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No. 202102189 A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2021] EWCA Crim 1583

Royal Courts of Justice

Friday, 15 October 2021

Before:

LORD JUSTICE EDIS

MR JUSTICE TURNER

HER HONOUR JUDGE KARU

(RECORDER OF SOUTHWARK)

REGINA

V

JULAIN ANDREW RODDIS

REPORTING RESTRICITONS APPLY:

SEXUAL OFFENCES (AMENDMENT) ACT 1992 APPLY

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Ms. S. Quinton-Carter appeared on behalf of the applicant.

The Crown were not represented.

JUDGMENT

MR JUSTICE TURNER:

1
The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. 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. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2
On 18 July 2021 in the Crown Court at Cambridge the appellant was sentenced in respect of nine counts of voyeurism, contrary to section 67(3) and (5) of the Sexual Offences Act 2003, to which he had earlier pleaded guilty before the magistrates who had committed him to the crown court for sentence.

3
He was sentenced to serve consecutive periods of 6 months' imprisonment on each of the first eight counts and a further concurrent period of 6 months on the ninth count, making a total of 4 years. He appeals this sentence with the leave of the single judge.

4
The facts are these. The appellant worked as a masseur between February 2016 and February 2019. At first, he worked from a hair salon in Bootle Road, Peterborough, and then from the Queens Gate Hotel, also in Peterborough, where he offered massage and therapy to both men and women. In his treatment room he had installed a wall clock in which was concealed a camera linked to his laptop. This arrangement allowed him to take and record films of his female clients in a state of undress. The appellant would take these clients to a treatment room where there was a table. He would instruct them to strip down to their knickers and put a towel on. He would leave the room to allow them privacy while they undressed. Such privacy, however, was an illusion. The camera would already be filming them. The appellant would then re-enter the treatment room and start the massage. Part way through he would instruct the women to turn over and he would hold a towel between them as they turned. However, the women were once again exposing themselves to the camera. At the end of the massage session he would leave the room to allow the women to put their clothes back on. Once again, the camera would capture them in their state of undress. The offending came to light when one of the appellant's victims noticed the distinctive appearance of the clock and became suspicious about it. She later researched it online and discovered that it was not just a clock, but also a camera.

5
She contacted the police, who seized the clock and the laptop from the appellant's place of work, together with two computers and a USB stick from his home address. In all, videos of over 900 women were discovered. In interview, the appellant admitted that he had been recording his clients in this

way over the years and that he fully understood that what he had been doing involved criminal offences. He denied distributing the images. Indeed, there was no evidence to suggest he had done. He simply said, "I did it because I could." He accepted, as he was bound to do, that none of his clients had consented to being filmed.

6
The victim personal statements revealed the harm that was caused. The nine complainants in respect of the charges identified had been left angry, humiliated, disgusted and degraded. They were also, understandably, worried about possible distribution. In particular, one pregnant woman had felt violated and had sought treatment for mental health difficulties.

7
In his sentencing remarks the judge referred to the definitive guideline and stated:

"Culpability 1, because of the recording, the abuse of trust and the planning. And defence counsel suggests category 2, which seemed to fit at first blush, although some cases never quite fit into the guidance. Those who drafted the guidance did not conceive a case where the offending would take place on an industrial scale, which is what happened here."

8
This passage is not as clear as it might have been. We assume from the context that the reference to culpability 1 is intended to be an indication that when seeking to place the offending within the correct category the culpability element should be taken to be raised. No possible criticism could be made of such an approach. However, in order for the offending to be placed in category 1, it would also have to involve raised harm. The guideline is clear the court should consider culpability and harm caused or intended by reference only to the factors below. With respect to raised harm, those factors are limited to images available to be viewed by others and/or victim observed or recorded in their own home or residence. Neither of these factors apply to the facts of this case. The Judge's reference to category 1 “only fitting at first blush” might possibly be taken to imply that, although he did not fully articulate the point, the “industrial scale” of the offending had allowed him to conclude under section 65 of the Sentencing Act 2020 that for the purpose of identifying the sentence within the offence range, which is the appropriate starting point, none of the categories sufficiently resemble the offender's case, thereby relieving the Judge of the duty under subsection 4 to decide which of the categories most resembled the offender's case in order to identify that sentencing starting point.

9
However, he then went on to identify a starting point, albeit one of nine months, which did not reflect the starting points of any of the categories in the guideline. The starting point for category 1, for example, is 26 weeks. It would appear to us that the Judge had elided several steps of analysis into one and arrived at a point at which only the discount for guilty pleas and totality fell to be made without shedding much light on the route by which he had arrived at that stage. In our view, this was not a case in which it was appropriate for the Judge to abandon the obligation on him to decide which of the categories most resembled the offender's case in order to identify the relevant sentencing starting point. The scale of the offending was very considerable indeed, but fully capable, in our view, of being reflected as a serious aggravating feature in the application of the guideline without departing from the discipline which the guideline is intended otherwise to provide.

10
There are a number of examples of cases in which the offender has recorded many films of victims over a considerable period without giving rise to concerns in this court that the guideline should

therefore be abandoned. In this regard, one need look no further than the cases of R v Adams[2014] EWCA Crim 1898 and R v Heath[2017] EWCA Crim 20 2502, to both of which the Judge's attention was specifically drawn.

11
We consider that the starting point for each offence was indeed that related to category 2. Unpalatable as that conclusion may have appeared to the Judge, the offending simply did not involve either of the factors indicating raised harm in the guideline. The starting point is, therefore, a high level community order. That, however, is not an end to the matter. The guideline goes on to provide that a case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjusting from the starting point, before further adjustment for aggravating or mitigating features. In this case, the combination of the recordings, the abuse of trust and the high level of planning merited significant upward adjustment to the top of the sentencing range of 26 weeks' custody.

12
The next stage ought properly to have been the assessment of aggravating and mitigating features. Again, the guideline provides:

"The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range."

13
In this case the aggravating features included the location of the offending and the prolonged period of three years over which the victims were observed. Mitigating features included, not insignificantly, the appellant's lack of criminal antecedents and his difficult domestic circumstances. He had caring responsibilities for his partner, who was seriously ill, and for his 16-year-old daughter and his autistic stepdaughter. He had lost his livelihood, and there had been a delay of two years before his case came to court. It is at this stage, however, that what the Judge referred to as "the industrial scale of the offending", fell to be factored into the sentencing exercise. Although not specifically referred to as a factor in the guideline, it is still highly relevant, bearing in mind that the list in the guideline is expressly stated to be non-exhaustive. No complaint could have been made if the Judge had considered that the balance of the aggravating and mitigating features at this stage were such that the court was entitled to move up to a sentence of 30 weeks in respect of each count. This would fall to be reduced in each case to 20 weeks to provide the appropriate credit of one third for the appellant's guilty plea. However, to reflect the principle of totality, we would, modestly in the particular circumstances of this case, reduce this period to one of four months on each count.

14
We do not consider in cases of multiple offending, such as this, particularly in respect of many different victims over a very long period, that the sentence is or should be limited to the imposition of concurrent sentences, the total of which must be no greater than the statutory maximum for each offence. Of course, the sentencer is bound to have regard in sentencing to the level of the statutory maximum when he or she comes to determine what the level of sentence is, but it does not provide a ceiling in relation to multiple offending such as this.

15

Consecutive offences were entirely appropriate in this case. Indeed, not only was the offending so serious that only an immediate custodial sentence was appropriate, but furthermore, a total sentence of three years is the least which could be justified. The sentences on all nine counts must be served consecutively, making a total of three years' imprisonment in this case.

16
We would, therefore, allow the appeal, to the extent only of reducing the total sentence passed from four years’ imprisonment to three.
