

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.

[2024] EWCA Crim 179

IN THE COURT OF APPEAL

CRIMINAL DIVISION



No. 202301573 B4

Royal Courts of Justice

Tuesday, 13 February 2024

Before:

LADY JUSTICE WHIPPLE
MRS JUSTICE STACEY
HIS HONOUR JUDGE PICTON

REX

V

GEORGE EDWARD GREAVES

REPORTING RESTRICTIONS APPLY
SEXUAL OFFENCES (AMENDMENT) ACT 1992

Computer-aided Transcript prepared from the Stenographic Notes of
Opus 2 International Ltd.

Official Court Reporters and Audio Transcribers

5 New Street Square, London, EC4A 3BF

Tel: 020 7831 5627 Fax: 020 7831 7737

CACD.ACO@opus2.digital

Mr R. Rosser appeared on behalf of the Applicant.
The Crown were not represented.

J U D G M E N T

LADY JUSTICE WHIPPLE:

- 1 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 10 May 2021 at Kingston upon Hull Crown Court, the applicant, who was then aged 61, was convicted of various offences of indecent assault against PB, a single complainant. On 25 August 2021, by which time the applicant was 62, he was sentenced to a total of 12 years' imprisonment for a total of seven counts of indecent assault against PB.
- 3 On 22 September 2021, the applicant lodged an application for leave to appeal against sentence with grounds of appeal settled by fresh counsel, Mr Rosser. That application was refused by the single judge and on renewal was refused by the full court (see *R v Greaves* [2022] EWCA Crim 716.)
- 4 The applicant now renews his application for leave to appeal against conviction, for which purposes he seeks an extension of time of 704 days. His applications were refused by the single judge.

The Facts

- 5 We take the facts from the previous judgment of this court, refusing leave to appeal against sentence, to which we have already referred:

"6 The offences were committed between 1987 and 1990. The victim was a girl. The offences took place when she was between 13 and 15 years old. The applicant was 15 years older than the victim. He had a mobile grocery business which he operated from a van. The victim worked for him and accompanied him as he did his rounds. The applicant groomed her and gave her sweets, crisps and pizza. He also gave her attention.

7 The victim was the daughter of a friend of the applicant and he had the trust of her parents. He convinced the victim that her parents did not really care for her and he encouraged her to stay at his home. He persuaded the victim's

parents to allow her to stay.

8 The sexual abuse started with inappropriate touching and kissing. It progressed to the applicant putting his hands down the victim's pants. Digital penetration escalated to penetrating her with bananas and cucumbers. Three of the counts, including one multiple incident count, related to penile penetration of the victim's mouth.

9 The applicant also had regular intercourse with the victim. At the age of 14 she became pregnant. She did not reveal who the father was and gave birth. The child was given up for adoption. She became pregnant again when she was 15 years old. The pregnancy was terminated; the applicant financed and arranged the termination.

10 The victim reported the assaults to the police in June 2019. The applicant was interviewed in August 2019. He admitted that sexual activity had taken place when the victim was under 16, but said he had not realised that such a relationship was against the law."

- 6 The applicant was not prosecuted for unlawful sexual intercourse because the offence was time barred under the terms of the Sexual Offences Act 1956, then in force, which provided that no charge would be brought once 12 months had passed since the activity took place. Thus it was that the applicant was prosecuted for, and convicted of, indecent assault only.

Character Direction

- 7 The applicant had accepted during interview and in his defence statement that he had sexual intercourse with the complainant when she was aged 14. At trial, the applicant denied the charges of indecent assault in full. The judge took the approach that there would be no direction regarding good character but that there would be a direction as to bad character and propensity.
- 8 Accordingly, the judge directed the jury that they could take into account the fact that the applicant had engaged in sexual intercourse with the complainant when she was under the age of 16 if they were sure of that fact, giving a standard bad character direction relating to that evidence and how it was to be taken into account. The judge gave no good character direction.
- 9 In fact, the applicant was of effective good character at the time of the offences but has

since been convicted of two driving offences, driving whilst disqualified and driving with no insurance, for which he was convicted on 3 June 1991. That good character was admitted as part of his evidence at trial but was not the subject of any direction by the judge.

- 10 In preparation for this appeal it has become clear that the applicant's trial counsel was of the view that the applicant was not entitled to a good character direction due to his admission during interview and at trial that he had engaged in penetrative sexual activity with a 14-year old child. Trial counsel did not submit that there should be any good character direction.

Extension of Time

- 11 The applicant seeks a very long extension of time. His grounds are that fresh counsel was instructed to represent him in respect of the appeal against sentence. That counsel was subsequently instructed to advise on appeal against conviction. It took a substantial period of time to obtain transcripts and for *McCook* to be complied with; arranging a conference with the applicant incurred further delays.

Grounds of Appeal against conviction

- 12 The applicant, by his fresh counsel Mr Rosser, seeks to appeal on the single ground that the judge erred in law in his approach to the legal directions in respect of character, such that the conviction is unsafe. By his helpful written and oral submissions Mr Rosser argues that, first, as to good character, the applicant was of effective good character and was entitled to both limbs of good character direction. Alternatively, and as pressed on us today by Mr Rosser who ably put his client's case, the acceptance by the applicant of the consensual sex that had occurred previously ought to have meant that the applicant at least received the credibility limb of a good character direction; and meant that it was wrong to give a direction that on the applicant's own evidence there was propensity to commit the offence, when there should have been no propensity direction in consequence of the applicant's own

admission.

- 13 By way of respondent's notice, the prosecution advanced grounds of opposition. The prosecution say that, in relation to good character, there was no error in the judge's approach: while the applicant's convictions were minor and irrelevant, and were it not for his admitted misconduct, it is difficult to see how the judge could have reached any conclusion other than that he was of effective good character; but that was not the situation before the judge, because the applicant's admitted misconduct changed the position entirely. It brought the situation the judge had to deal with squarely into the category dealt with in *R v Hunter* [2015] EWCA Crim 631 at paragraph 83, which meant that the trial judge had a broad discretion as to how to approach the case, and it was a matter for his "good sense". The absence of any good character direction was understandable and appropriate. In relation to bad character, the prosecution say that, contrary to the submissions advanced, the judge did not give a "direction on the defendant's own evidence there was propensity to commit the offence" and that his direction was only that this admitted past conduct "may" show such a tendency. He properly left the issue of whether it did demonstrate a propensity to the jury.

Refusal on Paper

- 14 Refusing leave to appeal conviction, the single judge, Sir Nigel Davis, said that it was contrary to the interests of justice for the applicant to seek leave to appeal some two years out of time and that the explanations for delay were inadequate. In any event, the judge said he had come to the clear view that the ground of appeal was not reasonably arguable, saying:

"3 The applicant may have had no (relevant) previous convictions but on his own admission he had engaged in sex with the complainant when, as he knew, she was 14. That would potentially have amounted to a criminal offence, albeit not charged by reason of lapse of time.

4 In such circumstances, the applicant was not entitled as of right to a full two-limb, or any, character direction (see *Hunter* 2015). Further, the judge

was entitled to instruct the jury as he did on the issue of bad character. Further still, the fact that the applicant had no relevant convictions was deployed before the jury and character references were put in. There can, overall, be no valid criticism of the summing-up or of the stance taken at trial by defence counsel. The trial was fair and it is not arguable that the convictions are unsafe."

Decision

- 15 We are in agreement with the single judge. The extension of time sought is very considerable. We see the difficulties listed by Mr Rosser (paragraphs 9 and 10 of his Advice) which have contributed to that delay. Even so, we are not willing to extend time in these circumstances. There was a considerable delay in instructing fresh counsel in the first place and then excessive time before grounds of appeal were lodged at this court. An extension of time is not in the interests of justice.
- 16 In any event, the judge's direction on bad character was entirely appropriate. The applicant admitted engaging in sexual intercourse with the complainant when she was under the age of 16. That was undoubtedly bad character which the jury was entitled to take into account, subject to the safeguards contained in the standard direction which the judge gave. There is no conceivable room for criticism here.
- 17 The judge was not obliged to give a direction on good character, even one limited to the second limb dealing with credibility. The judge had to decide, assessing all the circumstances of the case, what fairness dictated. In circumstances where the applicant admitted having sexual intercourse with the complainant when she was 14 it was reasonable for him to conclude that a good character direction, even a good character direction limited to the credibility limb, was not appropriate (see *Hunter*, paragraphs 68, 72, 79 and 83). This was very much a matter for the trial judge, depending on the trial judge's view of the evidence and sense of case.
- 18 The jury were aware that the applicant had no convictions for the type of this offending which had taken place a long time ago and had not been the subject of any other convictions

since, so that point was in evidence. The judge was not obliged to give a legal direction in the applicant's favour about this evidence.

- 19 Even if we had been willing to extend time we would have refused leave to appeal. There is no arguable merit in the applicant's grounds of appeal against conviction.
- 20 Therefore, we refuse this application for an extension of time and we refuse the application for leave to appeal against conviction.
-

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

Transcribed by Opus 2 International Limited
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital