

No: 200906957 A2

Neutral Citation Number: [2010] EWCA Crim 1538

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday, 10th June 2010

B e f o r e:

LORD JUSTICE PILL

MR JUSTICE FOSKETT

MRS JUSTICE NICOLA DAVIES DBE

R E G I N A

v

G O

Computer Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Miss X C Jones appeared on behalf of the **Appellant**

J U D G M E N T

MRS JUSTICE NICOLA DAVIES: On 23rd November 2009 at the Crown Court in Southampton the appellant was convicted of two offences: count 1, causing a person to engage in sexual activity without consent; count 2, sexual assault. On 18th December 2009 His Honour Judge Jarvis sentenced the appellant to two years' imprisonment on count 1 and two years' imprisonment concurrent on count 2. Further, the appellant was disqualified from working with children or vulnerable adults under the Safeguarding Vulnerable Groups Act 2006. The appellant was required to comply with the provisions of Part 2 of the Sexual Offences Act 2003. The appellant appeals against sentence by leave of the single judge.

On 2nd March 2009 the appellant and the 23-year-old victim were both patients at the Department of Psychiatry in Southampton. The victim had a history of depression and had been voluntarily admitted to the unit a few weeks previously. The appellant suffered from bipolar affective disorder and had been admitted to the unit in November 2008 pursuant to the provisions of section 3 of the Mental Health Act 1983. At about 8.15 pm the appellant and the victim met. They spoke, the appellant kissed the victim, which was unexpected. The victim had not consented to the kissing. They held hands briefly and separated. The victim then met a fellow patient and went to her room.

When in the room the victim received a telephone call from the appellant, who asked to meet her. They met at about 9.20 pm and entered the multi-faith room, where the appellant closed the curtains. They remained in the room for about five minutes, and it was during this time that the offences occurred. The appellant kissed the victim on the mouth, he told her to relax and open her mouth. He sat next to her and took out his penis. The appellant forced the victim's hand onto his penis and held it there briefly (count 1). He then stood up, held his penis in front of the victim and asked her to kiss it. The victim stood up and attempted to leave, but the appellant walked up to her and kissed her again. He undid her top and kissed her breasts (count 2). He tried to undo her trousers. The victim twice attempted to leave, but on each occasion the appellant stood in her way. She eventually managed to leave, and as she did so the appellant said "Don't you dare tell anyone". In fact, the appellant did tell a friend and a member of staff. The police were informed. The appellant was arrested, and when interviewed he accepted that he had gone into the room with the victim but insisted that sexual contact between them had been consensual.

On behalf of the appellant it is contended that sentences of two years' imprisonment were excessive in that:

- (1) They were at the top end of the sentencing guidelines bracket;
- (2) The learned judge did not take sufficient account of the circumstances of the offence, namely that the appellant was at the material time a psychiatric patient.

Before the judge was a pre-sentence report. The victim was described by the probation officer as being particularly vulnerable. A staff member described her as shy and nervous. Witness statements referred to her appearing shaken and crying immediately following the incident and self-harming on two subsequent occasions. When asked by staff what had triggered the self-harm, the victim said it was due to the stress of the

current offences. The probation officer states that it is known that psychological damage caused by offences of this nature is severe, both in the short and long term. The victim had to give evidence by reason of the not guilty plea entered by the appellant.

Prepared for the purposes of these proceedings, at the request of the single judge, is a psychiatric report. It is prepared by Dr Appleford, a consultant psychiatrist, following an assessment carried out upon the appellant on 1st April 2010. The appellant was originally admitted to hospital on 6th November 2008. The offences occurred on 2nd March 2009. The appellant was released from hospital on 27th April 2009 and was the subject of a community treatment order. Following release he went to live in a hostel and thereafter with his then partner. At the time of Dr Appleford's assessment the appellant was receiving medication for his mental health. Dr Appleford assessed the appellant's mood as normal in rate, form and content, no subjective or objective abnormality of mood was present, no abnormal beliefs were reported. The appellant maintained his denial of the offences and demonstrated no insight into any harm that he may have caused the victim. Dr Appleford was handicapped in that he did not have access to previous medical records, notwithstanding this fact the doctor concluded that it was highly likely that the disturbance of the appellant's mental health as a consequence of bipolar affective disorder may have been a contributory factor to the index offences.

No psychiatric report was before the sentencing court. In sentencing the judge acknowledged that the appellant had "real personal problems of your own". He stated that he was sure that the appellant decided to take advantage of the victim, hoping and depending upon her making no complaint, or if she did, a belief that she would not be believed. The judge had the advantage of seeing and hearing the victim give evidence. Of her, the judge said she was "plainly a timid inexperienced woman". The judge said:

"What you did clearly distressed her deeply, and almost certainly undermined her already very low self esteem, and I recollect that during the course of the evidence she told the court of how it was that she tried to leave the room and you barred her exit, made it more difficult for her, and it seems to me, in my judgment, the impact on a woman such as she, already damaged, will be very severe."

The court accepts that at the time of the commission of the offences the appellant was suffering from a bipolar affective disorder. Of itself the disorder cannot explain or excuse either offence, nor does it lessen the impact of the offence upon this particular victim. The circumstances surrounding the offences, the nature of the offences and their effect upon the victim clearly merited a custodial sentence. We note that the appellant twice attempted to bar the exit of the victim and told her not to inform anyone else of what had occurred. That is consistent with what is contained in the probation report, where it is observed that the appellant has a propensity for using threats in order to meet his needs. That is borne out by the appellant's previous convictions, in particular two convictions in 2007 for threatening and abusive behaviour which amounted to harassment.

We court accept that a sentence of two years' imprisonment is at the top of the sentencing bracket. Upon that issue there is force in the submissions made on behalf of the appellant. To reflect that fact we are minded to reduce the period of imprisonment. We quash the sentence of two years' imprisonment on each count and reduce it to a period of 18 months' imprisonment on each count concurrent. To that extent the appeal is allowed.