NCN: [2019] EWCA (Crim) 1164
No: 201804353 A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 6 June 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE LAVENDER

HIS HONOUR JUDGE EDMUNDS QC

R E G I N A
v
TYLER LEE LATIMER

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Mr N Edwards QC appeared on behalf of the **Appellant**

J U D G M E N T

LORD JUSTICE SIMON:

1. 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 at the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 20 July 2018, in the Crown Court at Newcastle-upon-Tyne, the appellant pleaded guilty on re-arraignment to four counts on an indictment: counts 2, 3, 4 and 7. On 1 August, he was convicted before Her Honour Judge Mallett and a jury on counts 1, 5, 6, 8 and 9.

3. On 24 September, he was sentenced by the trial judge on counts 1 and 5, assault by beating, to the term of 2 months' imprisonment concurrent; on count 2, a further charge of assault by beating, 2 months' imprisonment concurrent; on count 3, a charge of assault occasioning actual bodily harm, 2 years' imprisonment concurrent; on count 4, damaging property, a term of 1 month imprisonment concurrent; on counts 6 and 9, rape, 15 years' imprisonment concurrent; on count 7, another charge of assault occasioning actual bodily harm, 6 months concurrent; and on count 8, rape, an extended sentence of 25 years under section 226A of the Criminal Justice Act 2003, comprising a custodial term of 21 years and an extended licence period of 4 years.

4. He appeals against the sentence on count 8 with the leave of the single judge.

5. The victim, MR, was 17 at the time of the offences. The appellant was 21. She met him at their place of work and they commenced a relationship. All of the offences were committed within the context of that relationship and on any view the appellant's conduct amounted to serious criminality.

6. Count 1, assault by beating. On 26 August 2017, the couple went to watch a boxing match before returning to the appellant's flat in Bensham, where they began to argue. The appellant knocked over a wardrobe, trapping MR underneath. She sustained minor scratches and was understandably upset. The appellant responded by apologising and crying and then self-harming in an attempt to manipulate MR and discourage her from reporting the offence.

7. Count 2, assault by beating. A week or so later, MR was again at the appellant's flat when he told her he did not want her to leave. He took away her mobile phone and replied to text messages pretending to be her. He slapped her and kicked her in the legs. He later apologised and physically harmed himself. The pattern of abuse was developing.

8. Counts 3 and 4, assault occasioning actual bodily harm and damaging property. On 28 September 2017, MR was admitted to Accident & Emergency at Queen Elizabeth Hospital in Gateshead. She was wet and noticeably bruised. Her eardrum was perforated. She had spent the previous evening with the appellant at his flat. Once again he had taken her mobile phone, eventually breaking it, and became increasingly jealous and erratic. He ran a bath and threw MR's bag of makeup into it, ruining the contents. He then assaulted her, slapping her left ear with his right hand, putting his hands around her neck to choke

her and striking her chin using a full-sized wall mirror. He continued to assault her while holding her to the floor. She eventually persuaded him to telephone for an ambulance.

9. The appellant was arrested and remained silent throughout his police interview other than at the end when he told officers that he was in possession of evidence that would prove his innocence. He was released on bail on the condition that he had no further contact with MR. Despite that prohibition, the couple resumed their relationship in December 2018.

10. Counts 5 and 8, assault by beating and rape. On 3 December, MR returned home from the appellant's flat. She was upset and had a bruise beneath her ear but would not tell her mother how it had been caused.

11. On 11 December, while at college, MR made disclosures which led to a social services referral. She described having been at the appellant's home on the evening of 2 December. While there, the two argued in what was a physical as well as a verbal altercation. MR tried to leave but he told her that she would not be allowed to unless she had sex with him. He told her that she could "make it easy" for herself and ripped her knickers from her. He vaginally raped her until he ejaculated. He then told her that she would have to have sex with him three times before she left, although he eventually let her go when she complained of soreness to her vagina.

12. On 31 December 2017, MR, accompanied by the appellant, went to a police station. She provided a witness statement to say that while the allegations she had made against the appellant were true, she had resumed her relationship with him and did not want to pursue

a prosecution.

13. Counts 7, 8 and 9, assault occasioning actual bodily harm and two further counts of rape. On 16 February 2018, the couple had been out in Newcastle city centre before returning to the appellant's flat, where they engaged in consensual sexual intercourse. However, afterwards, the appellant became aggressive and punched her to the head and body. A neighbour became concerned by the noise and knocked on the front door. The appellant was verbally abusive to her. She said she would not leave until she had checked on MR, who appeared wearing nothing but a bedsheet wrapped around herself. The neighbour then left.

14. The couple then engaged in sexual intercourse again, before the appellant stopped without warning and demanded: "Who?" He questioned MR about any contact with men that she might have had during the course of their relationship. At one point he took two objects that appeared to be wrenches from the kitchen. He claimed the larger one bore the blood from a murder he had committed and that a friend of his had been prosecuted for.

15. The next morning, MR was covered in bruises and wanted to leave. The appellant attempted to initiate sexual contact but she said no. The appellant responded that it could be the same as before, which MR took to be a threat of violence if she did not comply. He caused her to kneel on all fours before he penetrated her anus with his penis. He ejaculated onto her face. She was also forced to perform oral sex on him.

16. The anal rape was charged as count 8, which the judge treated as the lead offence when it

came to sentence.

17. Police officers went to the appellant's flat on 20 February looking for MR after a missing person's report had been filed. The appellant refused to open the door and an armed response unit attended. While he and MR were in the flat he told her that he was going to prison and told her to correspond with him while he was in custody.

18. During his police interview he denied ever assaulting MR or having sexual contact without her consent. He suggested that she enjoyed rough sex, which he claimed made him feel uncomfortable.

19. Following his conviction, the appellant wrote a letter to MR with the postscript: "They can lock the locks but they can't stop the clocks". This was taken by MR as a threat as to what he might do to her on his release from custody. This and her victim statement dated 14 September 2018, which sets out in measured terms the effect of these crimes on her, will doubtless be matters to be considered by the Parole Board in due course.

20. The appellant was aged 22 at the date of sentence. He had nine convictions for 10 offences. These included convictions for disorderly behaviour likely to cause harassment, alarm or distress, on one occasion in 2012, two occasions in 2013 and a further occasion in 2014. There was also a section 20 wounding conviction in 2014 and one for criminal damage in 2016.

21. A pre-sentence report recorded that when discussing the offences to which he had pleaded

guilty the appellant placed most of the blame on the victim. He maintained his innocence in relation to the offences for which he had been convicted. The report concluded he had no insight into his offending, took limited responsibility, minimised his own culpability and had no victim empathy. He had self-harmed in the past, both as a means of manipulating partners and as a coping method.

22. In passing sentence, the judge noted that the appellant had pleaded guilty to counts 3, 4, 5 and 7 before the start of the trial. His behaviour on at least some of those occasions was spiteful and manipulative. She then described the offences of which he had been convicted, noting that although an immature young man, his behaviour was controlling and deeply disturbing.

23. The judge then considered the guidelines in relation to the non-sexual offences before addressing the rape guidelines within the definitive guidelines on sexual offences with which this appeal is concerned. Those guidelines related to a single offence. So far as harm was concerned, there had been additional degradation and humiliation of the victim by his ejaculating in her face and on her hair. She was detained for a prolonged period, the offences were sustained and the appellant had used violence as well as the threat of violence. The extreme impact of some of these category 2 factors elevated the rape offences into category 1. As to culpability, this fell within category A due to the element of trust and the previous violence against MR.

24. The starting point for category 1A was 15 years with the range of 13 to 19 years. The offences were so serious that a sentence of 20 years or above was appropriate. While there

was an element of doubt that it had been a campaign of rape, the severity of the three rape offences took it outside the guidelines for a single offence. The aggravating factors were the appellant's ejaculation, the use of a weapon to frighten and the fact that he prevented MR seeking help. The court took into account that he took her to the police station to make a retraction statement in relation to the first rape. There had also been significant psychological harm.

25. The court had read the pre-sentence report, victim personal statement and the letter of the appellant sent to MR from prison. He had shown no remorse and blamed his victim. The pre-sentence report assessed him as a high risk of reconviction for a sexual offence and a high risk of harm to females.

26. In mitigation, the judge noted that he was 22, immature and not heavily convicted. There were no previous convictions for violence against partners. His counsel had submitted that the appellant did have some insight and that his childhood experiences had affected his relationships. The appellant was vulnerable and had self-harmed in the past. He had completed programmes to address his substance misuse. The court bore in mind totality and gave him credit for his guilty pleas.

27. The judge imposed a lead sentence in respect of count 8, the anal rape. That sentence would be higher to reflect the overall offences and concurrent sentences were passed in respect of the remaining counts.

28. So far as dangerousness was concerned, there was a significant risk that the appellant

would commit further serious specified offences in the future and an extended sentence was required.

29. On count 8, the court imposed the extended sentence of 25 years, comprising a custodial element of 21 years and an extended licence of 4 years. The sentences for the other rapes, counts 6 and 8, was 15 years' imprisonment concurrent. The judge then passed the sentences for the non-sexual offences to which we have already referred.

30. The grounds of appeal acknowledge that the pre-sentence report makes bleak reading and Mr Edwards QC accepts that a substantial custodial sentence was inevitable and that the finding of dangerousness was incapable of challenge.

31. However, he submits that the custodial element of the extended sentence, 21 years, was manifestly excessive for a number of reasons. This was not a case described on page 10 of the guidelines of "such severity, for example a campaign of rape, that sentences of 21 years or above may be justified". The features of harm were not such as to necessarily justify the uplift in category 1. It was a bad category 2A, which would have a starting point of 10 years and a range of 9 to 13 years. The judge could have sentenced at the top of the range before applying an increase to reflect that there were multiple rapes. If, on the other hand, the judge were correct in placing the offending in category 1A, which had a starting point of 15 years and a range of 13 to 19 years, she erred in making the custodial element a term of 21 years that took the case out of the category 1 range and was too long.

32. In addition, points are taken in relation to the appellant's age and immaturity and the lack

of relevant previous convictions.

33. In our view, the judge was fully entitled to take the rape offence charged under count 8 as the lead offence and to increase the sentence passed on that count to take into account the other offences so as to reflect the overall seriousness of the offending.

34. We are also quite clear that when considering the rape offences, the judge was entitled to place the offending in category 1 of harm in view of the features she identified: additional degradation and the prolonged detention of the victim, and that she was also entitled to regard the previous offending against MR as putting the offending into category A culpability. Category 1A offending has a starting point of 15 years and a range of 13 to 19 years.

35. Where we disagree with the judge is in her assessment that the crimes could not properly be sentenced within that range. In our view, they could. The rape offences were very serious offences but they were not of such severity that a sentence outside the range was called for, even when the non-sexual violence was taken into account.

36. While we recognise that the judge was in a particularly advantageous position in assessing the seriousness of these crimes having presided over the trial, and while we acknowledge the care with which she approached the sentencing exercise, we have concluded that the custodial term of 21 years was too long for this immature young man and that a custodial sentence of 18 years should have been passed.

37. Accordingly, we quash the sentence on count 8 and substitute a sentence of 22 years, comprising a custodial term of 18 years and a 4-year period of extended licence. The other sentences will remain unchanged.

38. To that extent, the appeal is allowed.