Case No. 202302714/A4

Neutral Citation Number [2025] EWCA Crim 115

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM THE CROWN COURT AT NOTTINGHAM
HHJ Rafferty KC
31CF0161423

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 30 January 2025

Before:
LADY JUSTICE ANDREWS

MR JUSTICE SWIFT

MR JUSTICE PEPPERALL

REX
V
SHANE NASH

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MR S ECKERSLEY appeared on behalf of the Appellant.
MS D PRITCHARD appeared on behalf of the Crown.

J U D G M E N T

LADY JUSTICE ANDREWS:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences and the victim is entitled to anonymity. Nothing is to be included in any publication if it is likely to lead members of the public to identify her as the victim of these offences. This prohibition continues throughout her lifetime unless it is waived or lifted in accordance with section 3 of the Act.

2. On 31 March 2023, in the Crown Court at Nottingham, the appellant pleaded guilty to an offence of attempted rape and an offence of rape, committed on the same occasion against the same victim. The matter was adjourned for a pre-sentence report and a psychiatric report specifically to address the issue of *dangerousness.*

3. On 12 July 2023 he was found to be a *dangerous* offender and sentenced by HHJ Rafferty KC to imprisonment for life. The judge placed the offences in category 1A of the Definitive Sentencing Guidelines. He passed concurrent sentences on both counts that reflected the totality of the appellant's offending. After increasing from the starting point of 15 years to 22 years for the many aggravating features which he identified, he reduced that figure to 20 years to take account of the appellant's mental health issues. He then afforded the appropriate 25 per cent credit for plea, producing a notional determinate sentence of 15 years.

4. The judge stated (correctly) that the appellant would not be eligible for release until after he had served 10 years, but he did not expressly refer to this as the minimum term. In consequence, his sentencing remarks caused some confusion within the prison estate and the appellant was informed that he would not be eligible for release until he had served 15 years. The case was therefore re-listed for a "slip rule" hearing on 24 July 2023 under section 385 of the Sentencing Act 2020, in order that the judge could clarify the position. On that occasion, the judge made it clear beyond all doubt that the sentence was one of life imprisonment with a minimum term of 10 years less 173 days spent on remand. The appellant appeals against that sentence by leave of the single judge.

5. The key issue of principle is whether the judge erred in passing a discretionary life sentence instead of an extended sentence, although Mr Eckersley, on behalf of the appellant, also complains about the length of the notional determinate sentence before credit for plea and the fact that the judge took into consideration the facts of the previous offence of robbery to which the appellant had pleaded guilty.

6. For reasons that we shall explain, we are in agreement with the single judge that 22 years before credit is given for the mental health difficulties and the plea of guilty cannot possibly be described as "manifestly excessive" for offending of this seriousness, and the sentencing judge was fully entitled to take into account the facts of the earlier offence.

7. It is unnecessary to describe the index offences in detail. The victim was a 14-year-old schoolgirl, who had accompanied a friend to a bus stop shortly before 8pm on a

dark January evening. She saw her friend onto a bus and began to walk home, oblivious to the fact that the appellant was following her, because she was listening to music through her earbuds. The appellant approached her from behind and, using tape he had brought with him for this purpose, taped her mouth and tied her wrists behind her. As he was doing so, he said, "I bet you wish you didn't leave your friend now." When she began to scream he threatened to stab her if she did not keep quiet. Having dragged her down an alleyway to a secluded area of woodland, he then forcefully attempted to rape her vaginally. When that proved unsuccessful, and despite her protests that he was hurting her, he turned her over and raped her anally, commenting that it was "easier," and causing her considerable pain. She suffered injuries to her genitals and a laceration to her anus and her leg. This terrifying incident, which was that child's first sexual experience, lasted for around 17 minutes. In the course of committing the rape, he asked her how old she was. When she said "14", he commented that she looked older. When he had finished, he commented callously that she would "get over it".

8. After the appellant let her go, the victim ran home in a state of great distress. She reported to her mother that she had been raped by a man who had followed her from the bus stop, and the police were alerted. DNA evidence, including DNA from the victim found on tape at his home, linked the appellant to the attack. He was also visible on CCTV footage which shows him following the victim and dragging her off the pathway. When arrested, he initially denied the offences in interview, claiming that he had been begging outside a store in the area at the time. He denied that he was the man seen on the CCTV footage. He had no explanation for the DNA evidence.

9. The appellant was aged 39 at the time of sentence. He had 21 convictions for 40 offences spanning from November 1999 to March 2022, but none of these were for sexual offences. However, in 2015, he received a sentence of 4 years' imprisonment for an offence of robbery committed in breach of a suspended sentence order. On that occasion, he had followed his victim (a 22-year-old student) into a cemetery, attacked her from behind, put his hand over her mouth, forced her onto the ground, climbed onto her and took his trousers and pants down, exposing a semi-erect penis. He then asked the victim for money, and left when she said that she did not have any. He pleaded guilty to that offence on a full-facts basis which, as the single judge said, meant that he accepted the prosecution's case. HH Judge Rafferty was therefore entitled to take those facts into account when sentencing for the index offences. He was entitled to draw the obvious inference that the appellant embarked on that course of conduct with the intention of committing a rape or sexual assault on the victim, even though in the event he desisted. He observed that it would be "absurd" if he could not take that behaviour into consideration, and we agree.

10. There was no dispute that the present offences were category 1A offences, with a starting point for one offence of 15 years and a range of 13 to 19. Here there were two offences, albeit that they were part of the same sustained incident, and the attempt was only just short of the full offence. There were many aggravating factors, including the targeting of a vulnerable schoolgirl, the fact that this was a stranger rape, the timing and location, and the appellant's previous convictions, especially the robbery which had strikingly similar features. Quite apart from her physical injuries, the offences had a profound and long-lasting psychological impact on the victim and on her immediate family, particularly

her mother. The judge did not give much credence to the appellant's profession of sympathy "as a parent".

11. There was ample material upon which to find that the appellant satisfied the statutory criteria for *dangerousness* based on the facts of the offences alone, and it is not contended otherwise.

12. The sentencing judge had the benefit of a pre-sentence report and a psychiatric report from Dr Ramneesh Puri, but the latter was prepared without access to any of the appellant's medical notes. The single judge ordered an updated psychiatric report and disclosure of the medical notes. Dr Puri has helpfully produced a further report which we have carefully considered together with his original report. Unfortunately the appellant's medical notes were not made available to the doctor because the appellant said he could not remember which surgery he was registered with. Dr Puri confirms his original diagnosis of a severe personality disorder, more specifically a dissociative personality with borderline pattern which has been exhibited since childhood. Although the appellant reported hearing voices, Dr Puri was satisfied that these were not indicative of schizophrenia but were a facet of his personality disorder.

13. The appellant reported to Dr Puri that he was under the care of the Mental Health Team in prison and that he was compliant in taking his medication, which comprises an antipsychotic and an antidepressant. The appellant continues to profess to have no memory of the offences, as he did at the time of sentencing. The account he gave to Dr Puri of what had been happening in the run-up to the offences was very different from the account he gave to the police, leading the judge to label him an "unreliable historian". The appellant told Dr Puri in interview, prior to the doctor's first report, that on the day in question his friend had spiked his drink with crystal meth as a prank. He also said that he had split up with his partner two days earlier, accusing her of infidelity, that she had returned to apologise to him, and that this had triggered a mental health episode (which the doctor interpreted as meaning that he had lost his temper). The doctor indicated that the latter facts could have constituted a "chronic stressor," aggravating the poor thinking and judgment associated with the appellant's personality disorder.

14. The sentencing judge was entitled to view what the appellant told the doctor as self-serving accounts unsupported by any other evidence and to characterise them as unreliable, because they contradicted what the appellant told the police in interview. The judge's scepticism is understandable, even though in his more recent report Dr Puri considers that there could be a medical explanation for the alleged amnesia, irrespective of whether the appellant's drink was spiked.

15. Dr Puri accepts that the appellant has limited insight. He remains of the view that on balance the appellant's mental health condition meant that he was unable to exercise appropriate judgment, make rational choices or fully appreciate the consequences of his actions at the time of these offences. That may be so but, as the judge remarked, the extent to which his disorder caused him to act in the way which he did is opaque. It remains so despite Dr Puri's further report. The element of pre-planning demonstrated by the fact that he equipped himself with tape and reconnoitred the area before picking his victim makes it

clear that this was not impulsive offending triggered by some external cause.

16. In his earlier report Dr Puri had opined that the risk posed to the public could be reduced going forward by "appropriate evidence-based interventions targeted at [the appellant's] severe personal disorder and substance abuse". However, in his recent report, the doctor has clarified that substance abuse was simply an exacerbating factor in his earlier offending and that, in his view, the personality disorder is the root cause of the appellant's behaviour. We accept the doctor's opinion. It is supported by the fact that the appellant had taken positive steps to address his substance abuse whilst serving earlier custodial sentences but despite this, his offending had escalated in seriousness.

17. The doctor recommended a comprehensive psychological assessment by a specialist. He stated that the appellant requires long-term, trauma-focused psychological interventions. It would appear that the appellant has not received any such assessment or treatment in prison and there is no information as to whether it would even be available whilst he is incarcerated. The doctor expressed no view as to when, if ever, he would cease to pose a serious danger to the public. As the judge said, there was no evidence that, in the end, he would leave custody any better placed than he was when he went in.

18. With the advantage of Dr Puri's further report, we are able to say with confidence that the sentencing judge was plainly right to form the view that an extended sentence would not suffice to protect the public from the risk posed by the appellant. The interventions that he requires to address his mental health issues cannot be supplied by Probation during an extended licence period. It is impossible to say whether he would ever receive the treatment that Dr Puri has recommended in or even out of prison and, even if he were to do so, there is no indication as to how long the treatment would take to have any effect. All that Dr Puri says is that long-term treatment is needed. The period for which he could remain a serious danger to the public therefore cannot be reliably estimated. In those circumstances, a discretionary life sentence was fully justified.

19. There are one or two minor additional matters which need to be addressed. This Court has recently reiterated that it is desirable, when imposing a discretionary life sentence, that the judge when fixing the minimum sentence should go on to carry out the mathematical calculation and specify the resulting minimum term in open court (see *R v Sesay* [2024] EWCA Crim 483). In this case, that would have been 9 years and 192 days. The relevant statutory provision relating to this is section 323 of the Sentencing Code and not section 240ZA as stated by the judge, which does not apply to life sentences. We direct that the court record be amended to substitute a reference to section 323, and to spell out that the minimum term is one of 9 years and 192 days rather than 10 years less 173 days.

20. When the judge originally pronounced sentence he stated that the sentence of life imprisonment was imposed pursuant to section 274 of the Sentencing Code - that was also an error, since that provision only applies to offenders aged 18 to 20 at the time of conviction and sentence. As the appellant was then 39 (and indeed was 39 at all material times) the correct provision should have been section 285 of the Sentencing Act 2020. Following the slip rule hearing, the court extract contains a further error, as it now records that the sentence was passed under both of those sections. We direct that the record be

amended to reflect that it was passed under 285 and not under section 274. Subject to those miscellaneous amendments to the record, this appeal is dismissed.

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

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