

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

EDNA MARIE FURTADO BORGES & OTHERS

HORNER J

R v Edna Marie Furtado Borges

[1] Edna Borges you are 37 years old today. You have a twelve-year old daughter and are married to Mohammed Miah. You have pleaded guilty to seeking to conspire to defraud the Secretary of State for the Home Department by dishonestly inducing him to grant leave to remain in the United Kingdom to a person or persons who are not citizens of the European Union between 1 January 2004 and 16 September 2009. You should understand that the maximum penalty which this offence is capable of attracting is life imprisonment. This is not a victimless crime. This is a very serious offence. Such an offence attacks the roots of this country's system of properly regulating controlled immigration into the United Kingdom. Every person is capable of being affected if the immigration laws are ignored. Furthermore, it seeks to attack and undermine the institution of marriage which has been honoured and respected in this society and protected by the laws of this jurisdiction. This offence was committed after 1 April 2009 and the court therefore applies the provisions of the Criminal Justice (Northern Ireland) Order 2008. Under the 2008 Order, if a determinate custodial sentence is to be imposed the determinate term in custody is 12 months or more.

[2] There is clear evidence that you were involved not only in a sham marriage yourself with Mohammed Miah, but that you also took part in four sham marriages as a witness and that you were in fact responsible for recruiting Portuguese women to take part in these sham marriages. I accept that you did not organise the conspiracy at a high level and that you were very much a foot soldier. I have considered the authorities. I am advised and accept that the range of imprisonment for these offences is 3 years to 7½ years.

[3] I consider that the appropriate period of custody to be imposed after a trial was 4½ years. I note that you have pleaded guilty and co-operated. Accordingly, I consider that there should be a full discount of one third and that therefore the starting point is 3 years.

[4] The aggravating factors are:

- (a) This was well organised.
- (b) It was for commercial gain, although I accept that you were modestly rewarded.
- (c) It was committed over a period of time.
- (d) It enabled a number of legal immigrants to gain entry to Northern Ireland.
- (e) While not an organiser you played an important role in recruiting the brides.

[5] I consider the mitigating factors to be:

- (a) Your clear record. You had been of good character. You worked hard. You had a variety of different jobs.
- (b) Although your marriage to Mohammed Miah was a sham, this in fact has turned into a genuine marriage and I note that you are expecting his child in December. You already have a daughter.
- (c) These proceedings have been delayed and they have been hanging over your head for quite some considerable time.

[6] By far the most compelling feature of this case is the fact that you are heavily pregnant and about to give birth to a child. You also have a daughter. I have considered the decision of the Court of Appeal in England in R v Petherick and in particular the general observations of Hughes LJ in cases where the sentencing of a defendant invariably engages not only your Article 8 rights but also the rights of any dependent child or children. I also note the comments of Stephens J in R v McDonnell & Another [2013] NICC 16, para 21. I also have endeavoured to give effect to those matters set forth in the judgment of Hughes LJ.

[7] If it were not for the fact that you are heavily pregnant, and about to expect a child, I would consider that the appropriate prison sentence was 2½ years in prison. However, I accept that in a case such as this where custody cannot unfortunately be avoided, the effect on your child and on the child who has yet to be born affords

grounds for mitigating the length of the sentence. In those circumstances, given the imminence of the birth of your new child, I impose a period of one year in prison.

[8] I have been urged to suspend the sentence but I do not consider that I should do so in the circumstances of this case. The authorities make it clear that an immediate custodial sentence should be imposed especially as you played a key role in these sham marriages. I consider that I can best meet your particular circumstances by reducing a period of imprisonment to as short a prison sentence as possible while still maintaining its deterrent effect. Accordingly, I impose a determinate term in custody of 12 months. I am also required to deduct from the sentence such period, called the licence period, as the court considers appropriate to take account of the effect of the offender's supervision by probation officers on release from custody in protecting the public from harm from the offender and in preventing the commission by the offender of further offences. That period here, the court has assessed at 6 months. Resulting in a custodial period of 6 months, and that is the period which you Ms Borges will service in custody in respect of the offence of conspiracy. Upon your release you will be on licence for a further period of 6 months thereafter.

R v Tania Custodia Condessa Real

[9] The commission of a breach of immigration law by entering into a sham marriage with Sanja Ghos. He was not a citizen of the European Union. This was a breach of section 25(1) of the Immigration Act 1971. This offence carries with it a maximum sentence of 14 years in prison or a fine or both. Apart from entering into this sham marriage, you also were guilty of three other counts in respect of witnessing the sham marriages of others, contrary to section 25(1) of the Immigration Act.

[10] You are a 24 year-old single woman. You are the mother of one son aged 7 months. You live alone in a privately rented flat in the Clifton area of Belfast and you are on benefits.

[11] I have considered all the submissions made by your counsel and the pre-sentence reports.

[12] I have read all of the authorities. I consider that the appropriate range for each of these offences is 18 months to 3 years. I consider that you are at the lower end of the range. I note that you have pleaded guilty and that you have co-operated in full with the police. I consider that you are entitled to a full discount. The appropriate starting point in those circumstances on a plea is 12 months.

[13] The aggravating factors are:

- (i) This was well organised.

- (ii) They were not family.
- (iii) Took place over a period of time.
- (iv) You helped to arrange a number of people to hoodwink the immigration authorities.

[14] Mitigating factors are:

- (i) You were involved at a lower level in three of the offences when you acted as a witness.
- (ii) There is no evidence that you benefited financially from what you did.
- (iii) You have a record which contains two offences of dishonesty. However, these are very different offences with the ones which you have now committed.
- (iv) You are genuinely remorseful.

[15] I do take into account the fact that there is low likelihood of re-offending according to the pre-sentence report and you do not pose the risk of serious harm to others. Most importantly, I take into account the fact that you have a young child and you are socially isolated. In particular I have regard to the remarks of Hughes LJ in R v Petherick. I understand that prison will be a heavy burden for you to bear with a young child. I would have imposed a sentence of 12 months for the offence in which you were a bride. Instead I impose a sentence of 6 months and 3 months in respect of each of the other offences for which you acted as a witness. All these offences are to run concurrently. I do not think, in light of those sentences, that it is necessary for me to distinguish between the 1996 Order and the 2008 order.

R v Vania Dos Santos

[16] You have pleaded guilty to Count 5, that is assisting in unlawful immigration by participating in a sham marriage with Ali Ahmed contrary to section 25(1) of the Immigration Act. This is not a victimless crime. This is a serious offence as I have already said. It attracts a maximum penalty of 14 years' imprisonment or a fine or both.

[17] I am advised by the Prosecution Service that the range for this type of offence is 18 months to 3 years on a contest. I accept this on the basis of the authorities which I have read. I also conclude that from the circumstances, this defendant is at the bottom of the range. She has also pleaded guilty and co-operated fully and I give her a full discount of one third. Accordingly the starting point is one year.

[18] Aggravating factors are:

- (i) You did it to help out because the bridegroom was a good friend and providing you with emotional support at a difficult time. It was not carried out for financial gain.
- (ii) You are genuinely remorseful describing it as the biggest mistake of your life.
- (iii) You have a clear record and are of good character. You hope to undertake a degree course at Hull University to improve your prospects of employment. She did it to help out because he was a good friend and was providing her with emotional support at a difficult time.
- (iv) You have two young children, one of whom suffers from Axenfield Riger Syndrome which is a condition affecting the eyesight. You are currently pregnant, I am informed by your counsel, although nothing appears in the pre-sentence report. I accept what he has told me. I also accept that going into prison given the fact that you have two young children and will shortly give birth to another, will be very hard on you. In particular I take into account the remarks of Hughes LJ in R v Petherick. In those circumstances I propose to impose a sentence of 3 months' imprisonment. I decline to suspend the sentence because it is intended to act as a deterrent and I do not consider, in those circumstances, that it would be appropriate for me to suspend it.

[19] Finally, I should say that in all three cases of Borges, Real and Santos that I consider a custodial sentence is required, in order to make it clear to everyone, that those who participate in sham marriages with a view to trying to hoodwink the immigration authorities will receive a custodial sentence. However, I have given each of them the least sentence of imprisonment possible, given their family circumstances. It is, of course, true that in respect of Borges and Santos, each knew before they became pregnant, that they faced these charges.