IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/02359/A4

Neutral citation number: [2022] EWCA Crim 1839

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 22nd November 2022

B e f o r e:

LORD JUSTICE BEAN

MRS JUSTICE FARBEY DBE

HIS HONOUR JUDGE FORSTER KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

JAMES ROUTLEDGE

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Miss J McCullough appeared on behalf of the Appellant

JUDGMENT

Tuesday 22nd November 2022

MRS JUSTICE FARBEY:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under these provisions no matter relating to any of the victims shall during their lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of a sexual offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 23rd May 2022, in the Crown Court at Carlisle before HHJ Archer, the appellant (then aged 23) pleaded guilty upon re-arraignment to three offences of rape (counts 3, 7 and 8). On 1st July 2022, he was sentenced by the same judge as follows: on count 8 of the indictment, an extended sentence of 18 years, comprising a custodial term of 15 years and an extended licence period of three years; on count 3 of the indictment, 37 months' imprisonment; and on count 7 of the indictment, 53 months' imprisonment. All of the sentences were ordered to run concurrently with each other. The total sentence was therefore an extended sentence of 18 years.

3. The appellant appeals against sentence by leave of the single judge.

The Facts

4. The appellant and C1 had been in a relationship for six years which ended in October 2019. Count 3 reflected a specific incident of rape committed against C1 during the course of that relationship. The appellant pleaded guilty on the basis that the rape was not accompanied by violence.

5. In relation to count 7, C2 was in a relationship with the appellant between February and March 2020. During an evening out at a public house on 7th March 2020 the couple argued. The appellant later apologised and they went back to C2's home together. Once in bed the appellant tried to instigate sexual contact but C2 told him that she was too tired. The appellant pushed his penis into C2's vagina. She pushed him away, which he initially appeared to accept. The appellant penetrated her vagina with his penis again. C2 told him "no", this time more forcefully. He withdrew but then penetrated her for a third time a few minutes later. C2 shouted at the appellant that he had raped her and asked him to leave. The appellant said that he did not have anyone to pick him up and became very apologetic. The relationship continued until 11th March 2020, when C2 ended it.

6. In relation to count 8, the appellant and C3 met at a party in 2020. Both were cocaine users. On 16th August 2020, C3 woke up in the early hours of the morning in pain. The appellant had anally raped her while she slept. C3 confronted the appellant who told her that he thought she had been awake.

7. The appellant had other criminal convictions which relate to offences in 2019. He had six convictions for offences in that year, including offences of assault occasioning actual bodily harm, battery and persistently making use of a public communication network to cause annoyance or anxiety.

The Judge's Sentencing Remarks

8. The judge applied the sentencing guideline on rape. In relation to count 3, he concluded that the offence fell within category 3B of the guideline, with a starting point of five years and a category range of four to seven years. The commission of the offence under the influence of alcohol was an aggravating factor. As an individual offence, this would have attracted a sentence of four and a half years' custody. Reducing the sentence to three and a half years for totality, and making just over a ten per cent reduction for the guilty plea, the sentence was reduced to 37 months' imprisonment.

9. Count 7 was likewise a category 3B offence. The aggravating factors were ejaculation, the commission of the offence under the influence of alcohol and drugs, the significant psychological effect on the victim, and the fact that this was a second offence of rape. As an individual offence, it would have attracted a sentence of six years' custody. Reducing the sentence to five years for totality, and making just over a ten per cent reduction for the guilty plea, the sentence was reduced to 53 months' imprisonment. We note that it was not part of the prosecution case that the appellant ejaculated, but we do not regard this error, on its own, as material.

10. In relation to count 8, the judge observed that C3 knew little of what the appellant had done, beyond waking in pain and realising that semen was seeping from her anus. It followed that the appellant had penetrated her anus to the point of ejaculation. C3 suffered from ADHD, anxiety and an unstable personality disorder. She was a vulnerable victim who had been affected by the use of cocaine. The offending had caused her serious psychological harm. The judge concluded that the offence fell within category 2B, with a starting point of eight years' custody, and a category range of seven to nine years. It was an aggravating factor that count 8 represented the appellant's third offence of rape.

11. The judge said that count 8, if it had stood as the only offence, would have attracted a sentence of eight and a half years' custody, which would be reduced for totality to seven and a half years. There would be no discount for the appellant's guilty plea, which had been entered only after C3's pre-recorded cross-examination.

12. The judge then raised the sentence on count 8 beyond the category range to 15 years' imprisonment, to take account of the other two offences. In addition to the custodial period, there would be an extended licence period of three years, so that the total sentence on count 8 was 18 years. The sentences of 37 months and 53 months' imprisonment on counts 3 and 7 respectively would run concurrently with each other and with the sentence on count 8.

Grounds of appeal

13. In her written and oral submissions, Miss McCullough submitted that the judge had failed to give adequate consideration to the age, maturity and personal circumstances of the appellant; that he had adopted a starting point which was too high; that he had failed to have regard to the principle of totality when passing an overall sentence of 15 years' imprisonment; and that the sentence was excessive.

Discussion

14. There is no challenge to the judge's categorisation of any of the offences; nor could there be. The judge was entitled to treat count 8 as a category 2B offence and the other offences as category 3B. Given its seriousness, the judge was entitled to treat count 8 as the lead offence and to impose an overall custodial sentence that was significantly above the

category 2B range in light of the other two rapes.

15. In her submissions, Miss McCullough drew attention to various mitigating factors. She emphasised the appellant's age. He was only 23 years old at the date of sentence. It followed that he was only in his late teens or very early 20s at the time of the offence against C1, and not much older when he raped C2 and C3.

16. Attractively as these submissions were made to us, the appellant's age does not, in our judgment, provide strong mitigation. The appellant is young, but this was offending over time in relation to three different victims. We do not think that this repeat offending can be explained by age or immaturity. We do not regard the appellant's age as a reason to reduce his sentence.

17. Miss McCullough submitted that the judge had failed to take into consideration the appellant's personal situation, particularly his unstable upbringing and mental health difficulties. However, the judge's sentencing remarks make clear that he had regard to the relevant parts of the pre-sentence report that was before him, and to the NHS report which the appellant had submitted. In our judgment, any mitigation which the appellant's personal situation may have provided was significantly outweighed by the seriousness of the offending against three victims.

18. As for the overall length of the sentence, the judge's sentencing remarks make plain that he considered and applied the principle of totality. In our judgment, the custodial part of the sentence is neither too long nor wrong in principle. There is, quite rightly, no challenge to the extended licence period.

19. Finally, it is right to note that the judge revoked a two year community order imposed on 3rd March 2020 at North and West Cumbria Magistrates' Court for offences of assault occasioning actual bodily harm and assault by beating. The order was imposed for a period of two years and was therefore due to expire on 2nd March 2022. As the appellant was not convicted of the new offences until 23rd May 2022, it would appear that there was no power for the judge to revoke the order, notwithstanding that the new offences were committed during the operational period of the order: see paragraph 21(1) of Schedule 10 to the Sentencing Act 2020. This seemingly unlawful element of the sentence is of no practical consequence and requires no further consideration.

20. Accordingly, while we are grateful to Miss McCullough for her excellent submissions, this appeal is dismissed.

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