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No. 202100362 A1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2021] EWCA Crim 1562

Royal Courts of Justice

Tuesday, 12 October 2021

Before:

LORD JUSTICE EDIS

MR JUSTICE TURNER

HER HONOUR JUDGE KARU RECORDER OF SOUTHWARK

REGINA

V

CHRISTOPHER HAYTER

REPORTING RESTRICTIONS APPLY:

THE SEXUAL OFFENCES (AMENDMENT) ACT 1992

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MR B. SHAW appeared on behalf of the Appellant.

JUDGMENT

MR JUSTICE TURNER:

1

The provisions of the [Sexual Offences \(Amendment\) Act 1992](#) apply to these offences. Under those provisions where a sexual offence has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. The prohibition applies unless waived or lifted in accordance with [s.3](#) of [the Act](#).

2

On 12 January 2021 in the Crown Court at Cambridge the applicant, then aged 58, was convicted of a number of sexual offences under an indictment comprising 12 counts on which he was first sentenced on 20 January 2021 and later at a subsequent slip-rule hearing on 22 February 2021. The sentences passed following the slip-rule hearing were structured as follows. Under Counts 1, 3, 6, 7, 8, 10 and 11 in respect of offences of sexual assault of a child under 13 contrary to [s.7\(1\)](#) of the [Sexual Offences Act 2003](#) the applicant was sentenced to four years' imprisonment on each concurrently together. Counts 6 and 7 were multiple occasion specimen counts. Under Counts 2, 4, and 9, also relating to offences of sexual assault of a child under 13, involving intimate touching over clothing, the appellant was sentenced to serve 18 months' imprisonment each concurrently on the other and to sentences passed in respect of the other offences on the indictment.

3

Count 5 was in respect of an offence of assaulting a child under 13 by penetration contrary to [s.6\(1\)](#) of [the 2003 Act](#), for which a special custodial sentence of six years was passed under [s.236A](#) of the [Criminal Justice Act 2003](#) comprising a custodial term of five years and an extension period of one year to be served consecutively to the sentences passed under the other counts on the indictment. Finally, under Count 12, in respect of an offence of taking indecent photographs of a child contrary to [s.1\(1\)\(a\)](#) of the [Protection of Children Act 1978](#), the applicant was sentenced to serve 18 months' imprisonment concurrent to the sentences passed under the other counts on the indictment. Thus, the total sentence was of four years' imprisonment with a consecutive special custodial sentence of six years, comprising a custodial sentence of five years' imprisonment and an extension period of one year. Ancillary orders were made, as to the appropriateness of which no issue is taken in this court. The appellant applied for leave to appeal against sentence following refusal on paper by the single judge. We have given leave to appeal.

4

The facts are these. The appellant's victim ("A") was born in 2004. Her mother and father eventually split up and in 2009 her mother, with whom she continued to live, started a relationship with the applicant. They thereafter together treated A as a child of the family and, in due course, they went on to have two children together. After a few years, however, the appellant and A's mother separated,

despite which the appellant continued to play a role in the lives of the three children and visited them on most weekends. He was often left alone in the house, which provided him with the opportunities of which he took full predatory advantage against them.

5

The abuse started in the summer of 2015 and took place thereafter almost every weekend for a period of about five months. It was then interrupted when A went to stay with her biological father in New Zealand, only to be recommenced with on a greater frequency upon her return to the United Kingdom the following year over a period from late March to the Autumn of 2016. By way of overview, the abuse occurred when the appellant and A were either watching television downstairs in the living room or when he was lying on the bunk bed with her whilst she was watching something on her iPad or mobile phone. The appellant would try to put his hands down her clothing and on occasions would touch her vaginal area. At other times, he would put his hands on her top and touch her breasts, both under and over her clothing. In response to this repeated abuse, A would push him away or get up and move from the position she was in and the activity would cease for the time being until, undeterred, he would start again on his next visit.

6

Although the applicant did not use force or threats, he was relentless and persistent in his weekly assaults. It was not suggested that there was explicit grooming behaviour before A went to New Zealand, but on her return the judge found evidence of grooming arising from a greater laxity shown to her in relation to house rules, the applicant countermanding instructions from her mother and providing her with small amounts of money, a vape pen and on one occasion alcohol when she was with some friends at the house.

7

The most serious offence was that of Count 5 of assault by penetration. This occurred when the defendant and A were on the sofa when she described him putting his hand down her bottoms and trying to insert his finger inside her vagina. She crossed her legs, trapping his hand, which prevented his fingers from penetrating further than the labia majora. She described the assault as painful and later felt a stinging sensation when she urinated.

8

Eventually, A reported the appellant's behaviour in November 2016 when he was arrested by the police. In interview the appellant denied the allegations made against him. He was subsequently found guilty of all counts after a trial.

9

Counts 1 to 4 and 6 to 7 related to the applicant touching A's breasts and vagina on numerous occasions when she was ten years old and before she departed for New Zealand. Counts 8 to 11 related to the numerous occasions on which the applicant touched A's breast and vagina when she was 11 years old and after her return from New Zealand. Count 12 related to the occasion when the applicant had taken six category C indecent photographs of A when she was 11 years old. Count 5 related to the occasion when the applicant digitally penetrated A's vagina when she had been ten years old.

10

At the first sentencing hearing, the judge treated Count 5 as the lead offence and passed a sentence of nine years' imprisonment with a further one year extended licence as the applicant was an offender of particular concern. All the other sentences were to be served concurrently. At the subsequent slip-rule

hearing, the judge amended the sentence on Count 5 to a special custodial sentence of six years, comprising a custodial sentence of five years and an extended period of licence of one year. This sentence was expressed to run consecutively to a total sentence of four years' imprisonment imposed on the other counts, each imposed concurrently on the other. The total sentence was, therefore, a determinate sentence of four years' imprisonment with a consecutive special custodial sentence of six years, comprising a custodial term of five years' imprisonment and an extension period of licence of one year.

11

The appellant contends that the sentence passed was manifestly excessive and the following arguments were advanced. The circumstances of the assault by penetration, including the brevity of the incident, the limited penetration and the lack of persistence should have attracted a sentence towards the bottom of the range provided for in the sentencing guideline. The judge had improperly held that the abuse had had a psychological impact on A sufficient to amount to a further aggravating feature and had been wrong to find that there had been an element of grooming in the abuse which took place after A had returned from New Zealand. Insufficient weight had been placed to the delay between the offending and the matter coming to trial.

12

The judge correctly placed the assault by penetration offence in category 3A of the sexual offences guideline in respect of which a starting point of six years with a range of four to nine years was appropriate. This offending took place against the background of gross and persistent breach of trust. The assault was not brought to a voluntary halt by the applicant, but by the determined physical resistance of A and, even then, had been carried out with sufficient force to later cause pain and discomfort. In these circumstances, the complaint that the judge should have moved to the very lowest end of the sentencing range is in our view unsustainable. The judge was entitled to form his own view of the weight to be given to the various strands of evidence relating to the impact of the offending upon A. In any event, he did not seek to characterise the level of psychiatric harm to be such as to enable the court to move into a higher category within the guideline. Had he done so, the starting point would have been expected to be significantly higher for all of the offences.

13

Furthermore, we do not find the question of whether or not the applicant's behaviour following A's return from New Zealand amounted on occasion to be grooming to be capable of bearing the significance which the applicant seeks to place upon it. The applicant's behaviour took full exploitative advantage of the trust which had developed between him and his young victim and her mother over many years. Whether or not the treats he provided fall to be characterised as distinctly grooming steps is in our view more a question of semantics than substance against the background of this particular case.

14

We are unimpressed by the argument that it is a significant mitigating factor that there is no evidence that the applicant showed an interest in other children. Doubtless, this was material to the judge's decision not to make a finding of dangerousness and if the applicant had offended against other children, then he would have been additionally punished for such conduct. His exclusive, compulsive and relentless interest in his victim in this case provides little, if any, grounds for further mitigation.

15

We do, however, recognise as an important factor the very considerable delay in this case of three years and four months in bringing the applicant to justice. Although the judge expressly acknowledged the existence of this delay in his sentencing remarks, he did not identify the extent, if any, to which he considered that it was a significant mitigating factor. Indeed, it would appear that he felt that the force of the argument was that this was very considerably diluted by the impact that such delay had on other people, including the claimant, although it has to be said that the fault for such delay did not lie at the door of the appellant.

16

He made specific reference to all other mitigating factors, including the appellant's good character, but, stepping back from the detail of this analysis of the judge's approach, the issue to which the court must have regard is whether or not the sentence as a whole was manifestly excessive. We take the view that, with particular regard to the considerable delay in this case, we can confidently reach the conclusion that inadequate consideration was given by the judge to that delay in reaching his final sentence. The sentences in respect of the other counts on the indictment, which were ordered to be served consecutively to the sentence of five years relating to the assault by penetration offence, fall therefore in our view to be reduced to reflect that specific issue. We do not criticise the passing of consecutive sentence in the circumstances of this case, but consider that some reduction is required to reflect the delay.

17

In our view, the appropriate reduction would have resulted in a sentence under Counts 1, 3, 6, 7, 8, 10 and 11 to three years rather than four. Thus, the total sentence is reduced to three years' imprisonment with a consecutive special custodial sentence of six years comprising a custodial sentence of five years' imprisonment and an extension period of one year. Accordingly, we have granted leave to appeal and this appeal is allowed to the extent identified.
