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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
[2020] EWCA Crim 1435



Case No: 2020/00958/A4

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 16<sup>th</sup> October 2020

**B e f o r e:**

**LORD JUSTICE DAVIS**

**MR JUSTICE SPENCER**

**MR JUSTICE WALL**

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**R E G I N A**

**- v -**

**JORDAN SCARROTT**

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Computer Aided Transcript of Epiq Europe Ltd,  
Lower Ground, 18-22 Furnival Street, London EC4A 1JS  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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**Mr A Roxborough** appeared on behalf of the Applicant

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**J U D G M E N T**

Friday 16<sup>th</sup> October 2020

**MR JUSTICE SPENCER:**

1. This is a renewed application for leave to appeal against sentence following refusal by the single judge. The renewal was out of time. An extension of 33 days is required. Mr Roxborough, on behalf of the applicant, has explained the reasons for the delay. We grant the extension so that the application for leave can be considered on its merits.

2. The applicant is now 22 years of age. On 28<sup>th</sup> April 2020, in the Crown Court at Minshull Street, Manchester, he was sentenced by His Honour Judge Potter to a term of eight years and four months' imprisonment in respect of a series of sexual offences committed against six young females aged 14 or 15 years. We emphasise that the anonymity provisions of the Sexual Offences (Amendment) Act 1992 apply. There must be no reporting of the case which is likely to lead to the identification of the victims of the offences.

3. The 16 offences were committed over an eight-month period between the end of August 2018 and the beginning of April 2019. The applicant was aged 20 at the start of that period. His 21<sup>st</sup> birthday was in February 2019. He had no previous convictions. There were six offences of sexual activity with a child, contrary to section 9 of the Sexual Offences Act 2003 (counts 3, 9, 10, 11, 16 and 19); three offences of causing or inciting a child to engage in sexual activity, contrary to section 10 of the 2003 Act (counts 4, 5 and 12); three offences of communicating with a child for the purposes of sexual gratification, contrary to section 15A of the 2003 Act (counts 2, 6 and 8); three offences of arranging or facilitating the commission of a child sex offence, contrary to section 14 of the 2003 Act (counts 1, 7 and 17); and one offence of meeting a child following sexual grooming, contrary to section 15 of the 2003 Act (count 18).

4. The most serious offence on the indictment was count 16 (sexual activity with a child), which involved full vaginal sexual intercourse with a 15 year old girl, committed whilst on bail for the other offences. The applicant indicated a guilty plea to that offence only a week or so before trial, for which he was afforded appropriately limited credit of one-sixth. The sentence on that count was five years' imprisonment, as to which there is no complaint. The applicant had indicated his guilt from the outset to the remaining offences and had pleaded guilty at an early stage, for which he received one-third credit. The sentences on the other 15 counts totalled three years and four months' imprisonment, which term was ordered to run consecutively to the sentence of five years' imprisonment on count 16.

5. The common theme of the offences was that the applicant first contacted the children over the internet. He had built up a very significant following from a large number of likely young people prepared to look at and respond to messages and other material he posted or uploaded. His profile on the internet attracted over 70,000 followers. He was regarded as a "social media influencer". The judge was satisfied that this level of interest in his postings encouraged the applicant through vanity, egotism and grotesque selfishness to seek out female children he could sexually abuse. He viewed each child in a predatory manner as little more than an object for his own sexual gratification. Sometimes he travelled significant distances throughout England and Wales to meet children he had contacted. He lived in Rochdale. On one occasion he booked a hotel room in Cardiff in which to abuse a victim. On another occasion he provided the victim with a taxi to bring her to and from his home, where the offence took place. The judge was satisfied that the applicant sought power and control over his victims. Some were able to rebuff his approaches; others were not.

6. There was evidence from a psychologist that the applicant had belatedly been diagnosed as autistic. One of the grounds of appeal is that the judge paid insufficient regard to this as a

mitigating factor. We shall return to that submission. The judge was satisfied, however, that when some of his behaviour took place, particularly after the intervention of the police, it would have been very clear to the applicant that he presented a risk to young females. Despite that, he had persisted in the offending.

7. We deal with the facts of the offences only briefly, each in a few sentences. The applicant used the internet to groom his first victim, "EJ", aged 15, over a period of two to three weeks. He pretended that he was himself only 16 years of age. In fact, he was 18. The applicant persuaded EJ to meet him at a hotel in Cardiff. Her parents discovered that was afoot and contacted the police who arrived at the hotel to find the applicant alone with EJ in a bedroom. He had taken her shopping and bought her underwear. There had been some sexual touching on the bed before the police intervened. He gave the police a false date of birth, still pretending to be only 16. He was formally interviewed by the police on 3<sup>rd</sup> October 2018. That should have been a warning. The total sentence for the offences against EJ, after credit for the guilty plea, was ten months' imprisonment.

8. The next victim, "MB", was 14. The applicant engaged with her online over a period of ten weeks or so after the Cardiff episode. He pretended to be 17 years old. He repeatedly asked her to meet him. When she refused, he became angry with her and sent abusive messages. That was charged as arranging the commission of a child sex offence. The sentence, after credit for the guilty plea, was four months' imprisonment.

9. The third victim, "AF", was only 14, as the applicant well knew. He befriended her online. He knew that she was vulnerable because she confided in him that she had been sexually abused in the past. He asked her in text messages to give him oral sex and described how he was going to have sex with her. She agreed to meet him. He encouraged her to touch his penis. He touched her legs. He asked her again for oral sex, but she refused. The total sentence for the offences against AF, after credit for the guilty plea, was ten months' imprisonment.

10. The fourth victim, "CB", was 14. He told her that he was close to her age, but later pretended to be 17. He sent her a barrage of messages, many sexual in nature, to apply emotional pressure on her to meet him so that he could have sexual intercourse with her. He asked her to send him a picture of her naked bottom. She declined to meet him. She was made aware by others that he was someone prepared to abuse children and that he was in fact older than he said and was 21 years of age. The sentence for the offences against CB was four months' imprisonment.

11. The fifth victim, "LC", was 14. She lived in the East Midlands. The applicant was a friend of her family. He pretended to be 19. She knew of his internet prowess and following. She believed him to be wealthy. His Snapchat conversations with her became sexualised. He told her that he wanted to give her oral sex, to penetrate her digitally, and to have sexual intercourse with her. He inveigled himself into her home and was invited more than once to stay overnight in December 2018. He persuaded her to allow him into her bedroom, got into bed with her and cuddled her. On other occasions in the house, he touched her vagina and bottom over her clothing and placed her hand on his penis, over his clothing. When LC refused to allow him to go further, he became angry with her. The total sentence for the offences against LC, after credit for the guilty plea, was 12 months' imprisonment.

12. The sixth and final victim, "SH", was 15. She believed that the applicant was 16. The offence occurred at the end of March 2019, by which time the applicant was 21. He was also now subject to investigation by the police in relation to the other victims and was on bail. It is important to note that the conditions of his bail prohibited him from creating any new social media accounts, from being in any unsupervised contact with a child under 16, and from using

various internet facilities, including Snapchat, Instagram and Facebook. It had been explained to him that these conditions were in place to prevent further similar offending. He was living at home with his parents and twin sister. They had discussed with him the position in relation to his offending and the implication of the bail conditions. Despite this, and in breach of the conditions, he contacted SH by Snapchat and asked her to meet him. He invited her to come to his home to watch a film. She agreed but said that she would need to be home by 10pm. He provided a taxi to bring her to his home at a time when no one else was there. He waited until his twin sister had left the house and ensured that he was on his own when SH arrived at 10.45pm. He took her to his bedroom and had full sexual intercourse with her, in the course of which he ejaculated. As soon as it was over, he booked a taxi to take her home. She was only there for 30 minutes. He agreed to meet her again the following week, but she discovered his true age, confronted him online, and the police were informed. In interview, he maintained the lie that he believed her to be 16. The sentence, as we have indicated, was five years' imprisonment for that offence.

13. Following his initial interview in October 2018, the applicant was interviewed again by the police in December 2018. Indeed, on that occasion he went voluntarily to the police station, having first taken the precaution of wiping the contents of his mobile phone so that the traffic of text messages would not be easily recovered.

14. There were Victim Impact Statements from two of the child victims. The judge was in no doubt that the applicant had caused them significant harm by his behaviour towards them.

15. The author of the pre-sentence report concluded that there was a high risk of further sexual offending and that the risk was not currently manageable in the community. The author acknowledged that a custodial sentence was the most appropriate disposal, given the seriousness and volume of the offences. The plan for his eventual release would have to include residence at approved premises.

16. There was a thorough report from a clinical psychologist who had interviewed the applicant and his parents at length. The report concluded that the applicant's early psychological development had been impaired by Autism Spectrum Disorder. He had an underdeveloped sense of interpersonal understanding regarding the intentions and actions of others, bordering on social naivety. His autism would have made him less able to gauge correctly social norms and culturally acceptable behaviour. He would have lacked an adequate grasp of the social taboos associated with certain behaviour, or the severity of the legal consequences.

17. In his sentencing remarks, the judge acknowledged that the applicant's autism may have affected his level of maturity and literal thinking, and that he may have significant interpersonal and social developmental delays. However, the judge was satisfied that the applicant's autism provided him with no excuse whatsoever for the offending and must be seen within the context of the scale of the offending, both in terms of the number of victims and the length of time over which it persisted, when he was well aware that what he had done was wrong and that he presented a risk to young females. He knew that he was forbidden from acting as he did but had quite deliberately chosen to carry on. The judge accepted that the applicant had shown some remorse. He had written a letter to the judge, which we have seen.

18. It was common ground that under the relevant Sentencing Council guideline, count 16 apart, most of the other offences fell within category 3, with high culpability level A. For each such offence the starting point was 26 weeks' custody, with a range up to three years. There were various aggravating factors for the individual offences: the location of the offending, where it took place in a hotel room or the victim's home; the degree of planning; and lying about his age. The judge went through the offences and separately identified the relevant

guideline and the aggravating factors. Count 18 (meeting the first victim, EJ, following sexual grooming) was a category 2 offence under the guideline for that offence. The judge took a starting point of 15 months' custody for that, and for the other offences against EJ, ten months, with credit for the guilty plea.

19. The judge made it clear in his sentencing remarks at the very outset that the first principle he had to apply was totality. He was sentencing for many offences and had to consider the totality of the sentence he was imposing. The other principal mitigation, the judge said, was the fact that the applicant was a young man and that he had no previous convictions. The judge then referred to the psychologist's report in the terms we have already explained.

20. The judge structured the total sentence by imposing consecutive sentences for the batches of offences committed against each separate victim. For two of the victims, the total was four months' imprisonment each; for two others, ten months' imprisonment each; and for one, 12 months' imprisonment. That is how the judge arrived at the total of 40 months' imprisonment for the first five victims. For the sixth victim, there was a consecutive sentence of five years' imprisonment (count 16), as to which, as we have said, there is no complaint.

21. On behalf of the applicant, Mr Roxborough submits in the grounds of appeal that for the offences falling within category 3A of the guideline, the starting point was 26 weeks' custody, and that there was no justification for increasing the sentence to 18 months or 15 months, before credit for the guilty plea. Mr Roxborough acknowledges in the grounds that there were aggravating factors, as the judge identified, but he says that these were offset to a degree by the mitigation of the applicant's young age, his lack of previous convictions and, above all, by his autism. Mr Roxborough submits that the judge failed to give proper weight to this significant mitigation and also failed to ensure that the overall length of the sentence did not breach the principle of totality. He points out that before credit for the guilty plea the total sentence, after trial, would have been eleven years' imprisonment, which he says is simply too long as a first custodial sentence for a young man of previous good character, aged only 21, diagnosed with autism.

22. In his well-judged oral submissions, Mr Roxborough focused on the totality point. He seemed to us to backtrack somewhat from the complaint about the judge's approach to categorisation and uplift, save in the sense that the sentences overall were manifestly excessive for each group of offences. Mr Roxborough submitted that the appropriate sentence would have been in the range of seven to seven and a half years, rather than the eight years four months, which the judge imposed. Mr Roxborough emphasised the guideline mitigating factor of mental disorder or learning disability, particularly where linked to the commission of the offence. He acknowledged that there was little reference in the psychologist's report to any causal link between the applicant's autism and the commission of these offences but points out that the guideline does not necessarily require there to be a causal link. It is a free-standing mitigating factor to which the judge should have given more weight.

23. Although there is no prison report, Mr Roxborough informed us that the applicant is coping in custody and is being appropriately looked after by the Prison Service, although he has been unable to engage with any therapeutic courses because of the current pandemic and its restrictions.

24. We have carefully considered all of the submissions, but, like the single judge, we are not persuaded that this sentence was, even arguably, manifestly excessive. Taken as a whole, this was a very serious course of sexual offending, for which a very significant sentence of imprisonment was inevitable, despite the applicant's youth and lack of previous convictions. The judge was entitled to form the view that the applicant's autism provided little mitigation.

Whatever impact his autism may have had at the very outset of his offending, it was brought home to him very early on by the intervention of the police, after the first episode in Cardiff, that such behaviour was criminal and risked serious harm to the young females he was targeting on the internet. He is an intelligent young man. We note that he achieved nine GCSEs at respectable grades. He knew perfectly well that what he was doing was criminal, as well as morally wrong. The judge correctly assessed his culpability and the harm caused or risked by such serious offending.

25. The problem with Mr Roxborough's submissions in in the grounds of appeal relation to the guidelines was that it failed to acknowledge that the judge passed global, concurrent sentences in respect of the offences against each victim. It was, therefore, wrong to look at individual offences and argue that there was too high an uplift from the guideline starting point for that individual offence. The guideline indicates the appropriate level of sentence for a single offence. The judge had to pass sentence for multiple offences against each victim. He was entitled, and correct, to take a global figure for each batch of offences and to make the sentences for those batches' consecutive. In doing so, he followed the totality guideline in order to ensure that the offending against each separate victim was acknowledged and demonstrably punished. In his oral submissions Mr Roxborough realistically accepted the thrust of those propositions, as we have already indicated, and changed the focus of his submissions to totality.

26. We agree that the sole question is whether the total sentence passed by the judge was arguably manifestly excessive. The judge made it plain in his sentencing remarks that he had totality well in mind. He took into account all the applicant's personal mitigation; but that had to be balanced against the gravity of the overall offending.

27. Having considered the matter carefully, it is not arguable, in our view, that the total sentence was manifestly excessive. On the contrary, we think it was just and proportionate.

28. For all these reasons, and despite Mr Roxborough's eloquent and valiant submissions, the renewed application for leave to appeal against sentence is refused.

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS  
Tel No: 020 7404 1400  
Email: rcj@epiqglobal.co.uk

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