IN THE COURT OF APPEAL
CRIMINAL DIVISION
NCN: [2023] EWCA Crim 1038

Case No: 2023/00877/A5

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 30th August 2023

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE HOLGATE

MR JUSTICE HILLIARD

R E X

- v -

CLIVE LLOYD

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Mr I James appeared on behalf of the Appellant

J U D G M E N T

Wednesday 30th August 2023

LORD JUSTICE MALES: I shall ask Mr Justice Holgate to give the judgment of the court.

MR JUSTICE HOLGATE:

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 the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. In this judgment we refer to the complainant as "C".

2. On 14th December 2022, following a trial in the Crown Court at Norwich before His Honour Judge Shaw and a jury, the appellant (then aged 63) was convicted of six counts of indecent assault, contrary to section 14(1) of the Sexual Offences Act 1956. On 17th February 2023, the trial judge passed consecutive special custodial sentences under section 278 of the Sentencing Act 2020 on counts 3 to 6, namely custodial terms of 4 years and an extended licence period of one year on each of counts 4 and 6, and custodial terms of 3 years and an extended licence period of 1 year on each of counts 3 and 5. The overall special custodial sentence was one of 18 years, comprising a custodial term of 14 years and an extended licence period of 4 years. The judge also passed concurrent terms of 12 months and 2 years' imprisonment on counts 1 and 2 respectively. The appellant appeals against that sentence with the leave of the single judge.

3. During the 1970s the appellant was the boyfriend of C's mother. By the time C was aged 7, the appellant was aged 19 and had moved into their family home. He was about 10 years younger than his partner.

4. C was a quiet, introverted child who did not receive much physical attention from her mother. On Saturday mornings C would watch television in the basement. The appellant would sit next to her while she was still in her nightdress and began what he described as "play fighting". The judge described this as grooming behaviour. The appellant was getting C used to physical contact with himself. This enabled him to go on to touch C's chest and vagina. The appellant would undo C's nightdress and begin by tickling her. He then went on to put his hand on her chest and fondle her nipples. She did not enjoy this. She felt that it was not right. She told him to stop, but he ignored her.

5. The appellant used to grip C from behind with one hand would put a finger of his other hand into her vagina. This hurt her. C said that the appellant would have an erection. If she screamed, the appellant would put his hand over her mouth. Sometimes she would bite him and the appellant would call her a "vicious bitch".

6. The sexual abuse moved from the basement to C's bedroom when her sister moved into a separate room. The appellant would go into C's bedroom at night and digitally penetrate her vagina. As an attempt to deter the abuse, C stopped washing when she was aged about eight and tried to put on weight. This caused her mother to call her "fat" and "lazy".

7. The offences were charged as having occurred between 7th May 1979 and 9th May 1981, when C was aged between 7 and 9 and the appellant was aged between 19 and nearly 22. Count 1 was a single incident of touching C's chest under clothes. Count 2 was a multiple incident count of his touching her chest under clothing on at least two occasions. Count 3 was a single incident of the appellant digitally penetrating C's vagina in the basement. Count 4 was a multiple incident count of his digital penetration of her vagina on at least two occasions in the basement. Count 5 was a single incident of digital penetration of C's vagina in her bedroom. Count 6 was a multiple incident count of the same conduct, also committed

in her bedroom.

8. In her victim personal statement C explained how the offending had had a considerable and continuing effect on her life. She has found it difficult to form relationships and friendships. She has suffered from anxiety and depression and has been diagnosed with complex traumatic stress disorder. She has needed considerable therapy. She has struggled with the effects of the offending on her physical health over many years.

9. The appellant was arrested in July 2018. He admitted "play fighting" with C, but denied any sexual offending.

10. The appellant had no previous convictions. The author of the pre-sentence report noted that the appellant vehemently denied any wrongdoing and continued to show resentment towards C. He portrayed himself as the victim. The author said that the appellant had created opportunities to be alone with C and indulge his predatory behaviour. The nature of the offences and the appellant's attitude towards them affected the assessment of risk. The author said that he posed a high risk of causing serious harm to children. He needed to engage with offence focused work.

11. In 2020 the appellant suffered head and hip injuries in a road accident, but ongoing symptoms have improved with a change in medication.

12. In his sentencing remarks the judge concluded that the appellant should not be treated as dangerous. The last offences had been committed more than 40 years before. The appellant had not abused C's sister, and since then he had lived a law abiding life. The judge took into account the nature of the punishment he was about to impose and the safeguarding and other arrangements which would apply on release. He would not have considered it necessary to impose an extended sentence in any event.

13. The judge referred to the principles set out in *R v Forbes* [2016] EWCA Crim 1388, [2017] 1 WLR 53, the maximum penalty available in respect of the index offences under the 1956 Act, and the level of sentences appropriate under current sentencing guidelines for equivalent offences under the Sexual Offences Act 2003. He also took into account the fact that the offences had been committed many years ago, the appellant had been a much younger man and the punishment then would have been substantially less than would now be the case.

14. In determining the length of the custodial terms, the judge referred to the very young age of C, the way in which the appellant had exploited his position in C's home, the grooming behaviour, and the severe psychological harm caused to C. He said that the starting point for a contemporary, single category 2A offence under section 6 of the 2003 Act would be 11 years' custody, within a range of seven to 15 years.

15. There are two grounds of appeal. First, it is said that the learned judge adopted a mechanistic approach to current sentencing guidelines by which he had striven to achieve a total sentence of identical length to that which would be imposed today under a regime where the statutory maximum sentences are very substantially higher than they were when the offences were committed. Secondly, it is said that, in the circumstance,s sentences amounting to 14 years' imprisonment were manifestly excessive.

Discussion

16. We are grateful to Mr Ian James for his clear and helpful submissions. He rightly accepts that it was not wrong in principle for the judge to impose consecutive sentences on counts 3 to 6, subject to the principle of totality. The overall length of the sentence must be just and proportionate in relation to the criminality involved and any other relevant

circumstances. Mr James also accepts that the judge was entitled to find that this was a case of severe psychological harm and that a single offence under section 6 of the 2003 Act would fall within category 2A of the current sentencing guidelines, with a starting point of 11 years' custody, within a range of seven to 15 years. He makes no complaint that the effect of passing four consecutive special custodial sentences was to impose in total an extended licence period of four years.

17. The central question is whether the overall custodial term of 14 years was manifestly excessive. Mr James submits that it was, having regard to the following matters: (1) the appellant had no previous convictions; (2) he was comparatively young when he committed the offences; (3) he has not committed any subsequent offences and has a good work ethic; (4) he is now in his 60s and not in the best of health; and (5) there was a significant delay in the reporting of the offences, which is not attributable to the appellant.

18. Nevertheless, Mr James recognises that multiple offences of a particular type may attract a sentence towards the top of the category range for that offence, even allowing for mitigating circumstances: see *R v Pipe* [2014] EWCA Crim 2570, [2015] 1 Cr App R(S) 42.

19. In our judgment, the absence of previous convictions counts for little in this particular case because of the protracted history of offending. In addition, applying the observations in *Forbes* at [23] to [24], we are not persuaded that this is a case where significant weight attaches to subsequent good character.

20. Having said that, in our judgment insufficient allowance was made by the judge for the appellant's youth at the time of the offending. That was a significant factor. In addition, we accept the submission that the resultant sentence at which the judge arrived approaches the level which might be imposed under the current regime, which suggests that an insufficient

adjustment has been made in accordance with *Forbes*. On the other hand, we do not attach significant weight to the other factors upon which Mr James relied.

23. Looking at the matter overall, we are satisfied that the overall length of the custodial term was manifestly excessive. Accordingly, we quash the sentences which were imposed on counts 4 and 6 and substitute in relation to each of those counts, special custodial sentences with a custodial term of 3 years and an extended licence period of 1 year. Those sentences will continue to run consecutively.

24. The overall result is that the appellant will serve a special custodial sentence, reduced from 18 years to 16 years, comprising an overall custodial term of 12 years and an extended licence period of 4 years.

25. To that extent only, the appeal is allowed.

26. Finally, we note that in his sentencing remarks the judge said:

> "You will have to pay a statutory surcharge, and I will make a collection order so that the prescribed sum can be recovered."

27. It appears that the record sheet kept by the Crown Court does not refer to any such surcharge. But for the avoidance of any doubt, we confirm that no surcharge is payable for offences of this age.
