IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT DURHAM
MR RECORDER HAWKS CP No: 11DD060221
CASE NO 202401828/A5
Neutral Citation Number: [2024] EWCA Crim 1594

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
JOHN PATRICK HARROP

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MR J WALKER appeared on behalf of the Appellant
MR R PATTON appeared on behalf of the Crown

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**APPROVED J U D G M E N T**

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 that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

**MRS JUSTICE THORNTON DBE:**

**Introduction**

1. The Appellant appeals with leave against a special custodial sentence of eight years, comprising a custodial sentence of seven years and a one year licence period imposed for three counts of oral rape of a child under 13 and a concurrent sentence of five years for two counts of sexual assault of a child under 13. The sentence was imposed following conviction.

**Background**

2. By way of background, the offences were committed between June 2009 and September 2011 against C1, when he was aged between four and seven. The Appellant was then aged between 23 and 27. The sexual assault offences involved simulating anal sex. C1 recalled that the Appellant ejaculated on at least one occasion. The indictment specifies at least seven rapes and sexual assault on at least three occasions.
3. In 2012 the Appellant pleaded guilty to six counts of rape of a child under 13 and two counts of sexual assault of a child under 13 in relation to offending against C1's sister, C2. For the offending against C2 he was sentenced to an extended sentence of 18 years - 10 years in custody with an extended licence period of eight years. The Appellant was released on licence in 2017 and remains on licence in this regard until

2030.

4. C1 was spoken to by police in 2011 after his sister reported the Appellant's offending against her. C1 did not disclose the abuse against him at that time. The police became involved after C1 made disclosures to a social worker in October 2021, after the Appellant had been released on licence in relation to his offending against C2.

**Sentencing Remarks**

5. Turning to the sentencing remarks of the Recorder, we observe that the Recorder refers to four counts of oral rape. However, the indictment and all relevant documents detail there were three counts of oral rape not four.
6. The Recorder observed that the offending involved numerous occasions of the Appellant penetrating the complainant's mouth with his penis and ejaculation on one occasion. The sexual assaults involved simulating anal sex.
7. The Recorder identified the unusual background to the sentencing exercise to which we have already referred, namely the proceedings in relation to the complainant's sister, before going on to observe that this was an extremely difficult sentencing exercise and he had struggled to arrive at a just and appropriate sentence.
8. Having decided it was too difficult an exercise to decide what sentence the Appellant would have received in 2012 for the offending against both siblings, the Recorder decided the only fair approach was to look at the specific offending against C1 against the background of the following factors. First, the Appellant has remained offence free since his release from prison in 2017. Secondly, the Appellant is no longer a dangerous offender. Thirdly, the Appellant has made significant progress both in prison and on licence. Fourthly, the offender has considerable intellectual deficit, mental health problems and is plainly a highly vulnerable person.

9. The Recorder categorised the offending as 3B with a starting point of eight years' custody for the rape and a category range of six to eleven years. He imposed a custodial term of seven years and a licence period of one year pursuant to section 236A of the Sentencing Act to reflect the Appellant's status as an offender of particular concern. A concurrent sentence of five years was imposed in relation to the two counts of sexual assault.

**Grounds of Appeal**

10. The grounds of appeal are as follows:

    i) That insufficient weight was given to the fact that the Appellant had remained offence free since his release from custody in July 2017, that he was no longer considered a dangerous offender and had shown significant progress whilst in custody and following his release and that he had intellectual deficiencies and was vulnerable.

    ii) Whilst the Recorder was correct to categorise the offending as 3B offending, he nonetheless erred in adopting an excessively prescriptive approach to the sentencing exercise and insufficient regard was paid to the fact that the Appellant was returning to custody having already served a lengthy term of imprisonment for offending within the same time period, during which time he had sought to improve himself.

11. Before us in his oral submissions Mr Walker submitted that when asking a rhetorical question "Did the time in custody work?", the answer must surely be "yes" because of the substantial period of offence free offending since his release and given he was no longer regarded as a dangerous offender. He submitted further that the Appellant had missed out on an opportunity to resolve all matters against him in 2012 and has already served a lengthy prison sentence.

**Analysis**

12. Turning to our analysis. We agree with the Recorder that this was a difficult sentencing

exercise. The sentencing of historic sex offending is of itself complex and the backdrop to this particular offending was unusual in that the Appellant had been sentenced in 2012 for related offending directed at the complainant's sister over the same period of time.

13. The Recorder considered the rape to fall into Category 3B with a starting point of eight years' custody and a category range of six to 11 years. However, viewed in isolation we agree with the prosecution's submission that the offending would have merited classification as 2A offending in the relevant guidelines given the age of the complainant, who was four when the offending started, the abuse of trust and the lifelong impacts on the complainant. We have listened carefully in this regard to Mr Walker's oral submissions but he nonetheless, despite disputing that the offending merits classification as 2A, he nonetheless accepted that there was a degree of abuse of trust involved. In addition, he was prepared to concede that the ages of four and down would constitute extreme youth. Here the complainant was four years when the offending started.

14. Category 2A has a starting point of 13 years with a range of 11 to 17 years. We also accept the prosecution's submission that the offending is to be treated as aggravated by the previous offending against C1's sister and the multiple incidents.

15. The Recorder identified the personal mitigation available to the Appellant to which we have already referred, namely that the Appellant has remained offence free, is no longer a dangerous offender, has made significant progress in prison and on licence, has a considerable intellectual deficit and is a highly vulnerable person. However, even allowing for the personal mitigation identified and accepted by the Recorder, it cannot be said that the custodial sentence of seven years was manifestly excessive or wrong in principle given our view that the offending should have been categorised as 2A for which

the starting point is 13 years for rape of a child under 13 and four years for sexual assault of a child under 13.

16. Whilst the Appellant has remained offence free, he has not answered for his serious offending against the complainant. As the prosecution submitted in a sentencing note before the Recorder, and we accept, if the sentencing court had known of the true position in 2012 when it sentenced the Appellant for his offending against C1's sister the custodial sentence would have been longer but tempered by the totality principle. In our judgment the sentence of eight years imposed in relation to C1 is consistent with this approach and cannot be regarded as manifestly excessive, either viewed on its own or as part of a global sentencing exercise.

17. Even if the offending is treated as Category 3B as the Recorder did and as Mr Walker submits before us that we should do, the starting point is eight years for a single offence of rape of a child under 13. Here there were at least seven offences justifying a significant increase from the starting point. In addition, due weight had to be given to the two counts of sexual assault which occurred on at least three separate occasions. Accordingly, even on the Recorder's categorisation and after giving due allowance for the principle of totality, the aggregate sentence passed by the Recorder is not manifestly excessive.

18. Finally, we conclude by referring to the following matter which was brought to our attention by the Registrar. At the end of his sentencing remarks the Recorder referred to the Appellant paying a statutory surcharge, should it apply. It does not appear that any order was produced in this regard but for the avoidance of doubt we take the opportunity to clarify the position that no statutory surcharge could be imposed as the offences predate the victim surcharge provisions.

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