Neutral Citation Number: [2024] EWCA Crim 1610

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT INNER

LONDON

MR RECORDER FEATHERBY CP No: 93JD0680824

CASE NO 202402770/A2

Royal Courts of Justice
Strand
London
WC2A 2LL
Friday, 20 December 2024

Before:

LORD JUSTICE LEWIS
MR JUSTICE GARNHAM
MR JUSTICE CONSTABLE

REX
V
JAMES ARTHUR GEORGE GATHERCOLE

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MISS P ABEL appeared on behalf of the Appellant

J U D G M E N T

1. MR JUSTICE GARNHAM: 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.
2. On 8 June 2024, having pleaded guilty before Westminster Magistrates' Court, the appellant, George Gathercole, was committed for sentence pursuant to section 14 of the Sentencing Act 2020 in respect of two offences of intentional exposure. On 2 July 2024 in the Crown Court at Inner London before Mr Recorder Featherby, the appellant was sentenced to 16 months' imprisonment on each count. He now appeals against sentence by leave of the single judge.
3. The facts are as follows. At around 3.20 pm on 26 May 2024 the first complainant boarded a South Western train at Motspur Park Station heading towards Waterloo. The appellant sat opposite the complainant and also almost immediately began to touch his genitals outside his clothing. The appellant subsequently put his hand inside his clothing and the complainant began to record the appellant on her mobile phone. When the complainant turned her head away the appellant began masturbating. When the complainant looked directly at the appellant he would put his penis away. This occurred more than once.
4. When the complainant got up to leave the train at Wimbledon station, the appellant said: "You look beautiful", to which the complainant replied: "You are disgusting and I will be reporting this." The complainant got off the train and reported the matter to the British Transport Police.

5. At about 7.15 pm that same day the second complainant and her sister boarded a Thameslink train at Sutton. When the train got to West Sutton Station the appellant boarded the train. The complainant noticed that the appellant had been looking around and paying attention to another female who subsequently came and sat next to the complainant. The appellant then sat nearby. Within ten minutes the complainant noticed that the appellant was staring at her and was seen to be masturbating. The appellant put his penis away and walked down the carriage out of sight. The complainant told her sister what had happened and the matter was reported to British Transport Police. The incident had been captured on CCTV.
6. The appellant was subsequently identified and was arrested on 7 June 2024.
7. The appellant was aged 39 at sentence. He had 12 convictions for 32 offences spanning the period July 2000 to April 2023. His relevant convictions included 20 offences of exposure. A previous pre-sentence report had concluded that the appellant:

> "... is a persistent sex offender. Mr Gathercole has a history of non-compliance with Court sanctions and supervision by the National Probation Service.
>
> Mr Gathercole is deemed to pose a High Risk of Harm to the Public (adult females in particular) and a Very High Risk of committing a Non-Contact sexual offence.
>
> ... the context within which he committed the index offences demonstrates that Mr Gathercole cannot be relied upon to comply with the requirements of a robust risk management plan and as such he has proved that his risk is unmanageable in the community. Given these circumstances and the sentencing guidelines for offences of this nature, a community-based sentence option cannot be put forward on this occasion."

8. In sentencing the appellant, the judge said:

> "You're a nuisance to women, and I think you're a threat to women. You obviously get some sort of sexual gratification from cruising up and down the railways exposing yourself to lone women. It must stop. The only things I really have to determine are whether to reduce your sentence below what I have seen is the maximum that's been imposed on previous occasions, 16 months, after allowing one third off the maximum allowed for this offence, of 24 months, and whether to make the offences concurrent or consecutive. I see no reason whatsoever to depart from what previous judges have done ... I'm going to make them consecutive, because these 16 month imprisonments don't seem to keep you out of trouble."

9. It has been argued by Miss Abel on the appellant's behalf that the total sentence of 32 months' imprisonment was manifestly excessive. It is said that the Crown and defence agreed that the offending fell inside Category 2 of the guidelines, which has a starting point of a high range community order and 26 weeks' imprisonment, that the sentences should have been made to run concurrently and not consecutively, that the total sentence did not have sufficient regard to the principle of totality and that the Recorder did not allow a sufficient discount to reflect the appellant's early guilty pleas.

10. In our judgment, there is no merit in the argument that the judge should have limited himself to the range in the guidelines. The appellant is a particularly persistent offender and the judge was entitled to go outside the range, and substantially so on these facts.

11. Similarly, there is no merit in the argument that the sentences should be concurrent. These were two separate offences involving two different victims and consecutive sentences were plainly warranted. There is also nothing in the complaint that the judge did not allow proper credit for plea - he allowed a one-third reduction on each count.

12. However, in our judgment a total sentence at twice the maximum allowed for these offences less only the discount for plea was manifestly excessive. A proper sentence, making a reasonable adjustment for totality, would have been 18 months on each count, less one-third for his plea. In those circumstances, the appeal is allowed to the following

extent: the sentences of 16 months on each count are quashed and a sentence of 12 months consecutive on each count, making a total of 24 months' imprisonment, is substituted.

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

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