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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE KING

v

WILLIAM SHOLDIS

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Mr Barlow (instructed by Higgins Holywood Deazley Solicitors) for the Applicant
Mr Farrell (instructed by the Public Prosecution Service) for the Crown

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Before: Keegan LCJ, Treacy LJ and Horner LJ

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Delivered Ex Tempore

KEEGAN LCJ (*delivering the judgment of the court*)

Introduction

[1] This is an appeal against a sentence of 12 months' imprisonment imposed on 8 November 2023 for various offences as follows:

Counts 1-3 Making of indecent photographs or pseudo photographs, contrary to Article 3(1) of the Protection of Children (Northern Ireland) Order 1978.

Counts 4-6 Making of indecent photographs of another category under the same legislation.

Counts 7-10 Again, same offence under a different category.

Counts 11-12 and 13-18 Possession of extreme images and prohibited images.

[2] A total sentence of 12 months was imposed on counts 1-3 and all other sentences were concurrent. The custodial element was set as four months'

imprisonment and a licence period of eight months after a plea of guilty. A number of ancillary orders were made, the most significant of which is a five year Sexual Offences Prevention Order ("SOPO"). None of these orders are the subject of the appeal.

Factual background

[3] The factual background to this case is set out in the single judge's ruling which we have found of benefit from paras [4]-[9]. There the single judge refers to the fact that on 26 March 2021, PSNI detectives from the Child Internet Protection Team attended the home of the applicant in Ballyclare to conduct a search under warrant for indecent images of children. A number of electronic devices of interest belonging to the applicant were seized and he was arrested. The electronic examination revealed search terms indicative of an interest in indecent images of children but there was no evidence of file sharing, distribution or uploading. There was the presence of anti-forensic software on one of the devices that was a laptop, although this did not hamper the investigation and the investigation proceeded swiftly.

[4] The applicant was interviewed on the day of his arrest, 26 March 2021. To his credit he made significant admissions to downloading illegal material. At a later interview on 8 February 2023, the applicant repeated his admissions. As it transpired the offending started with the applicant receiving a spam email and spiralled from there.

[5] The history of court proceedings is that the applicant was committed to Antrim Crown Court on 27 June 2023. He was arraigned and pleaded guilty to all counts. However, a guilty plea was indicated at pre-arraignment as Mr Farrell frankly has said. The application for leave to appeal the sentence imposed was received on 14 November 2023.

[6] In terms of the sentencing exercise we have the benefit of sentencing remarks from the judge. He sets out that the applicant has no previous criminal record. A pre-sentence report was obtained by the sentencing judge from the Probation Board of Northern Ireland. This report is instructive as it outlines that the applicant is a 33-year-old single male who lives with his parents. He has autism which was diagnosed since primary school when he had an educational statement. He has no sexual experience, limited knowledge of such matters and has never been in an intimate relationship. He clearly leads a quiet lifestyle with a limited support network consisting only of his parents. He described a difficult childhood stating that he had no friends at school and was relentlessly bullied.

[7] The applicant was, however, employed prior to these offences on a full-time basis as a payroll administrator although we are told that that employment has now been removed from him. We also note that the probation officer describes the applicant as presenting a low likelihood of general reoffending. In support of that

assessment the following protective factors are noted: stable accommodation; pro-social lifestyle; no current addiction issues; remorse for the current matters; supportive parents, insight into victims' issues and no previous convictions.

[8] Of particular note is that this applicant was remorseful. He states this himself notwithstanding his autism, in a passage which we rarely find in reports of this nature, as follows:

> "Mr Sholdis was remorseful during the interview for his actions, and stated that he felt awful when he found out the images he was looking at were of children. He recognised that these children were subject to sexual, physical and psychological abuse, and felt ashamed for unintentionally supporting child abuse by looking at these photographs."

[9] The probation report goes on to determine whether this applicant presents a risk of serious harm to the public and says that he is not. The report refers to factors supporting this assessment which include presenting with shame and regret and a motivation to avoid further offences, cooperating with the assessment process and demonstrating a willingness to engage in probation supervision treatment and external controls imposed by the court. We also note that the applicant has, since this offending arose, had serious mental health difficulties which required a referral to community mental health due to suicidal ideation and his family have lost their accommodation due to a community reaction.

[10] In terms of the judge's sentencing remarks the methodology is hard to critique in any substantial way. Mr Barlow rightly accepted that the judge took into account all relevant factors. He was swayed by the number of the most serious images and the anti-forensic software to move away from a non-custodial option. However, the judge did adapt the licence period to allow for additional probation supervision recognising the benefit to society of ongoing supervision in a case of this nature. We have taken all of that into account.

Conclusion

[11] Our conclusion, having taken into account all of the above, is this. We think that this is a case on the borderline of a situation fitting between the category in *R v Oliver* [2002] EWCA 2766 set out at para [16] and the more serious category at para [17]. We say that given the majority of the images in this case were not of the highest category. The highest category represented 16%. In any event, we do not think that the judge's starting point of 18 months is outside the bounds of his discretion. That is within range. That figure is then properly reduced to 12 months after a plea. This is clearly a case where maximum credit should be granted given the plea was indicated before arraignment and then entered on arraignment.

[12] We are not attracted to any adaptation of the *McCartney* [2009] NICA 52 guidelines as there is more easy internet access now since that case was decided. That fact is something that does not assist in terms of the prevention of this type of crime. The same sentiment arises from the *McCartney* case at para [16] today as it did when that case was decided some time ago in 2009. That decision was articulated in para [16]:

> "… the dangers faced by adolescents with unsupervised access to the internet and the need for parents to be aware of the requirement for a high degree of supervision of the use of computer equipment. It also raises serious questions as to whether service providers are doing enough to prevent the dissemination of this type of dangerous and degrading material on the internet and, indeed, whether there is, in fact, a legal obligation on them to do so."

[13] We reiterate the obvious point that each case in this area is fact sensitive. This is a very different case from the case of *Pacyno* [2024] NICA 3 which we recently decided on a reference which involved sexual activity with children and inciting children to engage in sexual activity along with possession of indecent images. It is also distinguishable from the recent case of *Maxwell* [2023] NICA 21 which involved distribution.

[14] In addition, we point out that given that 12 months was arrived at as the final sentence in this case, as the learned judge was alive to, there is greater emphasis on community sentences rather than short prison sentences. The consideration at issue here is rehabilitation and the benefit to society on a more ongoing basis when circumstances demand it of education and prevention of reoffending. In this case the judge was alive to the need to protect society by greater supervision in the community as he adjusted the licence period which is very unusual in our jurisdiction and only if the statutory requirements in the Article 8(5) of the Criminal Justice (Northern Ireland) Order 2008 are met.

[15] This case is one that we have considered carefully taking into account all of the factors specific to it and the law which we have just referred to. Having done so, we rely upon the following striking factors which are specific to this case. First, as the judge recognised there is clearly a benefit from supervision and education provided by probation in this case due to the stark and personal circumstances here, particularly, the applicant's immaturity, social isolation and lack of sexual knowledge. He presented as a rather pathetic figure throughout the probation interview. The question, therefore, is whether eight months is enough now that he is near release, eight months meaning eight months of supervision in the community. That is one factor.

[16] The second factor is that he is clearly a low risk of reoffending which, again, does not appear in some of these cases.

[17] The third factor is the strong family support that he has in this case. His family support is a strong protective factor. We note that the applicant's mother has attended at this appeal and at this judgment. He also has the potential of re-employment. As we have said, we think this applicant is insightful of the pernicious nature of this type of offending by virtue of what he said to probation.

[18] Finally, we have noted that this applicant has served over two months in custody. That has had a significant effect on him. We consider that the principle of deterrence is satisfied as a result of that time spent in custody and we must look at the case now before us as it now stands.

[19] In reaching our conclusion we restate this court's abhorrence of such offending due to the effect on children caught up in this pernicious industry as the applicant has, himself, recognised.

[20] In the particular circumstances of this case which now arise after a period of imprisonment, to further protect society and prevent a recurrence of this sickening behaviour we are going to impose the maximum period of community supervision that we can. The conditions set out in the probation report are that the applicant must disclose all developing relationships and also that he actively participates in any programme of work recommended by his supervising officer designed to reduce risk. He must attend and cooperate in assessments and other offence-focused work. The SOPO for five years is an added protection and remains in place and will now take effect.

[21] Therefore, we will substitute the sentence that was imposed with a three-year probation order subject to the consent of the applicant which we will confirm. That, as we have said, is the longest period of community supervision that we can impose. We think it is of benefit to the applicant and society in preventing a reoccurrence. Of course, if there is any breach of the conditions of the order, the applicant is liable to prosecution and could potentially be returned to prison given the seriousness of adherence to conditions. We ask counsel to send in a note as to the ancillary orders.