

**No: 2019 02556 A4**  
**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

[2020] EWCA 127

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Wednesday 5 February 2020

**B e f o r e:**

**LADY JUSTICE SIMLER DBE**

**MR JUSTICE LAVENDER**

**SIR PETER OPENSHAW**

**R E G I N A**

v

**SW**

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**Mr Charles Langley** appeared on behalf of the **Applicant**

**J U D G M E N T**  
(Draft for approval)

**LADY JUSTICE SIMLER:** This is an application to which the provisions of the Sexual Offences (Amendment) Act 1992 apply so that no matter may be published in any form relating to a person against whom a sexual offence has been committed if it is likely to lead members of the public to identify that person as the victim of the offence. That prohibition continues unless waived or lifted.

On 7th May 2019, in the Crown Court at Chelmsford, the applicant pleaded guilty to three offences of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861; an offence of rape, contrary, to section 1(1) of the Sexual Offences Act 2003; and an offence of breach of a restraining order, contrary to section 5(5) of the Protection from Harassment Act 1997. He was sentenced on 13th June 2019. The sentencing judge, His Honour Judge Morgan, found the applicant to be dangerous and imposed an extended sentence under section 226A of the Criminal Justice Act 2003 of 20 years, comprising a custodial term of 12 years and an extension period of 8 years for the rape, and sentences of 2 years concurrent for the three assaults and 18 months concurrent in respect of the restraining order breach.

The applicant renews his application for leave to appeal against sentence after refusal by the single judge. No issue is taken with the finding of dangerousness or the extended sentence imposed. The appeal is directed solely at the length of the custodial term.

The facts are comprehensively set out in the Criminal Appeal Office summary, and we do not propose to repeat them here, save to indicate that the victim of the offences to which we have referred was the applicant's wife, there being a serious domestic violence context. Furthermore, the applicant was convicted of engaging in coercive controlling behaviour and assault occasioning actual bodily harm in relation to his wife in 2017 and was then

sentenced to 18 months' imprisonment in total for those offences and the restraining order to which we have referred was imposed.

In his careful sentencing remarks His Honour Judge Morgan described the breach of the restraining order as "flagrant". The applicant breached the order within a short period of his release; he exploited his wife's vulnerabilities and her reliance on him to make contact despite his clear understanding that he should have no association with her and should not live with her; he lied to his probation officer about where he was living and demonstrated his ability to manipulate to exploit for his own ends.

The assaults, both before and after the rape, were sustained and involved violence of a sadistic nature over two days; there were multiple blows that left significant bruising all over the victim's body; during the second assault the applicant pushed his wife up against the wall and stabbed her in the leg. That was the third stab injury he had inflicted on her within a very short period of time; and he said that he was going to kill her and use her as a punchbag. The photographs we have seen speak for themselves, as the judge himself observed.

So far as the rape is concerned, it was a category 2 offence, with culpability at the very highest level, category A, with a starting point of 10 years, and a range of up to 13 years.

In relation to the rape and treating the two earlier assaults as aggravating factors, the judge concluded that this would place the applicant at the highest end of the category - somewhere between 12 and 13 years. He observed that the subsequent assault might be a consecutive sentence because it occurred afterwards, but that totality was relevant. He then said that the sentence for the rape would reflect the overall criminal conduct and the associated offences and would also take into account the aggravating features identified within the rape offence itself. Had the applicant not pleaded guilty, the

total custodial element of the sentence would have been 16 years.

In written grounds of appeal that have been developed orally, Mr Charles Langley of counsel contends that the sentence was manifestly excessive for four reasons:

First, he submits that the starting point of 16 years for all the offences was too high.

Secondly, that the judge failed to have sufficient regard to totality when adding a further 3 or 4 years' imprisonment to the sentence for the rape in order to reflect the breach of the restraining order.

Thirdly, many of the aggravating factors of the breach had already been taken into consideration when determining the sentence for the rape and the assaults; and by increasing the length of the rape sentence by a further 3 or 4 years for the breach there was a clear element of double counting.

Finally, but very much by way of subsidiary submission, he submits that the judge failed to make what he described as the "small adjustment" that ought to have been made in relation to the applicant's mitigation in the form of his remorse, his lack of previous convictions for sexual offences, the progress he had made in prison in addressing his problems and a number of health problems.

We have no hesitation in rejecting those submissions. This was serious and sustained violence against a vulnerable woman in her own home against a background of earlier domestic violence that included coercive controlling behaviour. This applicant behaved in a sadistic and humiliating way towards her. It seems to us that the judge would have been entirely justified in taking a notional sentence at the top of the category 2A range for the rape with all its aggravating features and the earlier violence. We do not accept that the judge increased the sentence by a further 3 to 4 years simply to reflect the restraining order breach. That represents, we consider, a misreading of the judge's sentencing remarks.

Nor, in our judgment, was there any double counting.

It seems to us that the judge was entitled, to, and in light of his sentencing remarks did, increase the sentence to reflect the assault that took place the following day, together with the breach of the restraining order; and whilst severe, we consider that the overall increase to a notional sentence of 16 years was not arguably manifestly excessive.

So far as personal mitigation is concerned, the applicant's pleas attracted appropriate credit. His lack of previous convictions for sexual offences is significantly outweighed by the earlier domestic violence and assault conviction. His breach of the restraining order and repeated violence against his wife entirely undermines, in our judgment, the assertion that he had made considerable progress in addressing his problems while in prison. Finally, as to his medical issues, these were considered by the judge but he concluded that there was nothing to indicate that they justified any reduction in sentence in the circumstances of this case.

In conclusion, the judge had proper regard for totality, and we are quite satisfied that the overall sentence before credit, of 16 years, was commensurate with the gravity of this course of criminal conduct and not disproportionate to it. The application is therefore refused.

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

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