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IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE 202304528/A1



Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 20 February 2024

Before:

LORD JUSTICE SINGH

MR JUSTICE GOOSE

MRS JUSTICE FOSTER

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REX
V

STEVEN CARL EVANS

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MS J FAURE-WALKER appeared on behalf of the Attorney General.

MR M FIREMAN appeared on behalf of the Offender.

J U D G M E N T

(Approved)

1. LORD JUSTICE SINGH: 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. We will anonymise the judgment accordingly.

Introduction

2. This is an application on behalf of His Majesty's Solicitor General for leave to refer sentences to this Court, under section 36 of the Criminal Justice Act 1988 ("the 1988 Act"), on the ground that they were unduly lenient. On 30 November 2023, the respondent/offender was sentenced by HHJ Corbett-Jones, sitting in the Crown Court at Manchester (Minshull Street), to an extended sentence, under section 279 of the Sentencing Act 2020 ("the Sentencing Code") of 32 years' imprisonment, comprising a custodial period of 24 years and an extended licence period of 8 years. This was following a trial, after which on 19 September 2023, the respondent was convicted of 37 offences, mostly serious sex offences.
3. The principles to be applied on an application under section 36 of the 1988 Act are well established and have been summarised, for example, in Attorney-General's Reference (R v Azad) [2021] EWCA Crim 1846; [2022] 2 Cr App R(S) 10, at paragraph 72, in a judgment given by the Chancellor of the High Court as follows:

1. The judge at first instance is particularly well placed to assess the weight to be given to competing factors in considering

sentence.

2. A sentence is only unduly lenient where it falls outside the range of sentences which the judge at first instance might reasonably consider appropriate.

3. Leave to refer a sentence should only be granted by this court in exceptional circumstances and not in borderline cases.

4. Section 36 of the 1988 Act is designed to deal with cases where judges have fallen into ‘gross error’.”

4. In giving the judgment of this Court in Attorney General’s Reference (No 4 of 1989) (1990) 90 Cr App R 366 at 371, Lord Lane CJ said that even where this Court considers that a sentence was unduly lenient, it has discretion as to whether to exercise its powers. He also emphasised, as this Court has done ever since, that its role is not simply to retake the sentencing decision as if it were the sentencing court, and also that mercy is a virtue and does not necessarily mean that a sentence was unduly lenient.

The Facts

5. The facts can be taken from the agreed terms of the Final Reference. For present purposes it will suffice if we set them out in summary as follows. On 19 September 2023, the respondent was convicted of 37 offences falling into the following categories. First, in 2015 to 2016, offences against his female partner, victim “C”. He committed 10 rapes (these were counts 1 to 8 and 16 and 17 on the indictment), there were also six assaults by penetration (these were counts 9 to 14) and there was one sexual assault (count 15). Secondly, in 2017 to 2021, the respondent committed offences against his next female partner, the victim “L”. He committed five rapes (these were counts 18, 19, 30, 31 and 32). He committed three assaults by penetration (these were counts 20, 21 and

22). He committed seven sexual assaults (these were counts 23 to 29) and he committed two offences of administering a stupefying substance with intent, these were counts 33 and 34. Thirdly, in 2021, the respondent committed an offence against his male friend victim "T". This was an offence of administering a poison or noxious substance with intent and was count 35. Fourthly, there was an offence committed against T's girlfriend (victim "E") in 2017. This was an offence of administering a noxious substance with intent (count 36). Further, there was an offence against E in 2021, a sexual assault (count 37).

6. In summary, on numerous occasions in 2015 to 2016, while the offender was in a relationship with C, he raped her, inserted objects into her vagina and sexually assaulted her in other ways while she slept. She found some imagery of the abuse on his phone and so he must have recorded her without her knowledge. After the end of their relationship in 2016, he came to her house, entered as a trespasser and raped her again while she slept on at least two occasions. He then started a relationship with another woman, L. From 2017, he would rape and sexually assault L. On some occasions she was aware of what he was doing as he would force himself on her while she was awake. On many other occasions she was unaware at the time because she was unconscious having been drugged. On such occasions he would rape her or insert objects into her vagina. Sometimes L would wake up with a sore vagina not knowing what had happened. Although she found an image of such abuse on one occasion during their relationship, it was not until 2022, after the end of the relationship, that she found on the offender's phone numerous images showing the sexual abuse. The offender also drugged a male friend "T" and T's girlfriend, "E". There was an occasion when he sexually assaulted E at her house in T's presence.

7. The offender was first interviewed by the police in January 2023 in relation to L's allegations. He was further interviewed in March 2023, when he was asked about C, T and E's allegations. As we have mentioned, the case proceeded to trial where the offender was convicted of the offences we have mentioned.

The Sentencing Framework

8. The Sentencing Council has issued Definitive Guidelines which apply to the relevant offences, in particular rape and assault by penetration. In addition, the Sentencing Council has issued guidance on Domestic Abuse: Overarching Principles. According to that guideline, the domestic context of the offending behaviour makes the offending more serious because it represents a violation of trust and security that normally exists between people in an intimate or family relationship (see paragraph 9).
9. In the Definitive Guideline on Rape and Assault by Penetration, it is mentioned that offences maybe of such severity, for example, involving a campaign of rape, in which sentences of 20 years and above may be appropriate. It is also mentioned that a single category 1A offence of rape or assault by penetration attracts a starting point of 15 years' custody with a suggested range of 13 to 19 years.
10. We should also mention that section 285 of the Sentencing Code requires the court to impose a life sentence where the offender is aged 21 or over, the offence is listed in Schedule 19, this includes rape, assault by penetration and using a stupefying drug with intent. The court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, and the court considers that the seriousness of the offence or the offence and one or more offences associated with it is such as to justify the imposition of a sentence

of imprisonment for life.

11. Guidance was given by this Court, in particular, in Attorney-General's Reference (No 27 of 2013) (R v Burinskas) [2013] EWCA Crim 334; [2014] 2 Cr App R(S) 45. In particular, we have been reminded that, in that case, the Lord Chief Justice confirmed (at paragraph 18) that, save where section 283 applies (it is not applicable here) a life sentence remains a sentence of last resort.

The Sentencing Process

12. The offender was born on 17 August 1990 and is 33 years old. He has two previous convictions, both committed on the same date in 2013, namely driving a motor vehicle with excess alcohol, for which he was fined and disqualified from driving, and affray, for which he was sentenced to 13 months' imprisonment.
13. The sentencing court had before it, as do we, a pre-sentence report. The report concluded that the respondent presented a high risk of serious harm to known adults, which is the victims and to the public, namely future partners and friends. The judge also had victim impact assessments which are summarised in the Final Reference before us and testified to the severe impact on the victims of this offending. Finally, the judge had notes from the prosecution and the defence as to sentencing.

The Sentencing Remarks

14. In his careful and detailed sentencing remarks, the judge went through the history of the various offences for which he had to sentence the respondent. No serious issue is taken with the judge's categorisation of the harm or culpability of the offences. Turning to the issue of *dangerousness*, the judge was sure that the respondent does present a significant

risk to members of the public of serious harm occasioned by the commission of further specified offences. He considered whether it would be appropriate to impose a life sentence but concluded that, although the offending was of the utmost seriousness, it did not meet the exceptional criteria that would require him to impose a life sentence. The judge did consider it necessary and proportionate to impose an extended sentence in order to protect the public in future. He imposed what we have been reminded by counsel for the respondent was the maximum available extended licence period of 8 years.

15. Having regard to the principle of totality, the judge decided to impose an overall sentence reflecting the totality of the offending on count 30 and make all the other sentences concurrent. The custodial period of the sentence was 24 years' imprisonment, so making a total of an extended sentence of 32 years.

16. As the judge explained, the offender would serve two-thirds of the custodial period, that is 16 years before the Parole Board could consider whether it is safe to release him. Once released, he would serve the remainder of the custodial period on licence and would then be subject to an extended licence period of a further 8 years.

Submissions on behalf of the Solicitor General

17. On behalf of the Solicitor General, Ms Faure-Walker submits first, that the custodial term of 24 years fails to reflect the seriousness of the overall offending behaviour in this case. Secondly, she submits that the court should consider whether the seriousness of the offences was sufficient to justify the imposition of a life sentence under section 285 of the Sentencing Code. It is submitted that the offending against C alone would have warranted a sentence of more than 20 years' custody for the following reasons:

1. The offending was characterised by the judge as a "campaign". On this basis it

warranted an overall sentence of at least 20 years' imprisonment, even before one turned to the offending against L and the other victims.

2. The features of the offending against C involving multiple offences of category 1 harm and culpability A warranted a sentence significantly above 20 years' custody. We have been reminded that the starting point in the Definitive Guideline for one single category 1A offence is 15 years' custody, with a range of 13 to 19 years. Here, Ms Faure-Walker reminds us there were 16 category 1A offences against C. There was, in addition, the sexual assault in count 15.

3. Ms Faure-Walker submits that count 16 and 17 alone were sufficiently serious to attract a sentence of 20 years' custody. Those offences were particularly serious since they were committed after the offender had forced entry into the victim's home.

4. Although no issue is taken with the decision to impose concurrent sentences, it should be borne in mind that a case involving sexual offences against the same individual is an example given in the Definitive Guideline on Totality of where overall criminality would not be sufficiently reflected by concurrent sentences. Ms Faure-Walker submits that this underlines the importance of ensuring that the sentence represents the overall offending and is increased to reflect multiple incidents against the same victim or victims. Further, it is submitted that the offender went on to commit 17 similar offences against L over a period of 4 years, mostly facilitated by use of a stupefying drug on her. The offending included again inserting dangerous objects into her vagina while she was unconscious and also the recording of such activity.

18. In these circumstances, Ms Faure-Walker submits that an uplift of far greater than 4 years was necessary to reflect the overall offending against L. Furthermore, while she accepts that the offences against T and E were less serious, they do need to be reflected in the

overall sentence. These offences involve the administration of drugs on further occasions and also a sexual assault against E.

19. Turning to her second submission, Ms Faure-Walker does not rely on the respondent's antecedents but rather the combination of the offences in the present proceedings. This includes the following factors:

1. The offences were committed over 7 years from 2015 to 2021.
2. There were 10 rapes and six assaults of penetration against C and five rapes and three assaults by penetration against L.
3. The offending was particularly "depraved" as the judge himself noted.
4. The offender not only committed sexual offences but also committed an offence of administering a stupefying drug with intent on L, which also attracts a maximum penalty of life, in addition to administering a poisonous or noxious drug on E and T.
5. C and L were particularly vulnerable and C was targeted because of her vulnerability.
6. The psychological harm to the victims was severe, even in the context of sexual offences, as was the impact on the victim's children.
7. The offences were planned; steps were taken to prevent reporting. The victim's suspicions and concerns were belittled. In C's case the respondent claimed that her medication was making her imagine things. In L's case, the offender persuaded her not to seek medical assistance.

Submissions on behalf of the Respondent

20. On behalf of the respondent, Mr Fireman submits, first, that the judge did not err in concluding that it was not necessary to impose a life sentence in this case. He observes

that the judge was the trial judge. There was then a lengthy period of time between the end of the trial and the date of sentence. The judge also had the advantage of a written note on sentencing on behalf of the prosecution. Mr Fireman submits that, in those circumstances, the judge clearly had careful regard to the question of whether a life sentence was warranted in this case. He submits that the imposition of an extended sentence was a proper and proportionate exercise of the judge's powers, under section 279 of the Sentencing Code, particularly as he imposed the maximum available term of an 8-year extension period pursuant to section 281(4)(b). Secondly, Mr Fireman submits that the judge's decision to impose concurrent sentences on the lead count of count 30 was a reasonable and proper approach. Thirdly, he submits that the total sentence of 32 years, with a custodial term of 24 years, is not an unduly lenient sentence; it is a significant and condign sentence that provides both punishment and offers some prospect of rehabilitation. Finally, Mr Fireman submits the Court should give some account to the following factors. First, the respondent is still a relatively young man. He was 33 at the date of sentence. Secondly, the respondent was a man lightly convicted before these offences for offences not thought relevant to the current offending.

Our Assessment

21. We do not accept the Solicitor General's submission that the sentencing judge was required to impose a life sentence. The judge considered that question and came to the judgment, after careful consideration and having had the advantage of being the trial judge, that it was not necessary to take that course which would be a last resort. Although the judge mentioned that there had to be exceptional criteria, when read fairly and in context it, we consider that what he had mind was what this Court has said in cases

such as Burinskas, that a life sentence should only be imposed as a matter of last resort.

22. We remind ourselves that on an application for a Reference this Court does not sit as if it were the court of first instance and cannot simply substitute its own view for that of the sentencing judge. We are unable to say that the judge was not reasonably entitled to come to the assessment which he did as to the necessity for a life sentence.
23. When it comes to the custodial term however, we have reached the conclusion that careful and detailed though the sentencing remarks were, at the end of the day, the custodial period of 24 years was simply too low given the gravity of the overall offending in this case. A custodial period of at least 20 years was required for the offences against C alone. There were then the offences against L, and the other offences against the other two victims. The principle of totality had to be respected and so it would have been wrong simply to add the notional sentences together. It was also appropriate to structure the sentences so that the highest sentence was imposed on count 30, with the other sentences made concurrent rather than consecutive. That said, the overall sentence did have to reflect the true overall gravity of the offending taken as a whole.
24. Taking into account all the circumstances of the case, we have reached the conclusion that the minimum custodial period that was required is one of 30 years' imprisonment. We will therefore substitute that sentence on count 30. The other aspects of the sentences will remain as they were.

Conclusion

25. For the reasons we have given, we grant the Solicitor General leave to refer these sentences to this Court, under section 36 of the 1988 Act. In the result, there will be an extended sentence of 38 years comprising a custodial period of 30 years and an extended

licence period of 8 years.

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

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