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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202200796/A3

[2022] EWCA Crim 1003



Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 7 July 2022

Before:

LADY JUSTICE CARR DBE
MR JUSTICE FRASER
THE RECORDER OF WESTMINSTER
HER HONOUR JUDGE DEBORAH TAYLOR
(Sitting as a Judge of the CACD)

REGINA
V
PETER O

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NON-COUNSEL APPLICATION

J U D G M E N T

REPORTING RESTRICTIONS AND ANONYMISATION APPLY:

Section 1 of the Sexual Offences (Amendment) Act 1992 applies in this case. No matter relating to any complainants shall be included in any publication during their lifetimes if it is likely to lead members of the public to identify them as the persons against whom offences were committed. Reporting restrictions therefore apply in this case.

MR JUSTICE FRASER:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. 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 as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act and reporting restrictions therefore apply in this case. For this reason we refer to the different complainants in this case by the initials C and a number. No disrespect is intended by that to them, and this is a device adopted solely to help ensure their anonymity.
2. This is a renewed application for permission to appeal against sentence following refusal by the single judge. The applicant is a 78-year-old man who was recently convicted of offences of a type which are now termed historic sexual abuse and which occurred many years ago.
3. On 17 December 2021 in the Crown Court at Aylesbury before His Honour Judge Payne, the applicant was convicted of the offences to which we will now refer. He was discharged in relation to count 1, indecent assault on a child under 14, and count 9, cruelty to a person under 16. Another count, count 12, indecent assault on a child under 14, was ordered to lie on the file against him in the usual terms. No evidence was offered against him on counts 4, 6, 7 and 8 and not guilty verdicts were entered on those counts.
4. The counts of which he was convicted are as follows. The numbering of the offences is not sequential due to the fact that we retain the numbering of the original counts on the trial indictment. He was convicted of the following. Count 2, indecency with a child contrary to section 1(1) of the Indecency with Children Act 1960, the sentence which was passed on that count being one of six months' imprisonment. Count 3, indecency with a child, again contrary to section 1(1) of the 1960 Act, the sentence for that being two years' imprisonment concurrent. Count 5, cruelty to a person under 16, contrary to section 1(1) of the Children and Young Persons Act 1933, the sentence for that being one year's imprisonment consecutive. Count 10, indecent assault on a female person, contrary to section 14(1) of the Sexual Offences Act 1956, for which he received what is called a special custodial sentence of five years ordered to run consecutively. We will explain that sentence in more detail in a moment. Count 11, cruelty to a person under 16, contrary to section 1(1) again of the 1933 Act, the sentence on that count being one year's imprisonment consecutive. Count 13, indecent assault on a female person contrary to section 14(1) of the Sexual Offences Act 1956, the sentence on that count being nine months' imprisonment ordered to be served consecutively. Count 14, indecent assault on a female person, again contrary to section 14 of the 1956 Act, the sentence on that being three years' imprisonment. That was ordered to be served consecutively. Count 15, taking an indecent photograph of a child, contrary to section

1(1) of the Protection of Children Act 1978, the sentence on that being 18 months' imprisonment ordered to be served concurrently.

5. These offences were committed against four different children and the applicant was sentenced on 18 February. The overall sentence therefore was one of a determinate term of seven years and nine months with a consecutive sentence of five years under section 278 of the Sentencing Act 2020 for an offender of particular concern, namely the sentence passed on count 10. That five-year term was itself made up of a four-year custodial term with an extended licence of one year. The overall sentence in aggregate therefore is a custodial term of 11 years and nine months, together with a one-year extended licence, giving an overall sentence period of 12 years and nine months. Additionally, having been convicted of an offence listed in schedule 3 of the Sexual Offences Act 2003 the applicant was required to comply with the notification provisions for an indefinite period.
6. The facts of the offending are in brief as follows. The applicant married a woman in 1978 who had three children from a previous relationship. Soon after that, the applicant and his wife had two daughters together. The applicant badly mistreated one of his stepdaughters (to whom we shall refer as C1) and also his stepson (to whom we shall refer as C2) by meting out violent punishments for the most insignificant behaviour. The applicant would exert power over the children, frequently pulling their underwear down and smacking them on the bottom, humiliating them and even making them fight each other for his entertainment. This would be done by arranging the chairs as though they were in a boxing ring, with the intention being that the children would draw blood when fighting against each other. The youngest child was less than 10 years old when this was done. The applicant would often punch C2 on the head and generally ruled the house through violence and fear. C2 was so terrified of the applicant and the frequent threat of beatings that he developed a stammer. As well as punching him the applicant would kick him, generally demean him and insist that he called him "Sir". This mistreatment went on for many years.
7. In addition to this physical abuse, C1 and C2 suffered sexual abuse at the hands of the applicant. Between the ages of six and 12, C2 was made to watch the applicant masturbate in the bath on a number of occasions. This comprised count 2 and occurred between the years of 1977 and 1983. On at least five occasions the applicant asked C2 to masturbate him in the bath and this was count 3 between the years of 1977 and 1980. The applicant would reward C2 with money for sweets after this had been done.
8. Count 5 was for physical cruelty to C2, again between the years of 1977 and 1980. C2 had not made a complaint about what he had suffered at the hands of the applicant until 2018 when he was spoken to by the police whilst attempting to jump in front of a train at Aylesbury Station. It was as a result of that discussion that the offending finally came to light. Previous complaints had been made against the applicant in earlier years but regrettably these had not been investigated properly or at all.
9. Turning to the offending against C1, the stepdaughter, she was 11 years old when she was left alone in the house one night with the applicant. She had fallen asleep and woke up to find the applicant inserting his fingers into her vagina, licking them and inserting them again. After she woke up the applicant stopped and asked her if she wanted to go and sleep in her mother's bed. She refused. Count 10 represented this behaviour and was between the years 1979 and 1980.

10. Count 11 was cruelty to C1 and this was between the years 1979 and 1984. This consisted of him taking down her underwear in front of other people, including boys of her own age, and beating her on her naked buttocks.
11. The marriage between the applicant and his wife ended in the early 1990s and by 1991 the applicant was living in a one-bedroomed flat by himself. It was at this flat that the complainant C3, then aged 14 and a friend of the applicant's niece, attended one day and was given alcohol by the applicant. She recalled being in the bathroom with the applicant and them kissing together passionately. The kiss was witnessed by the applicant's daughter who challenged the applicant about it. He told his daughter that C3 had kissed him and he did not want to reject her. Those facts underpin count 13 and was committed in January 1989.
12. Counts 14 and 15 both concern a fourth young person, a girl of 13 years old. In 1992 the applicant forged a friendship with her. We will refer to her as C4. She was a vulnerable young person and was befriended by the applicant and together with her older sister she would often visit the applicant's address, staying late where they would be given alcohol and be allowed if not encouraged to drink freely. C4 would sometimes stay overnight and on one occasion when she was asleep she felt the applicant between her legs licking her vagina. She pulled away and the applicant stopped. Despite that incident C4 continued to go to the flat. On another occasion she wore a teddy suit and the applicant took a photograph of her with her nipple exposed, having said to her: "Come on show us your boobs." Counts 14 and 15 relate to each of these offences and were committed between March 1991 and March 1992.
13. Eventually, as we have explained, proper investigations into this offending were performed and the applicant was charged. The offending on the indictment therefore runs from the earliest date of 1977 running through to 1992, a period of some 15 years. We have read the victim personal statements of each of the complainants. They are very moving. The effect that the offending had on each of them has been very profound. We are just going to quote from one of them, the statement of C1, who explained as follows:
14. Her statement reads in party: "Every single day I lived in fear. I never knew if I was going to get hit, whether he would be nice or nasty. Although I am really close with my brothers and sisters now, when we were little it was like a battle of survival. He set us all against each other. I think if he had not been in our lives we would all be very different people."
15. She also explained that because of her severe asthma, even though the family had a car the applicant would insist that she was taken on a crowded bus to her hospital appointments and her asthma became worse over the years. It came to a sudden end the very day that he left the house and her asthma attacks instantly stopped. This demonstrates the enormous and detrimental impact that the applicant had upon her when she was a child. As she explained in her victim personal statement, he called her stupid the entire time she was growing up, and even now that she has grown up she has considerably low self-esteem. Although she has now found that she was dyslexic she explained that being told every day that you are stupid has, over a period of time, simply made her feel "thick", as she explained it.
16. Due to the dates when these offences were committed some had to be charged under the statute that was in force at the time, namely the Sexual Offences Act 1956, and sentenced

taking due notice of the different maximum sentences available at the time, and in accordance with the approach that has been explained in a number of authorities. This the sentencing judge did. He expressly stated at 2G in his sentencing remarks:

"When dealing with cases under the old law I must start with what the sentence would have been, for an equivalent offence, under the current law, but recognise I'm confined to the maximum sentence for the offence of which you've been convicted back then and limit the sentences in that way."

17. He then proceeded in extremely thorough and carefully-structured sentencing remarks to sentence each of the offences and fully explained the basis for his sentencing on each of them.
18. The grounds of the appeal are as follows:
 1. The judge failed to have sufficient regard to the principle of totality.
 2. The sentence imposed on count 13 was manifestly excessive as the conduct involved, as it is expressed in the grounds, was only a passionate kiss on the lips and no more than that.
 3. The sentence imposed on count 11 which was ordered to run consecutively to count 10 was too high and offended the principle of totality.
 4. The judge failed to take into account the applicant's personal mitigation, namely his ill-health, his senior years and the considerable delay in reporting and the matter coming to court.
19. We are surprised that delay should be advanced as a separate ground of appeal and that it can be said to be in the applicant's favour. The delay occurred because there was a delay in reporting. The reason that delay is not a sound basis for challenging the sentencing is for at least two reasons. First, a historic sex abuser is not entitled to benefit from the dreadful effects of their abuse, which very often does lead to victims keeping the history of their abuse secret to themselves, because they feel unable to tell anyone. Child victims of abuse may not be able to bring themselves to report what has happened to them as they are trapped in situations which cause confusion, extreme distress, a feeling of shame and fear in a domestic setting. Some victims bottle up the effects of their abuse, and others simply try to shut it out. This is well known in society and the effects of abuse can last for decades, and some victims may never be able to tell anyone what happened to them when they were children. The abuser is not entitled to credit for delay when convicted of offences of this dreadful type, which destroys the childhoods of the victims. This has been stated in numerous judgments of this court on many occasions before today.
20. Secondly, maximum sentences for such offending have increased over time. The law requires that the maximum available at the time is the limit that applies to each sentence, not the maximum at the date of conviction. An applicant such as this one has benefited in that sense by the delay caused by the fact that his different victims either did not or could not report the offending at the time. He has also benefitted in the sense that he has led his life without being convicted, whilst his victims struggle through, dealing with the effect of his criminality.
21. But in any event these grounds have been carefully considered and refused by the single judge in his detailed reasons. These appear at the Criminal Appeal Office summary between pages 6 and 8 and are to taken as though they are reproduced verbatim here. We cannot improve upon them and we entirely agree. We commend the sentencing judge for

his sentencing remarks which are well-structured and comprehensive. It is not reasonably arguable that any of the individual sentences are manifestly excessive nor is it reasonably arguable that the resulting overall sentence is manifestly excessive or infringes the principle of totality.

22. In these circumstances it is not reasonably arguable that the resulting sentences are manifestly excessive and we refuse this renewed application.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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