

In the Court of Appeal of St Helena

Citation: SHCA 3/2023

Criminal

In the matter of an appeal against sentence

Appellants

Mike Caswell

-and-

Julian Thomas

-and-

Sanjay Williams

Judgment on appeals against sentence

Heard on 3rd October 2023

Before: Sir John Saunders, President; HHJ R Mayo, Member; and HHJ L Drummond, Member

1. On the 24th March 2023 these 3 appellants were sentenced by Duncan Cooke the resident Chief Magistrate on St Helena sitting as a Judge of the Supreme Court for various sexual offences committed against a girl who was under 13 at the time of most of them.
2. In accordance with what the Judge did, we shall refer to the victim of these offences as AB. There are reporting conditions in place which means that nothing can be published which might lead to the identification of AB. These were serious offences which have had we have no doubt a considerable and lasting effect on the well-being of AB. As a result of their commission she has had to not only leave her home but also St Helena where she had lived all her life. These 3 men exploited a young girl to satisfy their own sexual desires. They were all over the age of 21 at the time they committed these offences and in each case there was a significant age difference.

3. In addition to these 3 Defendants the Judge sentenced two other defendants one of whom was the mother of the victim who did nothing to protect her from the harm caused to her by these 3 men.
4. There have already been previous proceedings in this court arising out of these convictions. Mike Caswell appealed against his convictions which we dismissed. We also heard an appeal against sentence from the mother which we allowed in part for reasons which we gave at the time and can be found in reports of the case.
5. Mike Caswell was the first of the three men to exploit AB. His is the worst case as he lived at the time with the mother of AB. While not in law, he was in reality the step father of AB and as he lived in the house with her he had access to her whenever he wanted it. He made use of that freedom on two occasions.
6. The first incident occurred when AB was 11 or 12. Caswell would have been 25. One evening after Caswell had been drinking he went into AB's bedroom after she had gone to bed. He removed the blanket turned off the light and got on top of AB. He touched her all over her body and inserted 2 fingers into her vagina. Although AB told her mother what had happened she got no support from her which undoubtedly distressed her.
7. On the second occasion Caswell had sexual intercourse with AB. Caswell and AB's mother had a party at her house and the children were sent to bed. Drink was consumed at the party and, when the party was over, Caswell came into AB's room got into bed with AB while she was still asleep; removed his and her clothing and had sexual intercourse with her. She woke up to find her stepfather having sexual intercourse with her; she was in pain and bleeding and she managed to push Caswell off so that he fell on the floor but it may well be that by that time he had ejaculated. AB had bled over the sheets and mattress which she cleared up. Again she told her mother who was again unsupportive. The Judge found that each offence was category 2A under the Sentencing Guidelines for England and Wales and taking into account the aggravating and mitigating factors he imposed concurrent sentences of 13 years for the offence of rape and 12 years for the offence of assault of a child under 13 by penetration.

8. The next person to have sex with this young girl was Julian Thomas. AB was 12 years old at the time of these offences and Thomas was 27 or 28.
9. He admitted having sexual intercourse with AB on 2 occasions one was vaginal sex and one was oral sex.
10. Julian Thomas was a regular visitor to the house where AB lived with her mother and Caswell. Thomas was watching a movie in AB's bedroom when he asked AB to make him a cup of coffee. When she brought it back he kissed her on the cheek and pulled her on to the bed. He told her she was beautiful and he loved her. He then had sexual intercourse with her and ejaculated. The second offence of oral sex took place the next day. This again took place at AB's house but this time on the veranda. AB's mother and Caswell had been at the house when Thomas arrived but they went out leaving Thomas to look after the children. He asked AB to suck his penis which she did. On his basis of plea which was not disputed he did not ejaculate into her mouth but did so in the bathroom.
11. By this time we are satisfied that AB was a very confused and disturbed child. She said that she had feelings for Thomas who had shown her kindness but by this time she had been raped by Caswell and ignored and unsupported by her mother. She clearly enjoyed the attention that Thomas gave her. The Judge decided that the evidence did not support the conclusion as an aggravating feature that Thomas had groomed her as the prosecution asserted. There is often a difficulty in establishing whether grooming has happened. As far as we know there is no definition of it in any court decision and it is not defined in the sentencing guideline. What the Judge did decide is that Thomas took advantage of a very disturbed child who had already been abused and gained no support from her mother. For the offence of vaginal rape the Judge sentenced Thomas to 8 years imprisonment and 7 years 7 months concurrent for the offence of oral rape. The Judge had given credit for the pleas of guilty which were entered by the Appellant before trial.
12. Sanjay Williams pleaded guilty to 2 charges of rape when AB was 12 years old. The first of those occurred on New Year's Eve 2021 at AB's house. As often was the case a great deal of alcohol had been consumed by the adults including Sanjay Williams. He had been drinking but was not drunk. He had sexual intercourse with AB on the sofa on the veranda

and continued until he ejaculated. At this stage Williams knew that AB had been sexually abused by both Caswell and Thomas because AB had told Williams' partner who she liked. While having sex with her Williams told AB that he loved her and afterwards said that he could not get enough of her. Later that night Williams had sexual intercourse with AB again. The second occasion of sexual intercourse again took place on the veranda. This time Williams was telling AB that he loved her and that he was going through a rough patch with his girlfriend. He told AB that he wanted to start a relationship with her which she believed, no doubt because of her need for some sort of constant in her life. There were then 2 further charges of sexual activity with a child which involved penile penetration. The charges were different because AB may have been over 13. Finally there was a further charge of child abduction on another child where no sexual activity was involved and the Judge took the view that no separate penalty was justified. Williams had pleaded guilty before the trial and the judge gave him credit for that. Having done that for the 2 offences of rape the sentences were 10 years and 4 months and 4 years for sexual activity with a child.

13. Grounds of Appeal: There is a ground of appeal which is common to all the Appellants and is the only one in the case of Mike Caswell. In the Judge's sentencing remarks he said this: In relation to the length of the sentences that will be imposed the following matter is relevant. The prison cell certification of the prison was amended by the Governor on 6th October 2022. The capacity for male prisoners has been increased from 18 to 24 as a short term measure. The building of a new prison is a project that has been mooted for many years which has yet to come to fruition. There is funding available through the Economic Development Investment Programme and the tender process for design and build is due to start soon. The earliest date for completion is 2026, but given the past history of the prison project I cannot be satisfied that this is a timescale that will be achieved. Three of the defendants are facing very lengthy jail sentences and may well spend many years in the prison in the conditions which are currently in place. The male prison population is at present 20 and expected to be 21. Any figure above 18 is considered overcrowded. This means that there will in some circumstances be 4 men to a cell with no natural light and poor ventilation. Applying the principles in *R v Manning* and *R v Fairclough* I will of course have regard to the likely effect of the sentence upon all the defendants. However in relation to those who will receive very long sentences the impact of the conditions becomes more pertinent as they are unlikely to change in the near future and will have to be endured for quite some time.

14. The facts of *Manning* which is reported at 2020 EWCA Crim 592 are somewhat different. The decision contained a statement of principle from the Lord Chief Justice that the detrimental effect on prison

conditions of the covid epidemic justified a reduction in the length of sentences imposed as this would make the sentences more difficult for prisoners.

15. We consider that the Judge was perfectly entitled to take the prison conditions into consideration when deciding on the length of sentence. We have been assisted by and are grateful for an update on the conditions of detention at HMP Jamestown which is the prison for St Helena. We are satisfied that the prison authorities are doing their best to mitigate the difficulties that they have in carrying out their job in a humane way. They clearly do everything they can to ensure that the prisoners spend as little time in their cells as is possible because the physical condition of the prison is not good.
16. We have also had the benefit of reading reports from the Human Rights Commission and the Prison Advisor as to the condition of the prison.
17. It is clear to us, as has been accepted, that the condition of the prison is not good and is not up to the standard required in a prison at this time.
18. Although we have had the benefit of reading this information, we do not have the same local knowledge of the Judge who clearly considered that the conditions should lead to a reduction in sentence. We defer to his local knowledge.
19. The ground of appeal is that the Judge, having said that he would make a reduction, doesn't identify in his sentencing remarks where he has done that.
20. It would have been helpful if the Judge had identified where he had reduced the sentence but we do not consider that he would have failed to do so having just said that he was going to.
21. The prosecution have identified that the Judge reduced the starting points for the offences as set out in the guidelines and there really can be no other reason for that in our judgment but to reflect the prison conditions and no other reason has been suggested. We agree. The Judge reduced the starting point for Caswell from 13 to 11. In Thomas' case he reduced the starting point from 10 to 9. He reduced the starting point in Williams' case from 13 to 11. We consider that it was in accordance with principle to reduce the sentences to reflect the

conditions and we think that the Judge was better able to assess the appropriate deduction than we are.

22. We reject that common ground of appeal.

23. That is the sole ground of appeal in Mike Caswell's case and we accordingly dismiss his appeal against sentence.

24. In the case of Julian Thomas there is a further ground of appeal. The prosecution contended that his case came within Category 2A of the Guidelines. They did so on the basis that they said that AB was a particularly vulnerable victim and so for harm it was category 2 and culpability was A because they asserted that Mr. Thomas had groomed the victim.

25. The Judge found that the victim was particularly vulnerable so it was cat 2 harm but he rejected the prosecution argument that Thomas had groomed the victim and found that the case came within category 2B of the guidelines. It is submitted on Mr Thomas' behalf that the Judge was wrong to find that the victim was particularly vulnerable. The Judge found that she was particularly vulnerable because in addition to her age the victim had already been raped by her step father in the recent past and her mother, to whom she had turned for help and support, had provided her with none. In relation to these factors in addition to the victim's age we are satisfied that the victim was particularly vulnerable. It is argued on Thomas' behalf that in addition to proving that the AB was particularly vulnerable in order to come within category B harm it would be necessary for the Judge to be satisfied that Thomas knew of the circumstances which made AB particularly vulnerable.

26. In our judgment that submission is incorrect. The assessment of harm in the guidelines is objective. The perpetrator of a crime will frequently be unaware of the matters which increase the harm to a victim but that does not mean that the harm has not been caused. It may be mitigation that the Defendant did not know of the matters that caused the increased vulnerability but it doesn't mean that the factor does not exist for the purpose of assessing the harm category in the Guidelines. Accordingly this ground of appeal fails. Accordingly Mr. Thomas' appeal fails.

27. Mr. Jackson on behalf of Williams argued before the Judge that Williams' offending came within cat 2B of the Guidelines. The prosecution argued that it was 2A. The difference between them was that the prosecution claimed that Williams had groomed AB. The relevant circumstances were these. Williams knew that AB had been raped by his stepfather and the failure of her mother to support her. That is a conclusion reached by the Judge on the evidence and, while it is not accepted by the Defence, in our judgment the Judge was entitled to reach that conclusion. Williams knew that AB was distressed as AB had turned to his partner for support which she provided. She behaved more like a mother to AB than her real mother had. Indeed AB in her interview referred to them as the good parents. Williams used the fact that his partner had been providing support to AB as an opportunity to sexually abuse her. While initiating sexual activity, he told her that he loved her; told her that he wanted to be with her and there were problems in the relationship with his partner.

28. The judge found that what happened amounted to grooming. It is argued on behalf of Williams that grooming has to be activity which predates sexual activity taking place as it is an attempt to gain the compliance of the victim so that sexual activity can occur. We do not consider that this is necessarily correct. We do consider that it is possible to groom someone for further sexual activity while already taking part in it with the intention of perpetuating it. Also Williams by giving the support to AB that he and his partner did, including putting her up for the night, had inevitably been gaining AB's trust. Williams had first made sexual advances to AB while she was still at his house. The Judge concluded that the purpose of that was to sexually exploit AB as well. It was in our view a finding of fact that he was entitled to make on the evidence and it is not one with which we think it is appropriate or necessary for us to interfere. We also considered that it is certainly arguable that the position that Williams was in in relation to AB constituted a position of trust which would have placed the offending in the same category.

29. Accordingly the appeal against sentence of Williams is also dismissed.