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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 6th June 2019

B e f o r e:

LADY JUSTICE THIRLWALL DBE

MR JUSTICE MARTIN SPENCER

THE RECORDER OF NORTHAMPTON
HIS HONOUR JUDGE MAYO QC

R E G I N A

v

EDWARD SEAMARK

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Mr N Spasojevic (a solicitor advocate) appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

MR JUSTICE MARTIN SPENCER:

1. The appellant appeals by leave of the single judge against sentences imposed by His Honour Judge Lowe at Cambridge Crown Court on 15th February 2019 in respect of two indictments relating to sexual assaults on children under the age of 13. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. No matter relating to the victims of these offences shall be included in any publication during their lifetime if it is likely to lead members of the public to identify them as victims of these offences. This prohibition applies until or unless waived or lifted in accordance with section 3 of the Act.
2. The first indictment related to a little boy, 'ES', aged 7 at the relevant time. ES lived with his mother but would frequently visit his grandmother, 'S', who had met the appellant in 2000 and married him in 2004. She ('S') regarded him as a family man. He had children and grandchildren of his own. ES was a frequent visitor to his grandmother and would spend time with her and the appellant.
3. The offences occurred in June 2017. The appellant and ES were alone together in the kitchen, and the kitchen door was partially closed, which was unusual. The next day ES visited again, and his grandmother saw that the door to the appellant's bedroom was closed with the appellant and ES inside. When ES came out of the room his grandmother asked what he had been doing. He said that they had been making photographs, and he blushed. She asked what he meant, but he said he did not want to get into trouble and ran outside. This raised his grandmother's suspicions, and she was extra vigilant when ES visited again later that week.
4. ES and the appellant were in the garden. The appellant was sitting on a chair, and when

S looked out of the kitchen door she saw that his shorts were pulled to one side and his penis was exposed.

5. The following day ES returned and went to play football with the appellant in the garden. The grandmother watched from the window. She saw the appellant sitting on a chair with his penis exposed. ES was sitting on his knee, and she saw the appellant touch ES's backside along the crease. ES then went off to play and the appellant followed him to the side of the house. The grandmother heard ES say, "I don't want to take my shorts and pants down". The grandmother then called for ES to come in, and she took him back to her daughter's house. The grandmother told her daughter what she had seen. They tried to speak to ES, but he became upset because he thought he would get into trouble and his mum would be angry. However, a few days later he told his mother that the appellant had exposed his penis. His mother asked ES if anything else had happened and if he could show her. ES then pulled down his own shorts and flicked his penis.
6. In a further conversation ES told his mother that the appellant had rubbed his penis on a number of occasions in the kitchen and in the bedroom whilst they had been playing hide and seek. This formed the basis of count 1 on the indictment.
7. Healso said that whenever he played football with the appellant, the appellant would expose his penis to him, and when ES sat on his lap the appellant would touch ES's anus with his finger, sometimes over his clothing, sometimes skin on skin. This formed the basis of count 2.
8. The police were contacted, and ES was interviewed on 21st July 2017. He told the police what had happened. He said on one occasion he had been sitting on the appellant's lap in the living room, and even whilst the grandmother was in the same living room watching television the appellant had put his hands down ES's shorts and squeezed his penis. ES

said that this had happened "lots of times" and it made him feel "sad" because he thought the appellant was being rude. He said the appellant had exposed himself in the kitchen, the living room and the bedroom. This formed the basis of count 3 on the indictment, alleging indecent exposure.

9. He said that when he was in the bedroom the appellant had been lying on the bed and exposed his privates to ES, and had then turned over, pulled his shorts part way down and exposed his backside to ES. ES said this had happened more than once. ES said that on one occasion they were lying on the bed, the appellant had his privates out and they were taking photographs with a camera. ES said that the appellant had told him to touch the appellant's private area whilst they were in the bedroom, but ES had refused to do so. This formed the basis of count 4 on the indictment.
10. The appellant had been arrested on 7th July 2017. In interview he said that there had been one occasion when he had *accidentally* exposed himself to ES when he was washing in the bathroom and he might have *accidentally* touched ES's penis when he went to slap him on the bottom, and similarly he might have *accidentally* touched ES's anus, but otherwise he denied the allegations.
11. At the plea and trial preparation hearing in September 2018 the appellant pleaded not guilty and was released on bail.
12. As a result of these allegations the appellant had to move out of the matrimonial home, and he moved into a property where he became the neighbour of a woman, 'M', who had a 5-year-old grandson, 'FP'. The appellant became a regular visitor to M's house and was there at times when M, together with the appellant, was looking after FP in his own home. M and FP's parents, of course, knew nothing of the allegations against the appellant involving ES and the fact that he was on bail awaiting trial.

13. In relation to the matters involving ES, the appellant had a change of heart and on 11th December 2018 the Crown were informed that there would now be guilty pleas to all four counts on the first indictment. Thus, from that date, the appellant was accepting his guilt in relation to the matters involving ES and knew that he would be pleading guilty at the next hearing.

14. Astonishingly, despite his position in relation to ES, the appellant then committed further offences, this time against FP, on 20th December 2018 - just nine days after the indication of the change of plea in relation to ES. On that day FP told his father that during the day, while M had been looking after him and his parents had been at work, he had been alone with the appellant and the appellant had pulled down his trousers and pants and kissed FP on his bottom and made noises.

15. The police were immediately notified and FP was interviewed the next day on 21st December. He told the police that there had been two occasions the previous day when the appellant had pulled down his trousers and pants and kissed him on the bottom, once when he was alone with the appellant in the bedroom and once when they were in the living room.

16. The appellant was arrested and interviewed. He claimed that FP's trousers and pants had come down *accidentally* and that he had blown a raspberry on his back, but there had been no sexual touching. However, this account is proved to be untrue by virtue of the appellant's pleas of guilty to the two charges on the second indictment involving FP, namely sexual assault of a child under 13, reflecting the two occasions described by FP that occurred on 20th December 2018.

17. The appellant is now 75, having been born on 29th April 1944. Prior to the matters reflected in these two indictments, he had nothing recorded against him by way of

previous offences or cautions or otherwise.

18. In a pre-sentence report, the appellant was recorded as having denied any intentional sexual touching of the complainants, but he did express some regret and remorse for his behaviour, saying he felt ashamed and terribly sorry for what had happened. The author of the report stated that the appellant struggled to recognise the potential long-term effect on his victims. The level of risk that the appellant had been willing to take in committing the offences was a matter of real concern. The risk of being caught or seen had not acted as a deterrent, which only went to highlight his desire sexually to offend. He had demonstrated no desire to desist from his behaviour given that he continued to commit sexual offences even whilst going through the court process. The author stated that the appellant clearly held attitudes that supported sexual attraction and sexual offending against children. The worry was that there was likely to have been further concerning behaviour in the past, as it would be extremely unusual for someone to begin sexual offending in their 70s. The author of the report assessed the appellant as posing a high risk of serious harm to children, and the risks he was willing to take when offending were of real concern. He continued to accept very little responsibility, including denying that his offending was sexually motivated. He demonstrated no desire to desist from sexual offending, and the author of the report was concerned about the likelihood of further sexual offending were he to be released.

19. In sentencing, the learned judge also had victim impact statements from the parents of both of these little boys. ES's mother described ES as having changed in character. He used to be an "outside boy, but now will get home from school, put on his pyjamas on and won't go outside at all". She described him as not nearly being as outgoing and confident as he used to be. His behaviour had also deteriorated. She describes him as

being "like a light switch, really nice one minute, chatting, and then flying off the handle". She said:

> "He used to be a really fun-loving outgoing little boy to completely isolating himself.
>
> It is upsetting and it does make me angry that his character has changed and I know this is down to what happened."

20. There was also a statement from FP's father, who describes the sense of betrayal felt by the family arising from the incidents which occurred on 20th December. He describes the appellant's actions having caused a massive family fallout with the grandmother M because it had happened whilst FP was in her care. He describes FP as having been different since the incident: "extra sensitive, crying at every little thing; angry and naughty, saying he does it because of what the appellant did to him; scared, saying he does not want to see the appellant again and hopes he stays in jail; sad, because he does not see his grandmother now; and confused, questioning his parents on a daily basis, asking why the appellant had done this to him. The events had also affected the relationship of FP's parents.
21. Sentencing the appellant, the learned judge referred to the appellant's advocate having said that the appellant was ashamed by what he did to the two young boys. The judge said:

> "I am bound to say that that submission does not sit particularly easily with what I read in the pre-sentence report in terms of what the defendant has told the author of that report."

He referred to the victim personal statements and the profound, long-lived and far-reaching consequences of the appellant's actions. He said that it is not simply the complainants themselves who have to live with the consequence of such offending but

also their families, who have to live and manage the emotional consequences that flow from such offending.

22. The learned judge referred to the Sentencing Guidelines, and it was agreed with counsel that counts 1 and 2 of the first indictment relating to ES fell within category 2A of the Sexual Offences *Definitive Guideline in relation to Sexual Assault of a Child Under 13*. This carries a starting point of 4 years' custody, with a category range of 3 to 7 years' custody. Similarly, the offences in relation to FP: not only was FP even younger, but the learned judge regarded it as an aggravating feature that the offences were committed in FP's own home, where he was entitled to feel safe and secure. Furthermore, of course, the offences reflected in the second indictment were committed whilst the appellant was on bail for the offences committed in relation to ES.

23. The learned judge considered the question of dangerousness. He said:

> "I also bear in mind the risks that this defendant was prepared to take in committing these offences, under the nose of his wife, under the nose of FP's grandmother. That feeds, in my judgment, directly into the question of dangerousness, because it reveals an attitude on his part which is not susceptible to deterrence. Similarly, the fact that whilst on court bail he goes on to commit similar offences against another boy whilst awaiting trial on the first indictment, indicates strongly to me that we are dealing here with a defendant who for such things provides absolutely no deterrent in committing offences of this nature.
>
> My judgment is that the facts of this case and what I know about the defendant, that I have been told and I have read in the pre-sentence report, take me to the conclusion that the statutory test of dangerousnesses here is met. There is, in my judgment, a significant risk that this defendant will commit further specified offences such that serious harm will be caused to other children."

The learned judge reminded himself he could only impose a *dangerous offender* sentence where the sentence was in excess of 4 years, and that he had to consider whether or not the extended licence was necessary to secure protection or whether other factors would

protect the public sufficiently and in particular the sexual harm prevention order that it was agreed should be made.

24. Referring to the defendant's advocate's submission that the length of a determinate sentence together with post-release supervision and the sexual harm prevention order were together sufficient to protect the public, the learned judge said:

> "I do not accept that submission, but I am satisfied that an extension to the licence period is necessary here in order to protect other children from being abused in the way that ES and FP were."

25. The sentence imposed by the learned judge was as follows: for the offences on the second indictment relating to FP, concurrent sentences of 2 years' imprisonment were imposed; for the two main counts on the first indictment relating to ES, the learned judge imposed an 8-year extended sentence, comprising a 5-year custodial period and a 3-year extended licence, with concurrent determinate sentences for the other offences on the indictment. In relation to the extended sentence the learned judge explained that, had the appellant been convicted after trial, the sentence would have been 6 years but this was reduced to 5 years giving appropriate credit for the plea of guilty. The 2-year determinate sentence in relation to the second indictment reflected a full one-third discount for the guilty plea where the sentence would have been 3 years after a trial. The learned judge then said:

> "I have considered the principle of totality. I have considered, of course, the defendant's age and lack of previous convictions and in relation to the custodial sentence and the custodial elements I have kept the sentences as short as I can to reflect the seriousness of what he did, offset against the mitigating features in this case."

He then explained the effect of the sentence.

26. For the appellant, Mr Spasojevic today argues that the learned judge gave inadequate credit for plea and that the cumulative effect of the sentence with a 7-year custodial

element and a 3-year extension is manifestly excessive. He submits that inadequate regard was had for the appellant's age and good previous character. He further submits that the starting points adopted were too high given the nature of the behaviour of which complaint was made. He relies on the lack of any coercion or intimidation, the lack of any suggestion that the appellant tried to stop the boys from speaking out, and the relatively short period over which the offences were committed.

27. Finally in relation to the finding of dangerousness, he renews the argument which he raised with the judge below and submits that it was unnecessary for the learned judge to go down the route of an extended sentence given the very significant consequences for the appellant in relation to the date of his release from custody when adequate protection would be afforded by a sexual harm prevention order and the notification requirements for an indefinite period.

28. He also submits that insufficient regard has been had to the principle of totality and insufficient credit was given for plea.

29. Turning first to the question of dangerousness, in our judgment the learned judge was entitled to go down the route of an extended sentence for the reasons which he stated, namely the risks which the appellant was prepared to run in committing these offences under the noses of the victims' grandmothers. It is a striking feature of this case that the offences in relation to FP were committed despite the jeopardy which the appellant faced, having admitted the offences in relation to ES only eight days previously. The learned judge was entitled to follow the opinion and view expressed in the pre-sentence report that the appellant poses a serious risk of serious harm to children, not just these two victims, but other children (known and unknown) to whom he may gain access through family or friendships. The author of the pre-sentence report expressed the view that the

appellant had used grooming behaviours to gain the trust of these young boys, particularly the second victim who was only 5 years old, and had then significantly breached that trust for his own sexual gratification. She stated that the risks which the appellant was willing to take when offending were matters of real concern. Taking all those matters into account, it is our view that the judge was justified in making the finding of dangerousness and passing the extended sentence that he did.

30. So far as the credit for plea is concerned, this was within the discretion of the learned judge, given the stage at which the guilty pleas were indicated. Again, although other judges might have taken a different view, we take the view that to have given the credit that he did was not an error on the part of the judge.

31. Finally so far as the length of the sentence is concerned, although it was undoubtedly at the upper end for offences of this nature, in our judgment these sentences were not manifestly excessive. Consecutive sentences were appropriate where the appellant had committed the further offences whilst on bail for the first group of offences. The learned judge appropriately followed the Sentencing Guidelines, and in our view he had due regard to the principle of totality, particularly in relation to the sentences passed in relation to the second indictment.

32. In the circumstances, we take the view that the overall sentence, whilst on one view severe for this appellant, was not on any view manifestly excessive. In those circumstances the appeal is dismissed.

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