

Official Transcripts (1980-1989)*

R v Cowen

No 2327/C/82, (Transcript:Marten Walsh Cherer)

COURT OF APPEAL (CRIMINAL DIVISION)

KERR LJ AND EWBANK J

17 JUNE 1982

E Fitzgerald for the Applicant.

EWBANK J

(Reading the judgment of the Court): In 1981 William John Alfred Cowen was the owner of a sex shop called "In Harmony" in Leicester. In June 1981, the police, with a search warrant, went to his shop and took a number of items. On 14th April 1982, at the Crown Court at Leicester, before Judge Jowitt, he pleaded guilty to 4 counts of an indictment of having obscene articles for publication. The obscene articles were, in count 1, books; in count 2, magazines; in count 3, films and in count 4, a video cassette. He also asked for three other offences to be taken into consideration. Those offences were as a result of a second raid, which took place in November 1981, and related to magazines, books and another video cassette. The learned judge sentenced him to 8 months' imprisonment on each count concurrently.

The applicant now applies for leave to appeal against sentence. We grant such leave. By the agreement of his counsel we treat the application as the appeal against sentence.

The Court of Appeal, Criminal Division, in the case of R. v. Holloway (Unreported), on 16th March, 1982, have said that "the only way of stamping out this filthy trade is by imposing sentences of imprisonment on first offenders and all connected with the commercial exploitation of pronography..... For first offenders sentences need only be comparatively short, but persistent offenders should get the full rigour of the law."

The appellant (as he now is) in this case is a first offender. It may be pointed out that having had a police raid in June of last year, he continued to run the shop as before, and the offences which he asked to be taken into consideration were offences as a result of the second raid in November. On the other hand, this sex shop was on a comparatively small scale compared with some. We are told that up until this time offences of this type in Leicester usually resulted in a fine on the first offence and a suspended sentence on the second. It is said that it is hard on this particular appellant that he should be first in Leicester to be treated to the full rigour of the law, as set out by this court in R v. Holloway.

It is also said that he has co-operated, he has pleaded guilty, and he has stopped trading. The appellant is 36 years old. He has a record of some convictions but not concerned with pornography.

We take the view that in the circumstances of this case, having regard to other cases to which we have been referred, a sentence of imprisonment was inevitable, but that the length of the sentence of imprisonment imposed by the learned judge was excessive.

The appellant has now been in prison just over two months. That means that he has served the equivalent of a sentence of 3 months' imprisonment, which is the sentence we think is appropriate for these offences. Therefore we shall substitute a sentence of 3 months' imprisonment for the sentence imposed by the judge. Subject to the appellant having been of good conduct, this will have the effect of allowing for his immediate release from prison. The appeal is allowed and the sentence is varied by substituting a total sentence of 3 months' imprisonment.

Appeal allowed, sentence reduced.