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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



Case No: 2023/02095/A2

On appeal from the Crown Court at Luton  
(Her Honour Judge Tayton KC)

Neutral Citation Number: [2024] EWCA Crim 847

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Wednesday 17<sup>th</sup> July 2024

**B e f o r e:**

**LADY JUSTICE ANDREWS DBE**

**MRS JUSTICE CUTTS DBE**

**HER HONOUR JUDGE MUNRO KC**

**(Sitting as a Judge of the Court of Appeal Criminal Division)**

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**R E X**

**- v -**

**MARTIN BAYES**

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Non-Counsel Application

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**J U D G M E N T**

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Wednesday 17<sup>th</sup> July 2024

**LADY JUSTICE ANDREWS:** I shall ask Mrs Justice Cutts to give the judgment of the court.

**MRS JUSTICE CUTTS:**

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. No matter relating to any victim of the sexual offending concerned shall during their lifetime be included in any publication if it is likely to lead members of the public to identify any of them as the victim of an offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. Particular care must be taken in this case to avoid jigsaw identification of any victim. We have anonymised the victims in this judgment.

2. This is a renewed application for leave to appeal against sentence, following refusal by the single judge.

3. On 22 May 2023, following his trial in the Crown Court at Luton, the applicant was convicted of 16 counts of sexual offending concerning six separate victims. He was acquitted of other counts alleging sexual offending upon the same victims.

4. On 30 May 2023 he was sentenced to a total extended sentence of 27 years, comprising a custodial term of 22 years and an extended licence period of five years. All sentences were ordered to run concurrently and were made up as follows. In relation to counts 1 to 4, each of which alleged indecent assault of "C1", who was aged 9 years at the time of the offending, four years' imprisonment on count 1; one year's imprisonment for each of counts 2 and 4; and 12 years' imprisonment on count 3. The sentence on count 3 is unlawful, as the maximum sentence for this offence is one of ten years' imprisonment. That sentence was subsequently

varied on 31 March 2023 to ten years' imprisonment, pursuant to section 385 of the Sentencing Act 2020, but this was of no effect as the variation was not announced in open court. We return to this matter below.

5. Returning to the indictment, the applicant was sentenced in relation to "C2" (counts 6, 7, 8 and 9, which occurred when she was 11 years of age) as follows: on count 6, indecent assault, one year's imprisonment; on count 7, indecent assault, 12 years' imprisonment (which is unlawful for the same reasons as the sentence imposed on count 3); on count 8, rape, an extended sentence of 27 years, comprising a custodial term of 22 years and an extended licence period of five years; and on count 9, perverting the course of justice, seven years' imprisonment.

6. In relation to counts 16 and 17 concerning "C3" (who was aged 14 to 15 years at the time), the applicant was sentenced on count 16, indecent assault, to two years' imprisonment; and on count 17, sexual assault, to three years' imprisonment.

7. In relation to counts 20 and 21 (both sexual assaults of "C4", who was aged 14 at the time), on count 20, the applicant was sentenced to one year's imprisonment; and on count 21, to 18 months' imprisonment.

8. In relation to count 27 (the sexual assault of "C5", a child under the age of 13 years, namely nine years), the applicant was sentenced to 18 months' imprisonment.

9. In relation to counts 29, 30 and 31 (all sexual assaults of "C6", when she was aged between 14 and 16 years), on counts 29 and 30, the applicant was sentenced to one year's imprisonment; and on count 31, to 18 months' imprisonment.

10. Ancillary orders were made. These included a victim surcharge order in the sum of £170. This was unlawful as a surcharge order only applies where all the offending before the court was committed on or after 1 October 2012: see Article 7(2) of the Criminal Justice Act 2003 (Surcharge) Order 2012 (SI 2012/1696). Counts 1 and 2 predated 1 October 2012. We will come to this below.

11. We do not propose to rehearse the facts in any detail in this judgment. They are set out in the Criminal Appeal Office Summary. Suffice it to say that over a 20 year period the applicant sexually assaulted six vulnerable children who were connected to him through his family.

12. The abuse of C1 involved the licking of her vagina, numerous occasions of the applicant inserting his tongue when kissing her, digital penetration of her vagina, and the touching of it over clothing.

13. The abuse of C2 involved the touching of her bottom, digital penetration of her vagina, rape in the presence of another child, and perverting the course of justice by telling her not to tell anyone what had happened, or he would go to prison and she would be taken from her family. The applicant told her an account to give to the police if questioned. She did as she was told; she only made her complaints many years later as an adult.

14. The abuse of C3 involved the grabbing of the victim's penis through his clothing, under the pretence of tickle fights.

15. The abuse of C4 involved the touching of her bottom over her clothes and on occasion putting his hand down her trousers.

16. The abuse of C5 involved the touching of her bottom over her clothing. The applicant told her not to tell anyone.

17. The abuse of C6 involved the touching of her bottom on more than one occasion, smacking and squeezing it as she went upstairs, and the applicant placing his finger into the crack of her bottom. The applicant touched her inside upper thigh when she was in the passenger seat of his car. On one occasion he forced her onto the bed and tried to touch her breasts under the guise of tickling her.

18. In impact statements all of the victims spoke of the effect of the applicant's offending upon them. They variously spoke of struggling in adult life with trusting people, which has impacted on their ability to form relationships. Some have long lasting depression, and some have self-harmed. As the judge observed in her sentencing remarks, the full effects of the offences the applicant committed have been far-reaching and significant.

19. The applicant was aged 52 years at the time of sentence. He had been sentenced to four months' imprisonment suspended for 12 months and made subject to a Sexual Harm Prevention Order, amongst other orders, in 2016 for an offence of sexual activity with a female child under 16, contrary to section 9 of the Sexual Offences Act 2003. He was sentenced to 32 months' imprisonment in 2019 for an offence of fraud by abuse of position, which occurred during the operational period of the suspended sentence order. The offence in count 27 was the only offence to take place after the sentence in 2016, when the applicant was subject to the Sexual Harm Prevention Order.

20. The applicant maintained his innocence to the author of a pre-sentence report. In the view of the author, he was dangerous within the meaning of the Criminal Justice Act 2003.

21. In full and careful sentencing remarks, the judge set out the factual basis upon which she sentenced on each count of which the applicant had been convicted. In reaching her sentences she properly applied the current sentencing regime, with measured reference to current sentencing guidelines for equivalent offending and subject to any lower maximum that applied at the relevant time. No issue was rightly taken with her approach or categorisation of the individual offences at the sentencing hearing. The judge observed that the applicant had demonstrated a pattern of serious offending over many years, characterised by the exploitation of vulnerable individuals for his sexual gratification. He accepted no responsibility for the offending. The judge found that he fell within the dangerousness criteria and that an extended sentence was necessary. In this regard she noted that the applicant had previously been subject to notification requirements and a Sexual Harm Prevention Order, but that these had not prevented him from sexually assaulting C5.

22. The judge approached the sentence by treating count 8 (rape) as the lead offence and imposing a sentence on that count which reflected the applicant's overall criminality, taking into account the principle of totality. All other sentences were ordered to run concurrently. She identified 15 years' imprisonment as the determinate appropriate sentence were she sentencing for the rape alone.

23. In grounds settled by his trial counsel, the applicant sought leave to appeal against his sentence on the basis that the judge erred in the placement of the rape offence within the relevant guideline. No criticism was made of the categorisation of 2A within the guideline, but it was said that the starting point should have been towards the lower end of the range, rather than at the identified starting point for the category. This was because, although the applicant later became the stepfather of C2, he was not so at the time. It was accepted that perverting the course of justice was an aggravating factor which warranted an increase to the starting point. However, the applicant submitted that the other offences were not the most

serious offences of their type and did not collectively warrant the uplift to the rape sentence applied by the judge.

24. Finally, it was submitted that the judge failed to take into account the lessened harm that must have followed the acquittals by the jury on the majority of the most serious allegations.

25. The applicant has renewed his application for leave to appeal against his sentence as a litigant in person. The application for renewal is silent as to the reasons. We have, therefore, considered the case on the grounds presented by his counsel and upon which leave was refused.

26. When refusing leave the single judge said:

"The judge was plainly right to impose a sentence for the rape offence which reflected the totality of [the applicant's] offending. It is not arguable that the sentence of 22 years, with an extended five year period, was manifestly excessive or wrong in principle.

The judge took the view that the appropriate sentence for the rape alone was 15 years, and she then increased the custodial element of the sentence by a further seven years to take account of the seven indecent assaults and four sexual assaults of which [the applicant was] also convicted, plus the offence of perverting the course of justice (although the latter was taken into account when setting a period of 15 years for the rape, as the offence was concerned with the pressure [the applicant] put on the victim to cover up the rape). This was a very serious pattern of offending.

[The applicant] contend[s] that the judge was wrong to place the rape offence at the top end of the relevant range in the sentencing guidelines. The arguments in [the applicant's] grounds of appeal reflect arguments that were made on [his] behalf at the sentencing hearing, and which were expressly taken into account by the judge in her sentencing remarks ... It is not arguable that the judge was not entitled to impose a 15 year sentence for the rape on its own. Even though [the applicant was] not then the victim's stepfather, there was a serious breach of trust as [he was] staying in the property and

[was] the only adult present in the property [at the time]. The victim was 11 years old and had been left in [his] care. Furthermore, as the judge said, the rape offence was aggravated by the fact that [the applicant] then persuaded [the] victim to lie to the authorities. ... there is no basis for suspecting that there was double counting in relation to the perverting the course of justice offence. The uplift of seven years for the other offending was not arguably excessive.

[The applicant] also contend[s] that the judge did not take account of the fact that [he was] acquitted of a number of serious offences, and that the victim impact statements reflected offending for which [he was] found not guilty. It is clear that the judge was well aware that [he was] acquitted of some offences and that she only sentenced [him] for the offences that [he was] convicted [of]. As for the victim impact statements, the judge said that 'the level of harm caused to [the victim of rape] by the offences of which you were convicted was on any view very serious and attempting to differentiate precisely what may have affected the level of harm she suffered is an almost impossible task'. This was plainly right. It is clear from the victim impact statements that the effect of the offences for which [the applicant was] convicted on the victims was very grave."

27. We have considered the matter afresh and agree entirely with the single judge that, for the reasons he gave, the sentences imposed on the applicant were far from manifestly excessive. Leave to appeal against sentence on the grounds presented by counsel for the applicant and renewed before us is therefore refused.

28. There were, however, some technical errors made by the judge in sentencing the applicant. We grant limited leave to appeal against sentence for the correction of those errors. First, as the judge herself recognised, the sentences of 12 years' imposed on counts 3 and 7 were unlawful, as the maximum sentence for indecent assault is ten years' imprisonment. The judge sought to correct the error but failed to do so in open court.

29. As this court said in *R v Leitch and Others* [2024] EWCA Crim 563, this meant that the variation was of no effect. We quash the sentences of 12 years' imprisonment on each of



counts 3 and 7 and substitute sentences of ten years' imprisonment on each count in their place, to run concurrently with each other and with all other sentences on the indictment.

30. This has no practical effect on the overall sentence, which will remain an extended sentence of 27 years, comprising a custodial term of 22 years and an extended licence period of five years.

31. We further quash the victim surcharge order.

32. To that limited extent, this appeal against sentence is allowed.

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

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