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IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT
KINGSTON UPON THAMES
HER HONOUR JUDGE KENT CP No: 01VW0219422
CASE NO 202304374/A1
Neutral Citation Number: [2024] EWCA Crim 1593

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 3 December 2024

Before:

LORD JUSTICE STUART-SMITH
MRS JUSTICE THORNTON DBE
THE RECORDER OF MANCHESTER
HIS HONOUR JUDGE DEAN KC
(Sitting as a Judge of the CACD)

REX
V
LOGANATHAN PERUMALL

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NON-COUNSEL APPLICATION

APPROVED JUDGMENT

The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. 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.

MRS JUSTICE THORNTON DBE:

Introduction

1. The Applicant renews his application for leave to appeal his sentence, leave having been refused by the single Judge on the papers.

Background

2. The background is set out in the note provided by the Criminal Appeal Office and is not repeated, save to say that the Applicant was sentenced to a total of 12 years' imprisonment for one count of attempted rape, contrary to section 1 of the Criminal Attempts Act 1981 and two counts of assault by penetration, contrary to section 2 of the Sexual Offences Act 2003. The sentence was imposed in relation to events on 23 October 2022 after the Applicant approached the complainant in the early hours of the morning as she made her way home from a night out with friends and whilst she was under the influence of alcohol.

Grounds of appeal

3. Grounds of appeal have been submitted by Counsel when Counsel was instructed (Counsel is no longer instructed) and by the Applicant himself. We also have additional grounds and letters from the Applicant dated 18 March 2024, 7 July 2024, 16 September 2024 and an undated letter received by the Criminal Appeals Office on 4 November

2024.

4. The various grounds of appeal may be summarised as follows:
 - i) The Judge erred in categorising the Applicant's culpability as A on the basis the Applicant used alcohol to facilitate his offending. The Applicant should have been sentenced on the basis of category 2B offending for which the starting point for attempted rape would have been eight years' imprisonment with a range of seven to nine years and the starting point for the assault by penetration would have been six years with a range of four to nine years.
 - ii) Mitigating factors were not taken into account, including good character, serious complex medical conditions, caring responsibilities and full co-operation with the police.

Analysis

5. After meeting the complainant, the Applicant purchased whiskey in a shop using the complainant's bank card. Once in her house he put the whiskey repeatedly to her lips in an unsuccessful attempt to try to get her to drink it. We incline to the view that this behaviour constitutes the use of alcohol to facilitate offending within the terms of the guideline. However, even if we are wrong in this respect, there is no doubt that the *attempt* to use alcohol is an aggravating feature in relation to culpability, even if the Applicant's conduct is not what the guideline has in mind as a feature justifying culpability A on its own.
6. We do not accept the submission that the Judge failed to take account of the personal mitigation. The Judge's sentencing remarks are careful and address both the relevant aggravating features and the available mitigation.
7. We do not consider it arguable that the sentence was manifestly excessive or wrong in

principle. Even if the offending should have been categorised as borderline category 2A/B on the basis the Applicant was unsuccessful in his use of alcohol on the complainant, it was not arguably manifestly excessive for the Judge to reach a sentence of 12 years for one count of attempted rape and two counts of assault by penetration.

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

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