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No. 2019/00620/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 8th May 2019

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(The Lord Burnett of Maldon)

MR JUSTICE LAVENDER

and

SIR JOHN ROYCE

REGINA

- v -

MARTYN ANTHONY MORRISON

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Mr Rupert Hallows appeared on behalf of the Appellant

JUDGMENT

Wednesday 8th May 2019

THE LORD CHIEF JUSTICE: I shall ask Mr Justice Lavender to give the judgment of the court.

MR JUSTICE LAVENDER:

1. This is an appeal against sentence to which the provisions of the Sexual Offences (Amendment) Act 1992 apply. During her lifetime no matter relating to the victim, whom we shall call "A", shall be included in any publication if it is likely to lead members of the public to identify her as the victim of these offences.

2. On 18th December 2018, following a trial in the Crown Court at Guildford before His Honour Judge Fraser and a jury, the appellant was convicted of two offences against A: exposure, contrary to section 66 of the Sexual Offences Act 2003 (count 4), and voyeurism, contrary to section 67 of the Sexual Offences Act 2003. In addition, on 6th February 2009 he pleaded guilty to failing to surrender to bail, contrary to section 6(2) of the Bail Act 1976. On that day he was sentenced by His Honour Judge Fraser to a total of sixteen months and seven days' imprisonment. That was made up of six months for the exposure, ten months for the voyeurism and seven days for the Bail Act offence. The judge also made a Sexual Harm Prevention Order, a restraining order and a victim surcharge order. Those orders are unaffected by this appeal.

3. The appellant was born on 6th November 1970. In 2011, when A was aged 13, the appellant went to live in the home of A and her mother, with whom he formed a relationship. He continued to live in the house for about five years.

4. The offence of exposure occurred during a twelve month period in 2012 and 2013 when A was 15 and the appellant was 42 or 43. The appellant would often walk around the house with his penis exposed. He would be wearing trousers, but he undid the fly. His penis was not erect.

5. The offence of voyeurism occurred during a three and a half year period from 2012 to 2016 when A was aged between 15 and 18 and the appellant was aged between 42 and 45. It ended when A left her mother's home and went to live with her father. She did so to get away from the appellant. The appellant installed a camera in A's bedroom, attached to the television set. He also installed software on his mobile telephone which allowed him to watch the video images taken by the camera and to save screen shots, which he did on 27 occasions in the early hours of four nights in 2016. These images showed A sleeping.

6. These offences have, understandably, had a considerable effect on A, who describes in her statement anxiety, a loss of confidence, trust issues with men, troubled sleep and nightmares.

7. The appellant was arrested on 5th July 2016. He attended the plea and trial preparation hearing on 27th November 2017. He fell out of contact with his solicitors, who listed the case for non-co-operation on 15th March 2018. The appellant did not attend court on that occasion and did not surrender to bail until 4th July 2018. It appears that his failure to surrender to bail on 15th March 2018 was treated as excusable, but not his subsequent delay of over three and a half months until 4th July 2018, which is attributed to his burying his head in the sand and also to pressures of work. The trial was fixed for 16th July 2018, but had to be adjourned in any event because of the Crown's failure to make disclosure in time.

8. We turn to the grounds of appeal. No complaint is made about the sentence of six months'

imprisonment for exposure. It is accepted that the offence of voyeurism fell within category 1 of the relevant sentencing guidelines, with a starting point of 26 weeks' custody and a range of twelve weeks to eighteen months' custody. The factors which put this case into category 1 were: that A was observed in her own home; that images were recorded; and that there was an abuse of trust. The additional aggravating factor was the period over which A was observed. As for mitigating factors, the appellant had no previous convictions.

9. Mr Hallows, on the appellant's behalf, submits that the sentence for the offence of voyeurism was too long, either in itself or by reason of the totality principle.

10. We do not consider that the sentence was manifestly excessive in itself (although other judges might have imposed a shorter sentence), but we agree that the total sentence was too long. The Sentencing Council's guideline on totality states as follows:

"The principle of totality comprises two elements:

1. All courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.

2. It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole."

11. In this case the judge imposed two consecutive sentences for the sexual offences, without expressly stating how he had addressed the totality principle. We consider that the total of sixteen months' imprisonment for the sexual offences was manifestly excessive, having regard to

all of the appellant's offending behaviour. Accordingly, we quash the sentence of ten months' imprisonment and substitute a sentence of six months' imprisonment.

12. The appellant's prolonged failure to surrender to bail is accepted to have been a deliberate act. It was a deliberate attempt to evade or delay justice, which puts the appellant's culpability in category A in the relevant sentencing guidelines. Fortunately for him, it did not result in substantial delay and/or interference with the administration of justice and so the harm was in category 3. The starting point for a category 3A offence is fourteen days' custody. It is usually appropriate to impose a consecutive sentence for a Bail Act offence, and the present case is no exception. The consecutive sentence of seven days' imprisonment was neither manifestly excessive nor wrong in principle.

13. We dismiss the appeal against the consecutive sentence of seven days' imprisonment for failure to surrender to bail.

14. In summary, therefore, the appellant's total sentence is now twelve months and seven days' imprisonment, made up of six months for each of the sexual offences and seven days for failing to surrender to bail.

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