



IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT
CHESTER
HHJ LEEMING 07EZ1104122
CASE NO 202400088/A1
[2024] EWCA Crim 822

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 4 July 2024

Before:

LORD JUSTICE MALES

MR JUSTICE BRYAN

MRS JUSTICE THORNTON

REX

V

IAN HEWITT

MS M MASSELIS appeared on behalf of the Appellant.

APPROVED JUDGMENT

MR JUSTICE BRYAN:

1. On 3 October 2023, in the Crown Court at Chester (HHJ Leeming), the appellant (then aged 50) pleaded guilty to three counts of making indecent photographs of children (Counts 1 to 3), one count of possession of indecent photographs of children (Count 4), seven counts of distributing indecent photographs of children (Counts 5 to 11), two counts of attempted sexual communication with a child (Counts 12 and 16), two counts of intentionally encouraging or assisting in the commission of an offence (Counts 13 and 14), two counts of attempting to cause or incite a child to engage in sexual activity (Counts 15 and 18), one count of attempting to cause a child to watch a sexual act (Count 17) and three counts of attempted sexual communication with a child (Counts 19 to 21).
2. On 7 November 2023, before the same court, the appellant (then aged 50) was sentenced. A sentence of 12 months' imprisonment was imposed on Count 1 to reflect the making/possession of indecent photographs of a child with concurrent sentences on other such counts, a sentence of 3 years' imprisonment consecutive, was passed in respect of Count 5 to reflect the distribution of indecent photographs of children offending, with concurrent sentences on other such counts, and a consecutive special custodial sentence comprising of a custodial sentence of 6 years' imprisonment and 1 year's extended licence was passed on Count 13 (intentionally encouraging or assisting the commission of an offence - that is encouraging the rape of a girl under 13 years of age) with concurrent sentences on all other counts including 32 month concurrent sentences on Counts 14 and 18, a 16 month concurrent sentence on Counts 15 and a 14 month concurrent sentence on Count 17, a total sentence consisting of standard determinate sentences totalling 4 years' imprisonment followed by a special custodial sentence comprising of a custodial sentence of 6 years' imprisonment and a 1 year extended licence consecutive.
3. The appellant appeals against sentence by leave of the single judge who also granted an extension of time of 31 days.
4. It is necessary to set out the facts of the offending in some detail. Turning to the facts of the appellant's offending. On 8 April 2021, following information that the appellant had been distributing indecent images to an undercover officer, a search warrant was executed and various computer equipment was seized from the appellant. The appellant was arrested and interviewed by the police and he admitted that he had possessed and distributed indecent images of children and that his interest was in female children between the ages of 13 and 14.
5. Subsequently the equipment found at the appellant's address was forensically analysed and a number of chat logs and indecent images were found. The appellant was arrested again on 29 July 2022 and a further phone containing indecent images was seized. In interview, the appellant admitted engaging in sexual communication with people that he believed to be children and said that he could not stop doing so. The appellant also admitted to being in possession of further images which were found on 29 July 2022.
6. Counts 1 to 4 on the indictment were offences of making and possessing indecent images of children. A total of 229 moving and still images had been found (Count 4) including 62 Category A images (Count 1), 96 Category B images (Count 2) and 71 Category C

images (Count 3). The children involved had ranged in age from 4 to 17 years of age. Images included children under the age of 10 made to perform oral sex on adults in which they could be seen to be in physical distress as to what was happening.

7. Counts 5, 6 and 7 related to the appellant distributing indecent images including a 6 year-old girl performing oral sex on a man and an 8-year-old exposing their genitals with a man nearby holding his erect penis which the appellant had said he wished was him.
8. Counts 8 to 14 all related to offences with an undercover officer named “Gary” and other users which related to the distribution of indecent images. Counts 8, 13 and 14 encouraged “Gary” in the rape of a child under 13 years of age, encouraging sexual activity with a child family member. The appellant sent a number of messages encouraging “Gary” to allow his 7 and 10 year-old nieces to perform oral sex on the appellant (Count 13). There was also discussion regarding the possibility of meeting up, although no specific arrangements appear to have been made in relation to that, and the appellant has said that he would never have gone through with it.
9. Counts 15 and 16 related to sexual communication with a user named “Amina B” whom the appellant thought was a 15-year-old girl. The appellant asked “Amina B” to send him a picture of her masturbating, stated that he would like to have sexual intercourse with her and sent her a naked picture of his penis.
10. Count 17 related to the appellant sending another user, whom the appellant thought was a 13-year-old girl, a video of him rubbing his penis over his underwear and masturbating. Count 18 involved the appellant asking the same user if he could penetrate her mouth and vagina with his penis, asking if she ever masturbated, and asking about her sexual activity with other girls (Count 19).
11. Counts 20 and 21 related to other users whom the appellant thought were girls aged 13 and 14 and involved the appellant asking if they had been with men his age and describing the sexual activity the appellant would like to carry out with the girls. The appellant also discussed getting one of the girls pregnant, and there was discussion around blindfolds, gagging and rape.
12. The counts span offending between 1 May 2015 and 30 July 2022, a period of just over seven years. The appellant was aged 50 at sentence (having been born on 1 February 1973). Save for one conviction for two offences of possession of amphetamines (found when his property was searched) for which he was fined by Cheshire Magistrates’ Court on 29 August 2023, he had no previous convictions.
13. There was a pre-sentence report before the Court. The appellant accepted that his motivation for the offending was to gain sexual gratification, and he accepted responsibility and culpability for the offences. He had expressed genuine remorse for his offending which demonstrated an awareness of the impact of his offending - namely that each image he made or distributed represented real life abuse of a child. He had taken steps to address the underlying cause of his offending by deleting the online platforms upon which he committed the offences and completing online modules and work books

with the Lucy Faithful Foundation.

14. He stated that he was affected by the influence of taking amphetamines at the time, which the author of the pre-sentence report identified would have lowered his internal barriers and disinhibited his behaviour. He reported that he continued to offend until he stopped taking amphetamines in February 2022, but somewhat worryingly he also indicated that he last used this substance three weeks before his probation interview. He also admitted that he continued to engage in sexual messaging on an online forum. The author considered that until the appellant had completed offence-focused interventions, he posed a high risk of serious harm to female children under the age of 17.
15. The Judge identified the most serious offending to be that the subject matter of Count 13, intentionally encouraging the rape of a child under 13 (in the appellant's conversations with the undercover officer). For the complete offence, rape of a child under 13, this would be Category 3 offending under the Sexual Offences Guideline due to the absence of Category 1 or Category 2 factors, and either Culpability A (if there was significant planning having regard to the arrangements to meet) or absent significant planning, Culpability B due to the absence of Category A factors. The starting point for Category 3A is 10 years' custody with a range up to 18 years' custody, for Category 3B a starting point of 8 years' custody with a range of 6 to 11 years' custody. In each case for a single offence.
16. The Judge identified that there were a number of aggravating factors: the period of time over which the appellant engaged in offending; multiple victims; the fact that the offences from Count 5 were committed on bail (in relation to Counts 1 to 4); the making of indecent images across all three levels of harm; videos were sent and shared as well as still images, and amphetamines and alcohol served as disinhibitors to his behaviour. In terms of mitigation, and in addition to his guilty pleas, the appellant had no prior convictions, there is no evidence that actual children were contacted as opposed to adults, there was no actual contact offending, and the number of indecent images of children was relatively modest compared to other cases often seen in the Crown Court. He had suffered bereavements in the family, he was something of a loner. There was also evidence that he had suffered from depression and had attempted suicide. He showed remorse and some insight into his offending.
17. The Judge found the appellant to be *dangerous* but did not consider it necessary to impose an extended sentence. He was, however, required to pass a special custodial sentence on Count 13 pursuant to sections 265 and 278 in Schedule 13 of the Sentencing Act 2020, as the appellant was an offender of particular concern as neither a sentence of imprisonment for life, nor an extended sentence was appropriate.
18. The Judge recognised that there needed to be an element of consecutive sentences as concurrent sentences would not properly mark the persistence of his behaviour and overall criminality. He gave full credit of one-third for the early guilty pleas. He had express regard to totality and the need to ensure that the overall sentence was just and proportionate (Sentencing Remarks at 13C). In this regard, at the end of his sentencing remarks he said the following:

“Taking a step back, the overall sentence of 10 years’ imprisonment with a further period of one year’s licence having regard to modern standards and attitudes is just proportionate and appropriate when regard is had to your overall criminality and the principle of totality. This consideration of totality relates not just to you but to the wider public interest. What is important is the overall sentence in a case like this, rather than individual sentences and that is what I have sought to achieve.”

19. The Judge structured this by taking Count 13 as the most serious offence and passed a special custodial sentence of 6 years’ imprisonment with a 1 year extended licence. The other elements of the sentence were 12 months’ imprisonment consecutive on Count 1 to reflect the making/possession of indecent photographs of a child offending with concurrent sentences on other such counts and a sentence of 3 years’ imprisonment consecutive in respect of Count 5 to reflect the distribution of indecent photographs of children offending with concurrent sentences on other such counts. As already noted above, concurrent sentences were passed on all other counts in respect of substantial concurrent sentences in respect of further serious sexual offending (Counts 14, 15 and 18 in particular).
20. The appellant’s grounds of appeal, advanced by Ms Masselis on behalf of the appellant, and in respect of which leave was granted, are as follows. It is said that the total sentence of 10 years’ imprisonment was manifestly excessive as (1) the Judge identified a starting point that was too high given that the offence in Count 13 was not carried out and there were no arrangements to bring that about and/or failed to apply any or any sufficient reduction to the starting point in respect of Count 13 to reflect the fact that no actual offence took place or had been arranged, and/or (2) the Judge failed to have sufficient regard to the principle of totality in making the total sentence 10 years’ imprisonment and/or in ordering the sentences on Counts 5 and 13 to run consecutively.
21. The defence invited the Judge to reduce the respective start point for the various sentences including, in particular that on Count 13, to reflect the fact that no contact offence in fact took place and no arrangements were ever put in place to bring such an offence about, relying upon what was said in *R v Reed* [2021] EWCA 572, in particular at [21]-[26], in which it is made clear that the categorisation of an offence depends first on intended harm whether the child is fictional or real, followed by an adjustment to reflect the fact that no contact offence took place, with the extent of the downward adjustment depending on the facts of the particular case.
22. In relation to Count 13, it is said that the Judge either identified a starting point of 9 years, which it is submitted was significantly too high given that no completed offence took place, or he correctly identified the start point for a complete offence minus a small reduction for totality but failed to make any proper reduction for the fact the offence did not take place. It is submitted that this was a case where a notable reduction was merited given the fact that the children were fictitious and that no actual plans to commit a

contact offence were ever made. It is pointed out that this was not a case where the appellant's attempts to bring about an offence were thwarted.

23. We are grateful to Ms Masselis for the quality of her submissions, but upon careful analysis of the sentence, and its structure, we do not consider it was manifestly excessive.
24. It is clear from what the Judge said by way of clarification, at the end of his sentencing remarks, that, in relation to Count 13, the Judge had taken a sentence of 9 years at trial (i.e. after the aggravating and mitigating features) from a starting point of 8 years (which he expressly referred to), before one-third credit down to 6 years' imprisonment. It appears, therefore, that he sentenced on the basis that this was Category 3B offending under the Sexual Offences Guidelines (i.e. no significant planning), as opposed to Category 3A offending (significant planning), given the 8-year starting point under the former. This was, perhaps, generous to the appellant given the fact that there was evidence of planning (albeit not carried through, and the appellant denied he would have carried it through).
25. On any view, if Count 13 was treated as Category 3B offending then a sentence for the complete offence considerably in excess of the 8-year starting point would have been appropriate. In this regard there were a number of serious aggravating factors (not least that this serious sexual offence was committed whilst the appellant was on bail for other sexual offences). These outweighed the mitigating factors by some margin. There is also the fact that the guidelines are for a single offence. Here the Judge was rightly treating Count 13 as the lead offence to include other serious sexual offending (in particular Counts 14, 15 and 18) which required a further increase from the starting point.
26. In order to arrive at an end point of 9 years' imprisonment on Count 13 (before full credit) the judge must have made a significant, and in our view, appropriate downward adjustment for the fact the offence did not take place, and for the fact that the children were fictitious.
27. Equally no complaint can be made of the consecutive sentences on Count 1 and Count 5 which were each to take into account offending on other associated counts of serious sexual offending.
28. Ultimately, and as is expressly recognised in the grounds of appeal, the key question on the appeal is whether the overall sentence of 10 years was manifestly excessive having regard to totality, or whether it was just and proportionate to such offending.
29. This was sustained serious sexual offending not only involving the making, possessing and distributing of photographs of very young children (many in obvious distress), but very serious sexual communications with multiple individuals (who appeared to be children) and encouragement to commit the most serious sexual offences, including rape of children under 13 years of age. We are in no doubt that the sentence passed was just and proportionate to the totality of the offending and was not manifestly excessive.
30. The appeal against sentence is accordingly dismissed.