

**WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.**

**This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.**

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



Case No: 2022/02094/A2

Neutral Citation Number: [2023] EWCA Crim 859

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Tuesday 28<sup>th</sup> February 2023

**B e f o r e:**

**LORD JUSTICE DINGEMANS**

**MR JUSTICE LAVENDER**

**THE RECORDER OF LIVERPOOL**

**(His Honour Judge Menary KC)**

**(Sitting as a Judge of the Court of Appeal Criminal Division)**

---

**R E X**

**- v -**

**PETER SANDERSON**

**(Also known as WILLIAM GARDNER)**

---

Computer Aided Transcription 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)

---

**Mr M Magarian KC** appeared on behalf of the Appellant

---

## **JUDGMENT**

---

Tuesday 28<sup>th</sup> February 2023

**LORD JUSTICE DINGEMANS:** I shall ask Mr Justice Lavender to give the judgment of the court.

**MR JUSTICE LAVENDER:**

1. The appellant appeals with leave granted by the single judge against a total sentence of four years' imprisonment imposed on him on 22 December 2021 in the Crown Court at Newcastle Upon Tyne for four offences to which he had pleaded guilty in the Magistrates' Court on 22 February 2021. The sentences imposed were: four years' imprisonment for one offence (the "lead offence") of attempting to cause or incite a female child aged under 13 to engage in sexual activity and concurrent terms of one year's imprisonment for each of three offences of attempting to engage in sexual communication with a child. No complaint is made about the sentences of one year's imprisonment.

2. The appellant committed the offences between March and May 2019, at a time when he was on licence. The appellant was aged 44 at the time. He used the social media platform "KIK" to exchange messages with what he believed were three young girls, aged 12 or 13, who called themselves "Natalie", "Milly" and "Kaitlyn". The messages were sexual in nature.

3. After he had exchanged messages with her for about two weeks, he encouraged "Natalie", whom he believed to be 12, to engage in sexual activity. He asked her whether she had ever played with herself and encouraged her to try it. She asked, "What do I do to try it?" He replied, "Put your fingers in your pussy, touch your special spot and you will get wet". The appellant also sent to "Natalie" two images of his penis and a video of himself masturbating to ejaculation. He asked for a photograph of her and received a non-sexual photograph of a

12 year old girl. He then asked for another photograph, saying that he wanted to see her "panties" and her "pussy".

4. As recorded on the sending sheet, the lead offence was that on between 6 March 2019 and 10 May 2019 at Newcastle Upon Tyne, the applicant had attempted to intentionally cause or incite a girl under the age of 13, namely 12, to engage in sexual activity of a non-penetrative nature, namely masturbation, contrary to section 1(1) of the Criminal Attempts Act 1981.

5. The offence which the appellant was charged with attempting, and to attempting which he pleaded guilty, was thus the either-way offence created by subsections 8(1) and (3) of the Sexual Offences Act 2003 and not the indictable-only offence created by subsections 8(1) and (2) of that Act, which concerns causing or inciting a child under 13 to engage in penetrative sexual activity.

6. The appellant's basis of plea stated as follows:

"...This chatroom (KIK) is expressly restricted in its user terms as being limited to those over 17 years of age. It cannot therefore be asserted that the [appellant] either began accessing the internet in general or this app in particular in order to engage in contact with minors.

The [appellant] was not initially drawn to access the profiles which he accessed from any belief in the professed age, or any apparent vulnerability of any of profiles in question.

When he engaged in the conversations concerned he in no way engaged in any coercive dialogue, and at the time during all relevant conversations and exchanges believed the persons in question were minors."

7. The appellant's previous convictions were for unrelated offences, the most recent of which was for fraud, for which he had received a sentence of three years' imprisonment on 8 June

2017.

8. There was a pre-sentence report and a psychiatric report from Dr Thomson, who expressed the opinion that the appellant was likely to meet the diagnostic criteria for borderline and narcissistic personality disorders, although they were not of a nature or degree to require treatment in hospital. Dr Thomson's opinion was that the appellant's personality difficulties were directly linked to his risk of sexual offending, since he used sex and sexualised behaviours as a maladaptive coping mechanism by which he attempted to overcome his dysphoric mood, which was linked with chronic feelings of emptiness and perceived rejection or abandonment. Letters from a counsellor, from a clinical psychologist, from representatives of the Richmond Fellowship and from the housing charity Crisis all spoke of the appellant's efforts to address his mental health issues. A letter from the local Adult Autism Diagnostic Service said that the appellant was diagnosed in June 2021 with autism spectrum disorder, although Dr Thomson did not see signs of this when he assessed the appellant.

9. Unfortunately, there was some confusion as to the nature of the lead offence. The prosecution sentencing note originally claimed that the lead offence was an offence of attempting to commit the offence created by section 10 of the Sexual Offences Act 2003. This was subsequently amended to refer to section 8. However, at the sentencing hearing the Recorder was invited to place the lead offence in category 2A in the sentencing guideline for an offence contrary to section 8 of the Sexual Offences Act 2003, on the basis that: the intended harm fell within category 2 because it was penetration of "Natalie's" vagina; and the appellant's culpability fell within category A because he used grooming behaviour. That gave a starting point of eight years' custody and a range from five to ten years.

10. However, by presenting the case in that way, prosecution counsel was inviting the court

to sentence the appellant for a different offence from that to which he had pleaded guilty. In effect, the court was being invited to sentence the appellant for attempting to cause or incite a child under 13 to engage in penetrative, rather than non-penetrative, sexual activity. Regrettably, this error was not noticed at the time and the Recorder sentenced on the basis proposed by prosecution counsel.

11. The only aggravating factor identified by the Recorder was that the offences were committed on licence.

12. The Recorder said that he reduced the sentence because no harm was in fact caused. He also took account of the appellant's mental health conditions and the time which had elapsed since the offences. He gave the appellant full credit for his guilty pleas. Accordingly, the sentence of four years' imprisonment was equivalent to six years before the reduction for the appellant's guilty pleas.

13. However, it is now accepted that the sentence was unlawful and that we should quash it and re-sentence the appellant. Since we have to re-sentence the appellant, it is strictly unnecessary to consider the grounds of appeal, but we note that in summary they are as follows:

(1) the Recorder erred in finding that the charge of causing/inciting came within category 2 harm in the sentencing guidelines;

(2) in the alternative, there ought to have been a greater reduction to reflect the change in the allegations between the original and later Opening Notes;

(3) the substantial pandemic - related delay was not sufficiently reflected in

any reduction of sentence; and

(4) Insufficient reduction was allowed for guilty pleas in the Magistrates' Court at the earliest opportunity: full credit was ostensibly allowed, but the arithmetical calculation was not spelled out.

14. We consider (and this was not disputed) that the lead offence falls within category 3A in the sentencing guideline. The intended sexual activity was not penetrative, but we consider that the communications which preceded the incitement amounted to a significant degree of grooming. In addition, there was some solicitation of a sexual photograph of "Natalie". The starting point is, therefore, five years' custody, with a range from three to eight years.

15. Having regard to the aggravating and mitigating factors to which we have already referred, and taking account of the fact that the sentence for the lead offence must reflect the whole of the appellant's offending, we consider that the appropriate sentence for the lead offence, before reduction for the appellant's guilty plea, would have been four years' imprisonment. Reducing that by one third gives a sentence of two years and eight months' imprisonment.

16. We therefore quash the sentence of four years' imprisonment imposed by the Recorder and substitute a sentence of two years and eight months' imprisonment. The other sentences remain unaffected. To that extent the appeal against sentence is allowed.

---

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the

proceedings or part thereof.

Lower Ground, 18-22 Fumival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk)

---