IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE MILITARY COURT AT CATTERICK

JUDGE SMITH CMAO 25/06/2024

CASE NO 202402342/B4

[2024] EWCA Crim 1681

Bulford Military Court Centre
22 Mons Avenue
Bulford Camp
Salsbury SP4 9NN

Wednesday, 4 December 2024

Before:

VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE
MR JUSTICE MORRIS
MRS JUSTICE FOSTER DBE

REX
v
ROBBIE COILS

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Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR N SANDS appeared on behalf of the Applicant
MR R GREGORY appeared on behalf of the Service Prosecuting Authority

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J U D G M E N T
(Approved)

1. THE VICE-PRESIDENT: On 28 November 2023 the applicant, then a Corporal in the Royal Air Force, pleaded guilty to an offence contrary to section 42 of the Armed Forces Act 2006 of committing a criminal offence, namely voyeurism, contrary to section 67 of the Sexual Offences Act 2003.
2. On 7 June 2024, before Assistant Judge Advocate General Smith and a Board, he was sentenced to a Service Community Order for two years with a specified activity program requirement for up to 90 days and a rehabilitation activity requirement for up to 10 days. He was dismissed from His Majesty's Armed Forces. A destruction order was made in respect of his mobile phone. By virtue of his conviction, he became subject for five years to the notification requirements in Part 2 of the Sexual Offences Act 2003. His application for leave to appeal against his sentence has been referred to the full court by the Registrar.
3. The victim of the offence is entitled to the life-long protection of the provisions of the Sexual Offences (Amendment) Act 1992. Accordingly, during her lifetime no matter may be included in any publication if it is likely to lead members of the public to identify her as the victim of this offence. We shall refer to her only as "V". We shall omit any circumstantial details which might lead to her identification.
4. We pay tribute to the thoroughness and care with which this matter was approached by all concerned in the proceedings before the Court-Martial. At this appeal stage, the issues are clearly defined and we can address them comparatively briefly.
5. The applicant is now aged 30. At the time of his dismissal he had completed more than 10 years' Service and had held the rank of Corporal for nearly three years. V was of a junior rank. She and the applicant had been friends for some time. There had in the past been a sexual relationship between them, but that had ended before the date of the

offence. On that date, the applicant, V and others went out together socially. They visited a number of public houses near to the air base where the applicant was serving. Both drank alcohol and V became very drunk. After she had vomited in a public house the landlady arranged for her to be driven home. The applicant went with her.

6. V lived near to, but not on, the air base. On arrival at her home it was realised that she had left her jacket behind with her keys in the pocket. The applicant said that he would take her to his room at the base a short distance away. They arrived there about 2.00am. It was noticed that V had to be held upright by the applicant. In his room she again vomited. She then passed out on the bed.
7. In the early hours both the applicant and V were in bed. V was naked from the waist down. She was dimly conscious that at some point the applicant pulled back the bed clothes and took a photograph of her on his mobile phone. He then got back into bed with her.
8. A few days later V challenged the applicant about what he had done. He initially denied taking any photograph, but later admitted to V that he had taken one.
9. In the course of the proceedings the applicant accepted that he had taken the photograph for his sexual gratification. He said that when sober he had deleted it. Examination of his mobile phone found no trace of the photograph and nothing to suggest that it had been sent to anyone.
10. The Court-Martial considered the helpful Guidance on Sentencing in the Service Courts, Version 6, June 2023, promulgated by the Judge Advocate General, and also considered the Sentencing Council's definitive guideline in relation to voyeurism offences. It was common ground between counsel, and the Court-Martial agreed, that under the Sentencing Council's guideline this was a Category 2 offence involving raised culpability

because of the vulnerability of the victim, but not raised harm. The guideline starting point for such an offence was a high level community order, with a range from a medium level community order to 26 weeks' custody. It is relevant to note that both that offence-specific guideline and the imposition guideline contain further guidance to assist courts in determining what requirements, and what level of requirements, to include in a community order.

11. It should also be noted that, as the Judge Advocate General's guidance makes clear at paragraph 4.7.2, a Service Community Order can only be imposed on a Service person who is currently serving if he or she is at the same time sentenced to dismissal.

12. The applicant was of previous good character and had an exemplary Service record. The Court-Martial was assisted by a detailed pre-sentence report which assessed the applicant as posing a medium risk of emotional and psychological harm to known adults if he committed further offences of this type. The author of the report assessed the applicant as suitable for a Service Community Order for 36 months. The applicant met the criteria for a treatment program and the report suggested a rehabilitation activity requirement "to support his progress through the program and to signpost the sources of support to help him reintegrate back into civilian life."

13. The Court-Martial was also provided with a number of testimonials which spoke very highly of the applicant, indicating his willingness to help others, his very strong work ethic and his usual high standard of conduct in accordance with Service ethos and principles. By way of example of the testimonials which each member of this court has read, his Wing Commander – fully informed as to the circumstances of the offence – said that it would be a "great loss to the team" if the applicant had to be dismissed.

14. In addition, the Court-Martial was provided with a victim personal statement by V

indicating that this crime had had a significant effect upon her, affecting her enthusiasm for Service life and causing her to feel depressed.

15. In explaining the reasons for the sentence, the Assistant Judge Advocate General referred to paragraph 6.1 of the Judge Advocate General's Guidance. He noted that the applicant had been in a very vulnerable state, and that the applicant had taken advantage of her when she was vulnerable and when she was entitled to expect that he would look after her. The offence, he said, was aggravated by the fact that V was junior in rank, and by the fact the applicant himself was intoxicated. The Judge Advocate General's Guidance to which the judge referred indicated the seriousness of sexual offences in the context of Service personnel, who have little choice as to those with whom they serve and who live in close confines, so that sexual offending undermines the bond of trust between those who serve.

16. The judge recognised the presence of a number of mitigating factors: the applicant's exemplary record, the fact that this was a single still image which had not been shared with anybody else and the fact that it had been deleted by the applicant a short time later. The applicant had pleaded guilty at his first appearance before the Court-Martial and it was accepted that he was entitled to full credit.

17. The judge said this on behalf of himself and the Board:

> "We take the view that even with your guilty plea, all the things that are positive that are said on your behalf, this offence is so serious that you must be dismissed from your position within the Royal Air Force. Having made the decision with regard to whether you be dismissed or not we then consider whether there are any other aspects of the sentence. We take the view that dismissal is a significant punishment in its own right. We do not intend to punish you any further with regard to that and therefore rule out any possibility of a service detention order. Nonetheless we do take the view that there is work that the probation service take the view ought to be done in your case to rehabilitate you going

> forward.
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> The probation service take the view, given your remorse and your early guilty plea, that you [are] a low risk of committing further offences but if that low risk comes about, a medium risk of causing serious harm by the [repetition] of offence, particularly of this nature. The probation service invite us to consider passing a three-year sentence of probation upon you under a service community order. Given your guilty plea we take the view that that three-year probation order would be too long in this case, and therefore reduce that order to one of two years. During that period of time, it is our intention that you undertake a specified treatment programme, that the probation service will identify, and we make an order that you attend on up to ten rehabilitation activity requirement days also over that two-year period."

18. Mr Sands, who appears for the applicant before this court as he did below, submits that the total sentence was manifestly excessive. He accepts that there can be no successful criticism of the order for dismissal, but submits that the approach taken by the Court-Martial was in effect simply to reduce the maximum available Service Community Order by one-third to reflect the guilty plea. Mr Sands argues that the circumstances of the offence, involving as it did a single still image which only existed for a matter of hours and was only ever seen by the applicant, meant that the sentence should have been at the lowest end of the guideline range before giving weight to personal mitigation. The personal mitigation included the exemplary Service record and other creditable aspects of the applicant's career.

19. Mr Sands further draws attention to the fact that a Service Community Order of 12 months or more carries with it the notification requirements to which we have referred. He submits that in all the circumstances the combination of dismissal and a Service Community Order of less than 12 months would have been appropriate and would have provided just and proportionate punishment.

20. For the respondent, Mr Gregory submits that the approach taken by the Court-Martial cannot be faulted and that the offence had serious aspects which were properly taken into account.

21. We are grateful to both counsel for their helpful submissions. Reflecting upon them we have come to the following conclusions.

22. The Court-Martial took the appropriate starting point under the guideline applicable to sentencing for this type of offence. There were no features of culpability or harm which required any initial adjustment up or down from that starting point. The Court-Martial correctly identified the aggravating and mitigating features which had to be taken into consideration. In the Service context, for the reasons given by the judge, the sexual nature of the offence and the difference in rank between complainant and victim are significant considerations. On the other hand, the mitigation was also significant. There is, in our view, no doubt that the Court-Martial took that mitigation into account and rightly treated this offence as being out of the usual character of the applicant.

23. It is in our view important to note that the Court-Martial regarded the sentence of dismissal as a substantial punishment in itself, and did not intend to add to that punishment by imposing a Service Community Order aimed at assisting the applicant to address his offending and to become rehabilitated. Consistently with that approach, the Court-Martial did not impose any requirements of the order which were specifically punitive in nature. We infer, although the judge did not specifically say this, that he had well in mind the statutory provisions which require a sentencing court to impose at least one punitive requirement as part of a community order or Service Community Order, unless the court is either imposing a fine or takes the view that there are exceptional circumstances which would make it unjust in all the circumstances to impose a

requirement for the purpose of punishment.

24. We note also that in the Sentencing Council Guideline on Reduction of Sentence for a Guilty Plea, the point is made that the reductions indicated apply to the punitive aspect of a sentence, not to ancillary matters.

25. Finally, we emphasise that the notification requirements are a statutory consequence of a person being convicted of an offence of this nature and sentenced in a way which renders the requirements applicable. The notification requirements are not in themselves part of the sentence of the court and are not in themselves subject to any right of appeal.

26. Drawing these threads together, we are unable to accept the submissions so skilfully made by Mr Sands on behalf of the applicant. Dismissal was, in the circumstances, inevitable. Because the applicant was to be dismissed, the sentence of a Service Community Order was available to the court. Although of course involving some restriction of liberty, that order was in this case primarily intended to be rehabilitative with no additional element of punishment.

27. Depending on the circumstances of a particular case, and on which of the five statutory purposes of sentencing identified in section 57 of the Sentencing Code is being prioritised by a court, a community order or Service Community Order may be more or less punitive in its effect. Here, as we have said, it was clearly intended to be aimed at assisting the rehabilitation of the applicant and was expressly not intended to add to the punishment inflicted by the order for dismissal.

28. By the statutory provisions governing such orders, the court was required to impose those requirements which in the opinion of the court were the most suitable for the offender. The Court-Martial complied with that duty and it is not suggested that either or both of the two requirements were inappropriate. Given that the requirements imposed by the

court were those which were most suitable for assisting the applicant's rehabilitation, the duration of the order was principally determined by the period for which it was felt appropriate for the requirements to continue. The order specified that the requirements must be completed within two years. In such circumstances, the duration of the order cannot fairly be criticised as if it were a three-year order reduced to two years by credit for a guilty plea.

29. It seems to us, notwithstanding Mr Sands' submissions, that a Service Community Order of less than one year could not realistically be said to be sufficient for completion of the various requirements which the court properly felt to be the most appropriate.

30. For all those reasons, having given careful thought to the arguments advanced on the applicant's behalf, we refuse this application for leave to appeal against sentence.

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

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