WARNING: The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. Under those provisions, where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall be included in any publication if it is likely to lead members of the public to identify them as the victim of the offence in question. This prohibition remains in force throughout the victim's lifetime, unless waived or lifted in accordance with section 3 of the Act.

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Neutral Citation Number: [2025] EWCA Crim 37

Case No: 2024/00090/A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT NEWCASTLE UPON TYNE
MR RECORDER CAMPBELL KC
T0111576

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday 15 January 2025

Before :

LADY JUSTICE ANDREWS
MRS JUSTICE CUTTS
and
MRS JUSTICE HEATHER WILLIAMS

- -

R EX

- v -

STEVEN SILLITTO

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Mr N Beechey appeared on behalf of the Applicant

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JUDGMENT

LADY JUSTICE ANDREWS:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. Under those provisions, where an allegation has been made that a sexual offence has been committed against a person, no matter relating to that person shall be included in any publication if it is likely to lead members of the public to identify them as the victim of the offence in question. This prohibition remains in force throughout the victim's lifetime, unless waived or lifted in accordance with section 3 of the Act.

2. The applicant is now aged 32 and is still in prison. On 16 December 2011, in the Crown Court at Newcastle Upon Tyne, he pleaded guilty to two offences of trespass with intent to commit a sexual offence, contrary to section 63(1) of the Sexual Offences Act 2003, and to one offence of having a bladed or pointed article, contrary to section 139(1) of the Criminal Justice Act 1988. He was 19 years old at the time of the offending and at the time of sentence.

3. On 2 March 2012 he was sentenced by Mr Recorder Campbell QC to an indefinite sentence of detention in a young offender institution for the protection of the public, with a specified minimum sentence of three years (less time served) before he would be eligible for consideration for release on licence by the Parole Board. No separate penalty was imposed in respect of the bladed article offence.

4. It is recorded on the record sheet that no separate penalty was imposed on count 2 (one of the section 63 offences), though in the form NG identical concurrent sentences are said to have been passed on counts 1 and 2, which is more in line with what one would expect. Although it does not matter for the purposes of the prospective appeal, it would appear that the record contains an error. The sentencing remarks do not support the view that the Recorder only passed sentence on count 1, although the transcript is incomplete and unhappily ends at the very point where the Recorder said: "No separate penalty on …" This statement was made in the immediate context of a discussion about whether an order should be made for the forfeiture and destruction of the weapon, which was a pair of scissors. Moreover, from what he said about the section 63 offending, the Recorder appears to have treated count 2 as a more serious offence because of the element of premeditation. That being so, it would be somewhat surprising if he chose to impose no separate penalty for it, and in principle that approach would have been wrong. It is generally inappropriate to impose no separate penalty, save in circumstances where the offence in question is relatively minor and can be viewed as part and parcel of the overall offending behaviour, as the bladed or pointed article offence was here. It is more apposite to reflect totality by passing a concurrent sentence which is either the same as, or shorter than, the sentence on the most serious offence, which will reflect the overall criminality by treating the remaining offences as aggravating factors.

5. Unfortunately, it is impossible for us to investigate the matter further because the case is not recorded on the Digital Case System and a great deal of time has passed since the sentence was pronounced. We will therefore proceed on the assumption that, as the record indicates, the indefinite sentence was passed only on count 1.

6. The applicant was advised by his legal representatives at trial that there was no prospect of appealing against that sentence. However, having received positive advice from Mr Beechey (different counsel), who appears before us this morning, he now seeks an extension of time of 4,298 days for seeking leave to appeal against sentence, and a representation order.

7. We have read the explanation for the delay. Part of it was due to the applicant erroneously approaching the Criminal Cases Review Commission in the first instance. His applications were referred to the full court by the single judge. Given that this inevitably meant that counsel has had to appear at an oral hearing, the usual practice would be to grant counsel a representation order for that hearing. We will make such an order. For reasons which I will go on to explain, that order will also extend to the costs of instructing solicitors and counsel for the further work that will have to be carried out before this matter returns before the court.

The Background

8. The complainant in this matter, whom we shall call "C," lived with her husband and two small children in a building which the couple ran as a guesthouse. The family's bedrooms were on the third floor at the very top of the house.

9. Late at night, on 24 August 2011, the applicant gained access to a downstairs sitting room via a patio door. He was unable to access the rest of the house on that occasion because an internal door was locked. He managed to access a computer used for the purposes of the family business. Over a period of just over an hour he used the computer to access a large number of pornographic sites, searching particularly for films showing a man having sexual intercourse with a sleeping woman. On his own account, he was under the influence of drink and drugs. As the Recorder noted, he was able to ascertain who lived in the house from the items that were in the sitting room. On that first occasion, having apparently masturbated, the applicant left the premises empty-handed, despite initially telling the police that he had gone there to steal.

10. He returned to the same property on the very next night. He forced his way in through an insecure window. This time he was able to gain access beyond the downstairs room. First, he accessed the computer, looking for similar material. Then, after viewing it for a much shorter period than he had done on the previous night, he made his way up to the top floor. There were no guests staying in the premises at the time.

11. Shortly after midnight, C heard the bedroom door rattle and got up, assuming that the noise had been made by one of the children. She opened the door and was confronted by the applicant who was standing on the landing. He had a hood up and was wearing a pair of rubber gloves. He was also carrying a pair of scissors, although these were held by his side. He appeared to be calm, and unperturbed by the unexpected encounter with an intended victim who was very much awake. C shouted at the applicant to get out of the house. This woke up her husband who jumped out of bed and confronted the applicant. When C's husband told her to ring the police, the applicant responded: "Big mistake, bad things are going to happen". There was a dispute as to what he meant by that. C's husband managed to get the applicant downstairs and let him out of the house. He then rang the police.

12. The couple, who up to that point had believed that they had disturbed a burglar, then discovered that their computer, which was next to the telephone, was showing a pornographic site. Understandably, the realisation that C was the likely target of a sexual assault by the person they had confronted caused a great deal of distress to her and her husband, such that for while the entire family took to sleeping in the same bedroom. The couple also discontinued their business.

13. The applicant was arrested the very next day. In his initial police interview he admitted breaking into the property with the intent to steal, but denied viewing pornography or going into the house. In later interviews he admitted entering the property on consecutive nights, viewing pornography on the computer and going upstairs to the bedroom, wearing latex

gloves and carrying the scissors which he said he had used to break in. However, even after pleading guilty he consistently denied that he had any sexual motivation for going upstairs.

14. The applicant had one previous conviction for common assault and criminal damage in 2009, for which he had received a referral order. He had been under investigation by the police for at least one previous sexual offence, but no charges were brought against him.

15. The maximum sentence for an offence under section 63 of the Sexual Offences Act 2003 is imprisonment for a term not exceeding ten years. This was a serious offence for the purposes of sections 224 to 229 of the Criminal Justice Act 2003, and therefore the provisions of the Act relating to dangerous offenders were potentially engaged.

16. The applicant was sentenced after the amendments to the Criminal Justice Act 2003 contained in the Criminal Justice and Immigration Act 2008 were brought into force on 14 July 2008, but before the amendments contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force on 3 December 2012.

17. The Recorder did not specify under which provisions of the 2003 Act he was sentencing, but the record incorrectly states that an indeterminate sentence of detention for public protection was imposed pursuant to section 226 of the 2003 Act. That provision only applied to offenders who were under 18 at the date of conviction. The applicant was aged 19 at all material times. The relevant section of the Act was therefore section 225.

18. The version of section 225(1) of the Criminal Justice Act 2003 in force at the time of sentence provided that where a person aged 18 or over is convicted of a serious offence and meets the statutory criteria of dangerousness – that is, the court is of the opinion that there is a significant risk to members of the public of serious harm being occasioned by the commission by him of further specified offences – then if the offender would otherwise be liable to imprisonment for life, but a life sentence is not justified, the court **may** impose a sentence of detention in a young offender institution for the protection of the public if the offender had previously been convicted of a Schedule 15A offence, or the notional minimum term is at least two years' custody.

19. As an alternative to such an indefinite sentence, section 227 of the 2003 Act gave the sentencer a discretion to impose an extended sentence for certain violent or sexual offences, including offences committed under section 63, in circumstances where a person aged 18 or over was convicted of a specified offence, but the court was not required by section 225(2) to impose a sentence of imprisonment for life. The conditions were that at the time the offence was committed, the offender had either been convicted of an offence specified in Schedule 15A, or the term that the court would specify as the appropriate custodial term would be one of at least four years' custody. The latter condition was met in the present case. Were he to find the applicant dangerous, and a determinate sentence insufficient to meet the risks he posed to the public, the Recorder therefore had available to him the option of an extended sentence for public protection instead of an indefinite sentence for public protection.

20. In his sentencing remarks, the Recorder indicated that because there were two section 63 offences committed on consecutive nights (which indicated a clear determination to carry through on the second night that which the applicant had formed the intention to carry out on the first) the appropriate custodial term would have been six years. He made it clear that this was the notional determinate sentence after taking into account the specific mitigating features he identified, including the applicant's youth and modest offending record, and credit for his guilty plea.

21. That assessment was in line with the then applicable sentencing guideline to which the Recorder referred and to which he obviously paid regard. The definitive sentencing guideline issued by the Sentencing Council only applies to offenders sentenced on or after 1 April 2014, and the range of sentences under that guideline would have been higher.

22. The Recorder had the benefit of both a pre-sentence report and a psychiatric report. The authors of both reports supported a finding of dangerousness and, realistically, Mr Beechey does not quarrel with that assessment. His primary contention is that the Recorder erred in imposing an indefinite sentence, rather than the extended sentence which was recommended by the author of the pre-sentence report. An extended sentence would have extended the normal period of licence to which the applicant would be subject after he was released automatically upon having served what was then half the custodial term. By contrast, once the specified minimum term had been served, an indefinite sentence would leave it to the Parole Board to decide when the risks posed by the applicant were sufficiently reduced to enable him to be released on licence, and, once released, he would remain on licence for the rest of his life.

23. Mr Beechey submitted that the Recorder failed properly to take into account the applicant's relatively young age at the time of the offending and to have proper regard to the prospect that he would mature and change while subject to the custodial term and an appropriately extended licence period, thereby reducing the risk to the public which a finding of dangerousness indicated that he would continue to pose. The applicant was very lightly convicted. He had no antecedent history of violent or sexual offending, and he had never undergone any previous custodial sentence.

24. Whilst he accepted that the applicant, despite pleading guilty, had continued to deny the sexual element of his offending, and that this could affect his suitability for treatment on a sex offender programme and thus the ability to address and reduce the risk he posed, Mr Beechey pointed out that that denial could itself have been due to his age and immaturity, and he relied on the fact that the author of the pre-sentence report, who was aware of all these matters, had still recommended an extended sentence. Mr Beechey also pointed out that the Sexual Offences Prevention Order and other ancillary orders were a potential means of reducing the risk posed by the applicant, and we understand why he says that.

25. Mr Beechey further submitted that the Recorder failed to give any or any adequate explanation as to why he had discounted an extended sentence as an appropriate disposal. All that the Recorder said was this:

> "I have had to consider whether passing an extended sentence of detention upon you is sufficient, but I have decided that it is not. This was a grave offence, repeated. These offences come rarely before these courts. You were determined to carry out the offence on the second night by climbing all the way up to the top of that house looking for your victim. Happily, you did not succeed."

The Recorder did not explain why he considered an extended licence period would not suffice to meet the risks posed to the public which he had identified.

26. This was, on any view, a disturbing case, but it was also an extremely difficult sentencing exercise because of the applicant's age and background. The offences were committed in C's own home late at night. A sharp weapon was taken upstairs which the Recorder was satisfied

would have been used by the applicant, if required, although he was hoping to find his target asleep.

27. When a substantive sexual offence has been committed, the main consideration for the court will be the offender's conduct as a whole, including their intention. Despite the content of the pornography which was viewed by the applicant, the Recorder treated this as a case of planned sexual assault which did not necessarily involve penetration. The applicant was aged only 19 when he committed the offences. He had a troubled personal history. An indefinite custodial sentence for someone of that age should be avoided if at all possible.

28. The real difficulty faced by the Recorder when considering whether an extended sentence would suffice to meet the risk that he posed was that the applicant gave no explanation for what caused him to act as he did, and in particular what it was that drove him to go back to the house on the following night. This meant that the probation officer and the psychiatrist had very little information to enable them to ascribe his offending to a lack of maturity or to calculate the risk that he might pose in the future. That in turn meant that the Recorder had little or no information about the steps that the Probation Service could take to address the risks posed to the public by the applicant following his release. One can therefore understand why a sentencer in that position might have taken the view that, despite the applicant's young age and lack of relevant past offending, it would be preferable for the Parole Board to consider and assess those risks at the appropriate time, particularly if the minimum period of sentence to be served was relatively short, as it was in the present case.

29. At the time that this sentence was passed, the court could not have predicted the practical problems which subsequently beset prisoners subject to indefinite sentences, and inhibited or even precluded them from demonstrating to the satisfaction of the Parole Board that they were safe to be released on licence, leading to their spending far more time in custody than the minimum sentence pronounced by the court.

30. It is regrettable that these problems have arisen, but they cannot justify a finding that the indefinite sentence was wrong in principle or manifestly excessive at the time when it was passed. The question for this court is not whether or not we would have passed an extended sentence; it is whether an extended sentence was wrong in principle or manifestly excessive for this offending, given the information that the Recorder had before him at the time.

31. As we have said, this was a difficult sentencing exercise for the Recorder, but it does seem to us that there is sufficient merit in the submissions that have been advanced by Mr Beechey to warrant the appeal being heard in full and for us to grant the necessary extension of time and to grant leave to appeal. However, it has proved impossible for this court to go on and deal with the substance of the appeal because there is a great deal of further information which is currently lacking. Despite Mr Beechey's great assistance to the court this morning in providing it with as much information as he could, it is impossible for the court to deal with this sentencing appeal fairly without further information.

32. We were told by Mr Beechey that the applicant was released on licence in 2022 but has been recalled to prison when a complaint was made that he had committed a sexual assault (in somewhat different circumstances) in the place where both he and the complainant in that matter were then residing. That matter is still very much under investigation by the police, and no charges have been brought against him in relation to it. It is understood that he gave a full comment interview in which he denied any offending and contended that any sexual interaction with the complainant was consensual.

33. Obviously, this is a troubling development. There is the further complication that if the

appeal were to succeed, given the length of time that he has already served, even if an extended sentence were to be substituted for the indefinite sentence with a full extended licence period imposed, the applicant would have served his sentence. This means he would be unable to receive any assistance or interventions from the Probation Service upon his release. On the other hand, because of the further allegations that are hanging over him, further Parole Board hearings have been put in abeyance whilst the investigation into the alleged assault continues, and therefore he is in a position of limbo. That is most undesirable, but there are limits to what the court can do about it. The most that we can do is to seek the further information that is necessary for the Full Court properly to consider his appeal.

34. We have discussed with Mr Beechey what would be the appropriate directions to give. We certainly consider that the Parole Board Report and the complete material that was placed before the Parole Board on the last occasion should be made available to the court. We would also direct an up to date Pre-Appeal Report with input from the prison, which should ideally set out all of the courses that the applicant has attended, the progress that he has made on those courses, and any admissions or acknowledgements that might give insight into the risk that he would continue to pose for the future. We were told that he has remained drug and alcohol free in prison. If that is confirmed, it would be of great assistance to the Full Court.

35. We would like much further information about the basis for recall. It may well be the defence would have some difficulty in getting hold of that information. We consider that it would be of great assistance to the Full Court hearing the appeal to have the prosecution present, and we will therefore direct prosecution attendance next time. We will also direct that the prosecution should co-operate with the defence and try and glean as much information as they possibly can, not only about the basis for recall, but about the progress of the police investigation into this further alleged offending. Such information should be supplied to the Court in advance of the hearing of the appeal.

36. The Full Court should be equipped with information as to any proposals as to the terms of any new/substitute Sexual Harm Prevention Order, if it were minded to allow the appeal and pass an extended sentence, and also any proposals as to what should be done were the applicant to be released from prison in consequence of that disposal. We also think that it would be particularly helpful to the Full Court to have copies of any risk assessments that have been carried out on the applicant/appellant whilst he has been in custody. Any written representations from his legal representatives to the Parole Board should also be provided.

37. We will give liberty to apply for further directions in case anything occurs to prosecution or defence counsel as to what might further assist the court.

38. We stress that there are no indications as to the potential outcome of the appeal. We have simply given leave because we consider the points to be fairly arguable, and so there are no indications at all given to the appellant (as he now is) as to what may happen following the hearing of the appeal, when the Full Court has all the necessary information before it.

39. Obviously, it might take some time to glean these pieces of information and so it is important to liaise with the Criminal Appeal Office to keep it updated in terms of progress. We cannot envisage all this material being capable of being produced within the immediate future; it might take some weeks or even months. So the case will have to be listed no earlier than next term – and even that might be a problem.

40. Are there any matters, Mr Beechey, that we have not yet dealt with? We will formally say for the record that there will be a representation order for today for you, and there should be a representation order for junior counsel for the hearing of the substantive appeal and for

solicitors and counsel to deal with any work that needs to be done in the intervening period.

MR BEECHEY: No, thank you, here is nothing further, my Lady.

LADY JUSTICE ANDREWS: Thank you again for your considerable assistance this morning.

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

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