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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday, 21 February 2019

B e f o r e:
LORD JUSTICE HOLROYDE
MR JUSTICE WILLIAM DAVIS
THE RECORDER OF LIVERPOOL
HIS HONOUR JUDGE GOLDSTONE QC
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 OF THE CRIMINAL JUSTICE ACT 1988

R E G I N A
v
GIVEMORE TONDEREI GEZI

Mr P Jarvis appeared on behalf of the **Attorney General**
Mr G Evans appeared on behalf of the **Offender**

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J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: On 4 December 2018, Mr Gezi pleaded guilty to two counts on an indictment. Count 1 charged him with at least six occasions of sexual activity with a child, contrary to section 9 of the Sexual Offences Act 2003. The activity covered by that charge involved his sexual touching of his victim, a girl then aged 15, and on two occasions his penetrating her mouth with his penis. Count 8 charged him with at least four occasions of sexual activity with a person with a mental disorder by a care worker, contrary to section 38 of the 2003 act. Those offences were committed just after the victim's 16th birthday. Each of them involved Mr Gezi penetrating her vagina with his penis and ejaculating.

2. On 5 December 2018 he was sentenced to concurrent terms of seven years eight months' imprisonment on each count. A Sexual Harm Prevention Order and a restraining order were also imposed which raise no separate issue. In relation to the total term of imprisonment, Her Majesty's Attorney General believes the sentencing to have been unduly lenient. Application is accordingly made pursuant to section 36 of the Criminal Justice Act 1988 for leave to refer the case to this court so that the sentencing may be reviewed.

3. We shall refer to the victim of these sexual offences as X. She is entitled to the protection of the provisions of the Sexual Offences (Amendment) Act 1992. Accordingly, no matter relating to her shall, during her lifetime, be included in any publication if it is likely to lead members of the public to identify her as the victim of any of these offences. This prohibition will continue unless it is lifted in accordance with section 3 of the Act.

4. Mr Gezi, now aged 40, is a qualified psychiatric nurse and has worked in the area of mental health services since he was 18. At the time of these offences he was employed as a mental health nurse and team leader within the Child and Adolescent Mental Health Service Crisis Team of a National Health Service Trust in Devon. That was clearly a position of trust and responsibility, which he abused by engaging in sexual activity with a vulnerable teenager whom he should have been assisting.

5. X, sadly, has suffered in her young life with mental health problems and has on occasions self-harmed. She was a client of the relevant Child and Adolescent Mental Health Service and for that reason came into contact with Mr Gezi. He was attentive to her and gained her trust and confidence. She was to say later that he made her feel special. Mr Gezi arranged matters so that he was the only member of the team who would have appointments with her.

6. One evening in late December 2017, when X was about two weeks from her 16th birthday, she self-harmed and left the home of her foster parents. The crisis team was informed and it was Mr Gezi who found her. Rather than take her straight back to her foster parents, he drove her to a secluded location where they talked for a considerable time, the conversation touching upon intimate matters. Mr Gezi told her that he was a single man of 26, who lived with his sister. In fact he was then 39, married and with two children, one aged six and the other older than X, aged 17. Mr Gezi then drove X to her foster parents' home and dropped her off. He had given her the number for his personal mobile phone so that she could ring him on that number rather than his work

phone. The two of them exchanged text messages throughout that night until the early hours of the morning. By the time their exchange ended, Mr Gezi had asked X to enter into a relationship with him. She, as she told him, had never had a boyfriend before.

7. Later in the day, Mr Gezi picked X up in his car. They again went to a secluded location. There he climbed into the back seat with her, kissed her and touched her intimately. He said he wanted to have sexual intercourse with her, but she told him that she was still a virgin and not ready to have intercourse.

8. Mr Gezi continued to meet her most days. He engaged in further sexual activity with her, including two occasions when she performed oral sex on him to the point of his ejaculation. On other occasions he rubbed his naked genitals against her clothed genital area and on other occasions she masturbated him.

9. X celebrated her 16th birthday on 5 January 2018. Within days after that, Mr Gezi persuaded her to have full sexual intercourse with him. On the first occasion, when he did not use a condom, he ejaculated onto her. On the subsequent occasions (at least three of them) he again did not use a condom but on these occasions ejaculated inside her.

10. For reasons entirely unconnected with his activity with X, which had not at that stage come to the attention of his employers, Mr Gezi was dismissed in mid-February. He nonetheless continued to see X and to have sex with her. That conduct is not the subject of any charge. By then of course he was no longer a care worker covered by the provisions of the Act under which count 8 was charged.

11. In early February 2018, X discovered she was pregnant. She told Mr Gezi. He encouraged her to have a termination, and when she agreed to that course of action he took her to a clinic so that she could make the necessary arrangements. We should record that at the sentencing hearing the evidence before the judge was that X had had no other boyfriend. Mr Gezi did not admit that he was the father of the child. He did however accept that it could not be said that he was not the father of the child. In those circumstances, the judge decided that it was not necessary to make any further specific finding for the purposes of sentencing.

12. Mr Gezi's wife became suspicious of his behaviour. Looking at his mobile phone she noted that a particular number had been rung on many occasions. She called that number, which was of course X's number, and told X the true position about Mr Gezi. X needless to say was greatly distressed. It came to the attention of Mr Gezi that she had had this call. He tried to pass it off as the conduct of a jealous former partner who was telling lies about him. On the following day, X arrived at school in tears. So it came about that she told one of her teachers about what had been happening with Mr Gezi. She showed the teacher text messages with sexual content passing between her and Mr Gezi. Those messages included instructions by Mr Gezi that X should delete the messages so that they would not be found out. The school contacted the police. Police officers interviewed X. Such was her distress about all this that later that day she self-harmed and had to be admitted to hospital.

13. Mr Gezi was arrested. He denied any form of sexual activity with X, whom he described as a fantasist who had become infatuated with him. He was warned not to contact her any further. He nonetheless did so, providing her for that purpose with a new unregistered pay-as-you-go phone and encouraging her to save his number in that phone's memory under a pseudonym.

14. The police discovered the continuing contact between the two in early April. Mr Gezi was re-arrested. He made little comment in interview, but maintained his denials that he had ever been in any form of sexual relationship with X. Ultimately, however, he was charged with offences against her.

15. On the first day of the trial the jury were empanelled and prosecuting counsel opened the case fully. Overnight it seems Mr Gezi reflected on advice which he had been given by his counsel. In the morning he entered guilty pleas. The judge regarded that as purely tactical timing, waiting to see whether X would appear to give evidence. Mr Evans, who appears for Mr Gezi today, as he did below, suggests that that may be somewhat unfair because Mr Gezi was reflecting overnight on advice which had been given.

16. Mr Gezi had no relevant previous convictions. When the matter came before the judge for sentencing, X had provided what the judge rightly referred to as a very moving and remarkably intelligent and insightful victim personal statement. She said she had trusted Mr Gezi and would do anything he asked. She had not realised at the time that he was taking advantage of her when she was at her most vulnerable. She said that amongst the other unhappy consequences of her disclosure to the police, she had had to move to a different part of the country. She pointed out that the police investigation had necessarily involved an invasion of her privacy because she had had to disclose text messages and diary entries. She commented that the timing of the guilty pleas struck her as "more strategic than anything else" and she expressed the view that Mr Gezi had been cruel to make her wait until just before she was due to give evidence.

17. There was no pre-sentence report before the court. None was thought to be necessary then and none is necessary now.

18. Each of the offences carries a maximum sentence of 14 years' imprisonment. Each is covered by a separate section of the Sentencing Council's definitive guideline on sentencing for offences under the Sexual Offences Act 2003. It was agreed between the parties and by the judge that under each of the relevant guidelines count 1 and count 8 were Category 1A offences for which the guideline indicates a starting point of five years' custody and a range of four to 10 years for a single offence.

19. In his sentencing remarks, the judge commented on the gross breach of professional duty involved in these offences. He rejected any suggestion that Mr Gezi had been motivated by genuine feelings of love towards X, saying that he had known precisely how wrong his conduct was. He described Mr Gezi as having embarked upon a process of grooming which was calculated, grossly manipulative and deceitful. He had obviously been in a position of power and influence over her. He had lied to her about his intentions, about his age and about his personal and family circumstances. The

judge concluded that Mr Gezi had been pursuing sexual gratification without any concern for the way in which he was breaching the trust in him and without concern for the harm he was inflicting upon X. As the judge pointed out, Mr Gezi of all people with his professional qualifications and experience was fully aware of the likely impact upon X.

20. The judge indicated he would give some credit for the guilty pleas, very late though they were, because they did at least enable X to be told at the very last minute that she would not after all have to give evidence. Commenting upon one particular matter which had been advanced in mitigation, the judge noted that the periods of time covered by each of the two counts were not particularly long. That however, he said, merely reflected the realities of the position, because the charge in count 1 ended when X attained the age of 18 and the charge in count 2 ended when Mr Gezi was for other reasons dismissed and was therefore no longer employed as X's care worker.

21. The judge referred to the respective sentencing guidelines, noting that they were applicable to a single offence, whereas here the charges were multiple offending counts and reflected two separate types of criminality. He noted that there were many aggravating features and, in his judgment, no real remorse. He took into account in Mr Gezi's favour the lack of relevant convictions and reminded himself of the importance of the principle of totality. The learned judge concluded that the appropriate total sentence after trial would be one of eight years six months' imprisonment. He allowed about 10 per cent credit for the late pleas and thus imposed concurrent terms on each count of seven years eight months.

22. For Her Majesty's Attorney General, Mr Jarvis submits that whilst the judge had correctly identified the guideline starting points and had correctly identified the many aggravating features and the limited mitigation, he had in the end passed a total sentence which failed properly to reflect the gravity of the offending and was unduly lenient. Mr Jarvis submits that the justice of the case required a sentence above the top of the category range which we have mentioned and thus above the top of the offence range for a single offence of each kind.

23. On behalf of Mr Gezi, Mr Evans submits that the judge had correctly identified the starting point. He had carefully analysed all relevant features of aggravation and mitigation and he had reached a considered conclusion which, even if it were thought lenient, could not be said to be unduly lenient.

24. We have reflected on these submissions. We are grateful to counsel for the succinct and focused manner in which they have presented them.

25. As the judge recognised, the offence charged in count 1 covered a number of occasions of sexual activity, two of which involved penile penetration of X's mouth and therefore constituted Category 1 harm under the guideline. Again as the judge recognised, that offence involved Category A culpability, but it is important to understand that it did so for a number of reasons. The guideline lists factors any one of which would suffice to bring the case within Category A. Here the following were present: a significant degree of planning, grooming behaviour used against the victim, abuse of trust, specific

targeting of a particularly vulnerable child, lying about the offender's age and a significant disparity in age. As Mr Jarvis very properly reminds us, it is important when considering that catalogue of features to note that to some extent some of them overlap with one another and therefore double-counting must be avoided. Nonetheless, it is important to note that the guideline specifically states that where there are multiple features of culpability, there may be an upward adjustment from the starting point before further adjustment for aggravating and mitigating features.

26. The aggravating features of the count 1 offence were the severe psychological harm suffered by X, the fact of ejaculation and the attempts which were made to conceal evidence. The only real mitigating factor was the absence of any relevant previous convictions. Whilst it could be said of Mr Gezi that he had previously been of good character, the guideline specifically notes that where previous good character has been used to facilitate the offence, it normally does not amount to mitigation and may indeed be an aggravating factor. It was of course because he had no relevant convictions that Mr Gezi had been employed as he was.

27. Similarly, under the section 38 offence guideline, harm Category 1 applied because of penetration of the vagina and culpability Category A applied because of the significant degree of planning and the use of grooming behaviour. Again, there were the aggravating features of ejaculation and attempts to conceal evidence. Again, there was no mitigation beyond the absence of relevant previous convictions.

28. Even setting to one side the earlier sexual activity with X, which was in truth significant offending in itself, it has to be remembered that there were here six offences involving penetration of the mouth or vagina with ejaculation on each occasion. It is in our view clear that any one of those six offences would in itself merit a sentence after trial which was well above the guideline starting point. We think, with respect, that Mr Jarvis somewhat overstated the position in suggesting a single offence would merit a sentence towards the top of the range, but it would certainly merit a sentence well above the starting point.

29. The guidelines apply of course to a single offence. Where as in this case the prosecution have properly charged, pursuant to Rule 10.22 of the Criminal Procedure Rules, a multiple incident count which specifies the minimum number of such offences covered by the charge, and where the accused has either pleaded guilty to that charge or been convicted of it, it would be wholly artificial and contrary to the interests of justice to apply the guideline as if the count alleged only a single offence. The purpose of the multiple count charge is, amongst other things, to enable the court to know for sentencing purposes the minimum number of offences which have been involved.

30. The judge clearly intended to reflect the totality of the offending and he rightly identified the features which made it a particularly serious course of offending. With all respect to him, however, the overall sentence which he imposed failed properly to reflect that totality. Just and proportionate sentencing for this course of offending required a substantially longer total sentence, and we are driven to the conclusion that the total sentence imposed by the judge fell below the range which he could reasonably have considered appropriate and was therefore unduly lenient. Following a trial, the

least total sentence which would have been appropriate would in our view be 11 years' imprisonment. Giving credit similar to that which the judge gave for the late guilty plea, the least total sentence appropriate in all the circumstances is one of 10 years' imprisonment.

31. We therefore grant leave to the Attorney General. We are satisfied the sentencing below was unduly lenient. We quash the sentences imposed below and we substitute on each count concurrently a sentence of 10 years' imprisonment.