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Neutral Citation No. [2022] EWCA Crim 1741

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202203082/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 15 December 2022

Before:
LORD JUSTICE DINGEMANS
MRS JUSTICE McGOWAN DBE
HIS HONOUR JUDGE PICTON
(Sitting as a Judge of the CACD)

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

REX
V
GERALD HIGHGATE

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MR B LLOYD appeared on behalf of the Attorney General
MISS C DOWSE appeared on behalf of the Offender

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an application by His Majesty's Attorney General for leave to refer a sentence which the Attorney General considers to be unduly lenient. The respondent, Mr Highgate, who is an 83-year-old man, who had no previous convictions before these convictions, was convicted on 22 September 2022 after a trial of 26 counts of indecent assault on a male, contrary to section 15(1) of the Sexual Offences Act 1956 and four counts of indecency with a child, contrary to section 1 of the Indecency with Children Act 1960. There were eight separate victims and the offending spanned from about 1966 to about 2000. On 23 September 2022 Mr Highgate was sentenced to an overall sentence of 10 years' imprisonment.

Factual circumstances

2. The relevant facts are that Mr Highgate sexually assaulted eight boys between 1967 and 2000. The boys were aged between 11 and 15 and were either involved in a local football team managed by Mr Highgate, were young members of the local rifle club or lived locally to Mr Highgate. All of the victims of Mr Highgate's offending have the benefit of life-long anonymity pursuant to the provisions of the Sexual Offences (Amendment) Act.
3. Mr Highgate used his roles at the clubs to groom and then sexually assault boys who were under his care. The offences involved breaches of trust. The offending included touching the victims' legs and genitals, masturbating the victims until ejaculation, making the victims masturbate Mr Highgate until ejaculation and giving oral sex to some of the victims until ejaculation. Many of the victims remained silent over the years through fear, shame and worrying that they would not be believed. Mr Highgate told a number of

the victims that they should not tell anybody and to some he gave money as if he was buying their silence. Mr Highgate was interviewed on a number of occasions and he denied all of the allegations made. Indeed, notwithstanding his conviction at trial, he continues to deny the allegations made.

4. He was interviewed by the police. In each interview Mr Highgate stated that the allegations made were not true. In respect of some of the boys he accepted that he had known them or knew of them, but said he had not been alone with them. He denied ever taking boys to the football club to help with the preparation of pitches and mowing, as was detailed in some of the evidence from the victims. He denied buying any of the boys alcohol. In respect of some of the boys he denied knowing them at all.
5. At trial Mr Highgate maintained that he had never sexually assaulted anyone. He referred to the allegations as "rubbish", "filthy" and "disgusting". He alleged that the victims were lying. He was convicted by the jury after the trial.
6. Before sentencing there were victim personal statements from a number of the victims. These showed the continuing and serious effect of Mr Highgate's offending on them: their feelings of shame, lack of self-worth and lack of trust, which had affected relationships between some of the victims and members of their family.
7. There was no pre-sentence report but there was evidence of the frailty of Mr Highgate's wife who had been dependent on him before his remand in custody.
8. When sentencing, the judge accepted as accurate the modern equivalent starting point suggested by the prosecution and agreed by the defence, with starting points of up to five years with a range of four to 10 years for some individual counts. The judge described Mr Highgate as a serial sexual predator who groomed boys to sexually abuse them. The judge noted that the effects on the victims had been life-changing. The judge

recorded that the appellant had been of good character before 1966 and had stopped offending from about 2000. The judge recorded that the maximum sentences for the offences at the time were 10 years' imprisonment for indecent assault, contrary to section 15 of the Sexual Offences Act 1956, and two years' imprisonment for indecency with a child, contrary to section 1 of the Indecency with Children Act 1960.

Grounds for the Reference

9. Mr Lloyd on behalf of the Attorney General submits that this was a campaign of sexual abuse over a very lengthy period of time against eight separate victims. The offending involved grooming and a gross abuse of trust. It was repeat offending which involved at times penile penetration and ejaculation. The Attorney General accepted that the judge had to have regard to the Sexual Offences Historic Offences Guideline but submitted that the judge had failed to have sufficient regard to the number of victims and to the length of time during which Mr Highgate had committed the offences. Given the significant number of victims and in relation to the offending it was submitted that the judge had failed to have proper regard to totality. It was submitted that at the very least the judge ought to have ordered some of the sentences for the penetrative offences to run consecutively. The Attorney General in writing pointed out aggravating factors on the effects on the victims, ejaculation and steps taken to prevent the victims reporting the offences. On that basis the offending, even for individual offences, would have been towards the top of the sentencing range and the impact on the victims involved severe psychological harm and the individual offending was committed over many months. In those circumstances, it was submitted that this was a sentence which, whichever way one looked at it, was simply too lenient.
10. Mr Lloyd accepted that although there were some factors which justified a reduction in

sentence, in particular Mr Highgate's age and reported illnesses, he submitted that the judge must have taken too low a starting point after taking account of the aggravating factors before making the final sentence.

11. It is submitted by Miss Dowse on behalf of Mr Highgate that the Recorder had undertaken this difficult sentencing exercise with care. The Recorder had been the trial judge. This was an 83-year-old man, who had various illnesses, who had been sentenced to 10 years' imprisonment. The judge had had proper regard to the historic nature of the offending, the relevant statutory provisions and the authorities about the impact of those provisions on sentencing. Reference was made in particular to R v Clifford [2014] EWCA Crim. 2245. Reference was also made to the impact of the sentence on the respondent's wife. It was submitted that this was a proper sentence having regard to issues of totality.

Decision on the Reference

12. We note that this was serious offending which took place over a period of 34 years which involved eight separate victims causing real harm. We note that the judge did identify the correct starting points for the individual offences and the real issue is whether the overall sentence was too short. There were inherent limitations because of the individual maximum sentences available under the old statutory provisions but as was pointed out on behalf of the Attorney General it was perfectly possible to restructure the sentences in a way that would have given a longer sentence.
13. We note that the judge who sentenced the respondent was the judge who heard the trial, who was best able to assess Mr Highgate and the effect of a 10 year period of imprisonment on him. He is an 83-year-old man, who had two hip replacements, diabetes and severe sciatica. He had a wife who had been dependent on him before his

incarceration because of her illness after a stroke.

14. We consider that this was a sentence which was lenient but given the particular circumstances of this individual offender we do not consider that it was so lenient that it is a sentence with which we ought to interfere. For all those reasons we will grant leave for this Reference, because the points raised on behalf of the Attorney General merit review, but we will, for the reasons given, dismiss the Reference.

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