forged passport and because her offences were more numerous. We cannot accept that there was any proper basis for distinguishing the position of the husband and wife, and would in any event reduce her sentence accordingly.
10. Are sentences of 12 months too long in this case? They would not have been open to criticism after a trial. The applicants are entitled to full credit for their pleas. We consider that sentences of eight months in each case would have been appropriate.
11. The next question is whether such sentences should be suspended. Although it is not necessary to identify exceptional circumstances to suspend a sentence, there must be good reason to do so in cases of this kind. The question is whether the position of the applicants' children, and in particular the younger child, is good reason to do so for one or both of these applicants. The position of the applicants' family cannot be ignored. The disability of the younger girl is truly severe. She was entirely dependent on her parents for the most basic functions of living and for any sort of movement. We understand that if immediate custodial sentences are upheld there is a danger of the children being evicted from where they live.
12. This particular case cries out for compassion, and we do not think that any general need for deterrence or consistency in sentencing drowns out that cry. There will be few cases, thankfully, in which offenders will have a plea for humanity as strong as that of these applicants.
13. We consider that these offences can properly be dealt with by suspended sentences of imprisonment with a requirement for unpaid work. We therefore allow in Mrs Pangetti's case the application to extend time to apply for leave to appeal. We give leave to appeal in both cases. We allow the appeals to the extent of reducing the sentences imposed to eight months, by suspending the sentences, now eight months in each case, for a period of 2 years, and by directing a requirement of unpaid work of 100 hours in each case.
14. MR PERKINS: Does my Lord direct that the 100 hours be completed within 12 months?
15. MRS JUSTICE RAFFERTY: It has to be.

16. MR PERKINS: Thank you.
 17. MRS JUSTICE RAFFERTY: The learned associate very sensibly raises the automatic recommendation for deportation under the United Kingdom Borders Act. Speaking entirely for myself, this court, of course, is powerless to do anything about an automatic recommendation. Were it a recommendation that needed a judicial decision, for my part mine would be favourable.
 18. MR JUSTICE ANDREW SMITH: I certainly would not recommend deportation were it (inaudible).
 19. MR PERKINS: Thank you.
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