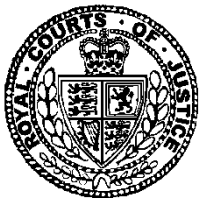

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT SOUTHAMPTON

HIS HONOUR JUDGE PARKER : 44SC0605323

CASE NO 202400410/A1

[2024] EWCA Crim 1028

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 13 August 2024

Before:

LORD JUSTICE WARBY
MR JUSTICE CAVANAGH
MR JUSTICE WALL

REX
V
AB

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MR T SIDDLE appeared on behalf of the Appellant

J U D G M E N T

1. MR JUSTICE WALL: The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. On 13 November 2023 the appellant pleaded guilty to three offences of rape (counts 2, 4 and 8), one of attempted rape (count 6), two of sexual assault (counts 3 and 9) and three of causing a person to engage in sexual activity without consent (counts 5, 6 and 11). Other allegations (counts 1 and 7) were not proceeded with and were ordered to lie on the file on the usual terms.
3. On 4 January 2024 the appellant was sentenced to an extended sentence of 17 years, comprising a custodial term of nine years and an extension period of eight years, for one of the offences of rape (count 8 on the indictment) and a consecutive term of six years' imprisonment for one of the offences of causing a person to engage in sexual activity without consent (count 11). Determinate sentences of 18 months were imposed on counts 3 and 9, six years on counts 5 and 6, seven years on count 10, and eight years' on counts 2 and 4. The judge ordered that these sentences were to be served concurrently with the sentence for count 8. They do not affect the overall length of the sentence.
4. The appellant appeals against sentence with leave of the single judge. The grounds of appeal originally advanced are that the total sentence was manifestly excessive and the extension period too long.
5. <u>The facts</u>

   The victim of all of these offences was the appellant's stepdaughter. The abuse began

when the complainant was 13 years old and took place over a two year period. The appellant and the complainant lived with the complainant's mother and brother. The abuse would usually occur when other members of the household were out but would sometimes happen while the complainant's mother was at home but in a different room.

6. The first rape (count 2) occurred when the appellant sat astride the complainant aged 13 and put his penis into her vagina. He did not ejaculate. On a later occasion (count 8) the appellant raped the complainant vaginally while she screamed, cried and told him to get off her. On that occasion he also touched her breasts and called her a "slag" and a "slut" (count 9). On a further occasion (count 4) the appellant approached the complainant in her bedroom and asked her to put his penis into her mouth. She refused. He grabbed the back of the complainant's head and pushed it down onto his penis causing the complainant to choke and cough. He then left the room but returned a short while later telling the complainant to lie down. He then masturbated and ejaculated onto her breasts (count 5). The act of masturbating and ejaculating onto the complainant's breasts was repeated on a number of occasions, which repeated conduct was reflected by count 6 on the indictment. There were many other occasions when he would just touch her breasts. That further repeated conduct was reflected in count 3.
7. On the penultimate occasion of abuse (count 10) the appellant told the complainant to get changed into a dress and not to put on tights. He left the room. The complainant put on both a dress and tights. When the appellant returned he removed the tights, made the complainant lean over the bed and then attempted to rape her anally. The complainant was screaming and crying and telling the appellant to get off her, while he persisted in this conduct.
8. After this occasion the complainant told her mother what the appellant had tried to do to

her. She had recorded part of the incident on her mobile telephone and played the footage to her mother. The appellant denied that it was him. The complainant also sent her brother some footage from her telephone on which she had recorded the appellant telling her to take her shorts off. Her brother also confronted the appellant who said that the voice was not his and suggested that his voice might have been cloned by some form of technology.

9. Some days later the appellant took the complainant into the bathroom, locked the door and told her that as she had now told everyone what had been happening she would have to suffer the consequences. He instructed her to delete the footage from her mobile telephone and said that if she did not do so someone would get hurt. He then made her lift up her top and her bra so that her breasts were exposed. He masturbated whilst squeezing her breast (count 11). He asked if he could ejaculate onto her breasts. The complainant was crying. On this occasion he did not ejaculate.

10. Antecedents and reports

    The appellant, who is now 38, has two minor convictions for dissimilar conduct. The sentencing judge had access to both a pre-sentence report and a medical report. The medical evidence was that the appellant had ADHD. There was no suggestion in the medical evidence that the appellant's criminal behaviour was linked to this condition, although the appellant sought to forge a link between the condition and his criminality in discussions with the author of the pre-sentence report.

11. The pre-sentence report concluded that the appellant had some insight into the harm that he had caused his victim but primarily is a man preoccupied with himself. He was assessed as posing a high likelihood of re-offending. The author of the report concluded that the appellant presented a high risk of causing serious harm to pubescent girls in the

future.

12. The complainant's father and stepmother both provided victim personal statements to the court. Those statements detailed the distress and disturbance this offending had caused the complainant and other members of her family.

13. Sentence

    The judge referred to the Sentencing Council definitive guidelines for the relevant offences. He placed all of this offending into Category 2A of the relevant guidelines. In each case it was culpability Category A because of the abuse of trust. For the offences of rape, attempted rape and causing a person to engage in sexual activity without consent, it was harm Category 2 because of the vulnerability through age of the complainant. For the offences of sexual assault, it was harm Category 2 because the offending involved the touching of the complainant's naked breasts. Therefore the starting point for each offence of rape or attempted rape was 10 years, with a range of between nine and 13 years' imprisonment; for each sexual assault the starting point was two years with a range of between one and four years' imprisonment; and for each offence of causing a person to engage in sexual activity without consent, where there was penetrative activity, the starting point was eight years with a range of between five and 13 years' imprisonment, and where there was no penetration the starting point of two years with a range of between one year and four years.

14. The judge decided to pass concurrent sentences for all of these offences save for count 11 which was the offence committed after the complainant had told both her mother and brother what had been happening to her. Although the judge did not set out his mathematical workings in his sentencing remarks, the judge must have decided that the

appropriate total custodial period for all of the offending save for count 11 was 12 years. That can be deduced from the fact that he afforded the appellant 25 per cent credit for entering his guilty pleas at an early stage and then passed a total custodial term of nine years once that credit had been applied. He found the appellant to be a dangerous offender. Therefore he passed an extended sentence of imprisonment on count 8.

15. Finally, he passed a six-year consecutive determinate sentence of imprisonment on count 11. It can again be deduced that this was a sentence of eight years reduced by 25 per cent to reflect the guilty plea.

16. The appeal

No criticism in the grounds of appeal was made of the judge's categorisation of any of this offending. Neither was it said that any of the individual sentence was excessive in length. Further, it was accepted that the judge was entitled to find the appellant to be a dangerous offender and pass an extended sentence of imprisonment on him. The argument initially was focused on whether the total custodial term and/or the extension period were manifestly excessive.

17. However, in oral argument today, Mr Siddle of counsel applied for leave to advance a further ground of appeal. He asserts that, as there was no penetration involved in the offences of causing a person to engage in sexual activity without consent, the judge used the wrong table within the guidelines when deciding on the appropriate sentence. This was of particular importance on count 11 as it was the sole count which attracted a consecutive sentence. The use of the wrong table in the guideline led the Judge to start at 8 years for each of these offences rather than, as would have been appropriate, 2 years. Mr Siddle is correct in his assertion and therefore we grant leave to add this extra ground of appeal, even though it was advanced today at a very late stage.

18. Our conclusions

It was good sentencing practice for the judge to choose a lead offence for all of this offending save for count 11, pass a sentence on that lead offence which reflected the entirety of the offending outside count 11, and then pass concurrent sentences for the other offences. It was also proper for the judge to pass a consecutive sentence for count 11 to reflect the fact that this offending took place after the complainant had made her initial complaints to members of her family and after those family members had confronted him about his behaviour.

19. Count 11 was a particularly sinister incident of abuse as it followed the appellant telling the complainant that this was her punishment for informing on him and threatening her that somebody was going to get hurt if she did not destroy the evidence against him which she then had on her mobile telephone. On this occasion it was not a purely sexual offence but rather one which was also designed to punish the complainant for her disobedience to him.

20. The starting point for one offence of rape such as that in count 8 was 10 years' imprisonment. An increase from that starting point to 12 years to reflect two further offences of rape, one of attempted rape, numerous sexual assaults and offences of forcing a person to engage in sexual activity without consent, was very modest. A much more significant uplift from the starting point would have been justifiable. This was repeated abuse of a serious nature carried out over a two year period.

21. In passing concurrent sentences for all offences save for count 11, the judge demonstrated that he had the principle of totality well in mind when carrying out this sentencing exercise. The two-year increase from the starting point of 10 years on count 8 was very significantly less than the appropriate length of sentence for those other counts had they

stood alone. The judge was careful to ensure that his sentence was not disproportionate to the appellant's overall criminality.

22. As we have previously indicated, the starting point for count 11 was not the eight years as was assumed by the judge but two years. It was properly conceded in oral argument by Mr Siddle that it would have been proper for the judge to apply an uplift from that starting point to reflect the particularly unpleasant nature of this piece of offending. In our judgment the facts of that count justified an upwards adjustment to four years before applying discount for guilty plea. This would have resulted in a sentence of three years after that discount was applied. We similarly reduce the sentences on counts 5 and 6 to three years to reflect the fact that the Judge took the wrong starting point for sentence. In respect of those counts, we move upwards from the starting point of 2 years to 4 years before applying credit for guilty plea to reflect the repeated nature of this offending.

23. We now stand back to consider the overall sentence. Were we simply to correct the error we have just identified, the overall custodial term would be 16 years before applying discount for guilty plea or 12 years once that discount was applied. In our judgment this would not be adequate to reflect the totality of the appellant's offending. Had the judge realised that his sentencing powers on count 11 were more limited than he supposed them to be, we have no doubt that he would have uplifted the sentence on count 8 better to reflect the appellant's overall criminality. We intend therefore to increase the custodial element of the sentence on count 8 to 14 years before applying discount for guilty plea. Therefore the overall custodial period will be 18 years before credit for guilty plea is applied. That is 13-and-a-half years after that discount is applied. Although we are increasing the sentence on count 11, the overall sentence will be shorter than that originally imposed.

24. We are unpersuaded that the extension period on count 8 was manifestly excessive. We are mindful that the judge imposed the maximum extension period permitted to a custodial sentence for a sexual offence. However, this was sexual offending of the most serious type carried out over a significant period of time. The pre-sentence report strongly suggested that the appellant posed a danger to pubescent girls into the future. There was no evidence that the danger posed by the appellant would diminish or be extinguished in any period of time short of that encompassed by the current extension period. The period of extension is designed to protect the public once the appellant is released from custody. It is not arguable that the judge was wrong to conclude that the lengthiest period of protection after release was required in this case.

25. Therefore, the appeal is allowed to this extent. The sentence on count 8 is varied to an extended sentence of eighteen and a half years, comprising a custodial sentence of ten and a half years and an extension period of two years. The sentences on counts 5 and 6 are reduced to sentences of three years imprisonment. They are to be served concurrently to the sentence on count 8. The sentence on count 11 is reduced to three years and is to be served consecutively to the sentence on count 8. Save for that, the sentences remain unaltered.

26. We make clear the way in which the sentence is to be served. As is good practice, the determinate sentence will be served first. The appellant will serve half of that sentence before beginning to serve the custodial element of the extended sentence. Once he has served two-thirds of the custodial element of that sentence he may apply to the Parole Board for release. If the Parole Board does not release him earlier he will serve the whole of the custodial portion of the extended sentence in prison. Whenever he is released, he will then be on licence until the total period of the extended sentence has expired.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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