



Neutral Citation Number: [2021] EWCA Crim 1191

Case No: 202002390 A1

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**  
**ON APPEAL FROM Cambridge Crown Court**  
**HHJ Cooper**  
**T20190156**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 02/08/2021

**Before :**

**LORD JUSTICE HOLROYDE**  
**MRS JUSTICE MCGOWAN**  
and  
**HHJ SLOAN QC RECORDER OF NEWCASTLE**

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**Between :**

**John William Dickinson**  
**- and -**  
**Regina**

**Appellant**

**Respondent**

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**Miss Joanna Hardy for the Appellant**

Hearing date: 15/04/2021  
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**Approved Judgment**

**The Hon. Mrs Justice McGowan :**

**REPORTING RESTRICTION**

- 1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. No matter shall be included in any publication if it is likely to lead members of the public to identify the victims of these offences. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.

**Introduction**

- 2. John Dickinson, (“the Appellant”), seeks leave to appeal against the totality of the sentences imposed on 21 August 2020, following refusal by the Single Judge. We grant leave. The issue of the statutory surcharge was referred to the full court by the Registrar on the papers for rectification.
- 3. On 6 February 2019, having pleaded guilty before Central London Magistrates Court, to an offence of purchasing a weapon designed or adapted for the discharge of a noxious liquid/gas/electrical incapacitation device/thing, contrary to section 5 (1) (b) of the Firearms Act 1968, the Appellant (then aged 65) was committed for sentence to the Crown Court.
- 4. On 12 September 2019, in the Crown Court at Cambridge, before HHJ Cooper, (“the Judge”), and a jury, the Appellant (then aged 66) was convicted of the offences below on an indictment number T20190156.
- 5. On 21 August 2020, the Appellant (by then aged 67) was sentenced as follows:

Count 1	Indecent assault on a male s15(1) SOA 1956	Special Custodial Sentence s. 236A Criminal Justice Act 2003 of 8 years, custodial term of 7 years and 1 year extended licence period	Consecutive	10 years maximum
2, 6 and 7	Indecency with a child s1 (1) Indecency with Children Act 1960	2 years	Concurrent	2 years
3	Indecent assault s14(1) SOA 1956	Special Custodial Sentence of 5 years, custodial term of 4 years and 1 year extended licence period	Consecutive	5 years
4	Indecent assault	Ditto	Concurrent	5 years
5	Indecent Assault	Ditto	Consecutive	5 years
8	Indecent Assault	Special Custodial Sentence of 3 years, custodial term of 2 and 1 year extended licence period	Consecutive	5 years
Committal	s5(1)(b) Firearms Act 1968	12 months imprisonment		

6. This leads to a total term comprising a determinate sentence of 1 year imprisonment with consecutive Special Custodial Sentences under section 236A of the Criminal Justice Act 2003 made up of custodial terms totalling 17 years with extended licence periods totalling 4 years.
7. Other orders were made as follows; an order was made for the forfeiture and destruction of the weapon. A Deprivation Order was made in relation to a flick knife, 2 balaclavas and shackles/restraints. A Sexual Harm Prevention Order was made under section 103A of the Sexual Offences Act 2003 until further Order. Notification to the police was ordered for an indefinite period.

### **Victim Surcharge**

8. On sentencing the Appellant, the Judge made an order for a statutory surcharge on the firearms offence but not for the historical sexual offences. The amount recorded is £140. Leave was granted in relation to the imposition of that Victim Surcharge Order only. The difficulties of calculating different levels of surcharge for historical offences was dealt with in *R v Abbott and Others* [2020] EWCA Crim 516. If any offence being dealt with by the Court was committed before the coming into force of the current surcharge order, the surcharge will need to be calculated by reference to the earliest offence at [84] *ibid*.
9. Section 161A of the Criminal Justice Act 2003 sets out the Court's duty to order payment of a surcharge when dealing with a person for one or more offences. The Appellant was "being dealt with by the Court" for the historical sexual offences and the recent firearm offence. The historical sexual offences pre-dated the coming into force of section 161A Criminal Justice Act 2003. Therefore the surcharge should not have been imposed. We correct that and remove the requirement to pay the statutory surcharge in the sum of £140.

### **Facts**

10. The Appellant sexually abused his two stepchildren who were between 2 and 6 years of age between October 1974 and September 1977. The first complainant was the Appellant's stepson, ("X"). The second was his stepdaughter, ("Y").
11. The offences can be summarised as follows;  
Count 1 was an occasion when the Appellant had inserted an object into X's anus when he was aged between 2 and 4 years of age.  
Count 2 was an occasion when the Appellant had caused X to insert his hand into the Appellant's anus in Y's presence.  
Counts 3, 4 and 5 (multiple incidents) had been occasions when the Appellant had inserted his penis into Y's mouth when she was between 4 and 6 years of age, including ejaculation.  
Count 6 was an occasion when the Appellant had caused Y to insert her hand into his anus when she was between 4 and 6 years of age.  
Count 7 was the same activity as Count 6 but had been carried out in X's presence.  
Count 8 was an occasion when Y was between 4 and 6 years of age, the Appellant had tied her up with a skipping rope and had inserted something into her vagina.

12. The children had made complaints in the 1970's shortly after the commission of the offences but no formal proceedings were brought against the Appellant then.
13. In 1980 the appellant was sentenced to a term of life imprisonment for murder and arson. He pleaded guilty to those offences. In 2014 he was released on licence from that sentence. He had served 34 years imprisonment.
14. In 2017 the complainants gave were interviewed as witnesses and outlined the facts of the incidents in the 1970's. The appellant was interviewed about these offences in 2017 and provided a prepared statement denying the allegations.
15. In December 2018 UK Border Force officials intercepted a stun gun coming into the country, (the committal charge), which the Appellant had ordered online. Police attended the Appellant's address in relation to the stun gun and whilst there the police recovered a flick knife, two balaclavas and some restraints.

## **Sentence**

16. The Judge conducted a very careful sentencing exercise. The Appellant was to be sentenced for eight historic offences against his newly adopted stepchildren dating from 1974. He had been convicted by a jury. He was also to be sentenced for the offence committed in 2018, the purchasing of a stun gun, to which he had pleaded guilty before the Magistrates Court. He had served 34 years in custody in the period between the commission of the sexual offences and sentence for them.
17. The offences all had maximum sentences that were substantially lower than their modern equivalent. The Judge concluded that he must impose a sentence that would be passed today for the behaviour underlying the offence, although he could not impose a sentence beyond the maximum available at the time.
18. The Judge found that section 236A of the Criminal Justice Act 2003 applied, which required the imposition of an additional period of one year extended licence to any custodial term. There were no specific sentencing guidelines for the firearms offence, at the time of sentence. The Judge was careful to consider the range of factors that applied and finally to consider the principle of totality.
19. The victims had been vulnerable because of their extreme youth and had been terrified by the Appellant's conduct. He had targeted them and had taken advantage of their mother's trust in leaving the them alone with him. The Judge noted the effect that the Appellant's offending had had upon the victims both in their childhood and continuing into their adult lives.
20. He applied the current sentencing guidelines in relation to Count 1, that offence would now be classed as a category 2A offence with a starting point of 11 years imprisonment and a range of seven to 15 years imprisonment. He found that there was no mitigation in relation to the offence itself. The offence at the time carried a maximum sentence of 10 years imprisonment, well below the current levels.
21. He found a similar position in relation to Count 2 although the maximum sentence for that offence at the time was two years imprisonment. In relation to the offences against

Y, the most serious were Counts 3, 4 and 5 which would now be charged as rape offences. The appropriate starting point would now be 13 years imprisonment with a category range of 11 to 17 years imprisonment. The fact of ejaculation aggravated the offence. The multiple incident Count would elevate the sentence again. He had in mind the maximum sentences for those offences at the time which was five years imprisonment. Counts 6 and 7 were like offences to Counts 1 and 2 and Count 8 was an assault involving penetration, throughout which Y had been screaming. He found that current guidelines would categorise this offence as a category 2A with a starting point of 11 years imprisonment.

22. He also had to pass sentence on the firearms offence. The Judge had been invited by the Crown to consider the context in which those items had been found. In order to assess the gravity of the Appellant's possession of the stun gun and other items, the Judge had held a Newton Hearing. The Judge rejected the contention that the reason for the Appellant having the taser was to do with potential defensive use against a blackmailer. The possession of the items found in the Appellant's flat was highly relevant to the question of future risk, even if the Appellant's mobility was impaired. In relation to the stun gun offence, the potential for harm was high and the presence of that item, together with other items found, raised significant concerns about the risk that the Appellant presented to members of the public. The Judge had rejected the account that the presence of the item could be accounted for by pressure the Appellant had been placed under. The sentence would have been eighteen months imprisonment after a trial and was reduced to twelve months imprisonment, to reflect the guilty plea, it would be consecutive to the other sentences.
23. The appellant was 67 years of age and the Judge had noted the contents of the reports that had been made available to him, including the Review Progress Report. He noted the physical health summary and that the impact of imprisonment on the appellant would be harshly felt. The Judge also noted the effect of the COVID-19 pandemic and that the appellant was a wheelchair user.
24. The Appellant had been 22 years old when the sexual offences had been committed. He found the Appellant to be an opportunist and predatory sexually bully of defenceless children, 20 years his junior. The Judge had considered the passage of time and the fact that he had been in custody for over fourteen years beyond his original tariff. The Judge had been referred to the case of [R v Green, \[2019\] EWCA Crim 196](#) and had been invited to adjust the overall sentence to reflect that intervening sentence. The Judge set out the facts of the case of murder of which the Appellant had been convicted. The Appellant could have admitted the index offending at that time but did not and therefore took no opportunity to be treated, reformed or rehabilitated for his paedophilic impulses. The Judge therefore made no adjustment to reflect the fact that that the Appellant had been in prison as a result of his other offending. The Judge considered the Appellant's frailty and had read the physical health, psychiatric and psychological reports.
25. The Judge had considered the issue of dangerousness and was satisfied that the Appellant did pose such a risk as a result of his antecedents and attempted acquisition of the stun gun and possession of the other items found by the police. He concluded that an extended sentence was not necessary and so passed determinate sentences in relation to each offence.

26. The Judge considered the principle of totality and adjusted accordingly. He imposed an extended licence of one year in relation to each of the offences that related to an offence of penetration of a child since the Appellant was an offender of particular concern. He imposed the individual terms as set out in the table above.
27. The total sentence was 18 years imprisonment with four mandatory extended licence periods which made a total sentence of 22 years. He called the matter back for clarification and said that in order to reflect totality he had made an explicit reduction in relation to Count 8 and passed a sentence of two years imprisonment along with the extended licence period of one year pursuant to section 236A of the Criminal Justice Act 2003.

## **Appeal**

28. We are extremely grateful to Miss Hardy for the careful and well defined submissions made in writing and amplified orally before us. She submits that the sentence is manifestly excessive and wrong in principle because;
  - a. The individual component sentences were too high
  - b. The consecutive nature of some sentences was wrong in principle
  - c. Insufficient regard was given to the time the Appellant had spent in custody for offences of murder and arson
  - d. The Judge was wrong to find that the Appellant met the criteria for dangerousness and
  - e. The Sexual Harm Prevention Order should not have been imposed.
29. Miss Hardy argues that the sentences imposed were the maximum available sentence on counts 2, 6 and 7 and because of the application of s. 236A(2) Criminal Justice Act 2003, the sentences on counts 3, 4 and 5 amounted to the maximum on those offences also. She argues that that was the wrong approach because the offending was not of the most serious within the categorisation in the guidelines. She submits that these offences would properly be identified as category 2A in their modern equivalent. She argues that 'measured reference' would not require the imposition of the maximum term available at the time of offending for offences that would not be the most serious examples of that type of offending.
30. She underlines her argument about the excessive nature of those sentences under her second ground by reference to the additional factor that some of these sentences were ordered to run consecutively. She acknowledges that consecutive sentences were appropriate for each complainant and for the later stun gun offence but argues that counts 3, 5 and 8 all related to Y, covered the same type of offending and a similar time frame. That is particularly so, given that count 5 was a count drafted to reflect multiple incidents.
31. In her third ground she submits that the Judge failed to make any allowance for the very lengthy time that the appellant has spent in custody between the commission of these offences and sentence. There are cases such as *R v Green* *ibid*, in which an accused has served a sentence between the commission of the index offences and sentence on a new indictment but that this does not fall precisely into that class of case. She argues that

whilst it had to be conceded that the Appellant could have volunteered the fact of these offences and pleaded guilty, it was nonetheless wrong and resulted in a manifestly excessive sentence to take no account of the 34 year term served in the period between offending and sentence. She relies in particular on the final points raised in a non-exhaustive list of factors set out in *R v Green*, at [18], namely, “*the age and health of the offender, particularly if the latter has deteriorated significantly as a result of his incarceration and any other relevant circumstances including, for example, his conduct whilst in prison; and whether, if no account is taken of the previous sentence, the length of the two sentences is such that, had they been passed together to be served consecutively, that would have offended the totality principle.*”

32. In her fourth ground Miss Hardy submits that the finding of dangerousness was wrong on the evidence before the Judge. She acknowledges that the Judge did not, in fact pass an extended sentence but submits that the finding may, without more, have aggravated the sentence imposed.
33. It is argued finally that the imposition of the Sexual Harm Prevention Order was wrong. In her submission she argues that the risk of harm that the Appellant presents was wrongly assessed as a matter of historical rather than current or future danger. She submits that the combination of his age, his mobility and his incarceration make the order unnecessary.

## Discussion

34. Taking the first and second grounds together, we do not find that there was an error of principle or that the total term imposed was manifestly excessive. The Judge correctly approached the issues raised in sentencing for offences committed decades before when the maximum sentences were lower as set out in *R v Forbes [2016] 2 Cr App R (S) 44*. It is not correct to say that is necessarily manifestly excessive because the statutory maximum at the time is imposed. The judge correctly sentenced in accordance with the regime applicable at the date of sentence having regard to current sentencing practice and limited by the maximum sentence available at the time of the commission of the offence: *Forbes* at [4].
35. Consecutive sentences for Counts 3, 5 and 8 reflected firstly that this was a separate victim from count 1 (a boy aged 3), in relation to 5 that it related to multiple offences, and in relation to Count 8 that the victim (a child under 13) was tied up before he penetrated her vagina with an object. The consecutive nature of these offences reflected the gravity of the offending which would not have been sufficiently reflected by concurrent sentences. These were extremely serious offences committed against very young children. Some of the offences were carried out in the presence of both children. There was gratuitous physical violence and they were terrified by the Appellant’s behaviour. The Judge saw the victims as adult witnesses and was well placed to assess the lasting effect on each.
36. We find there to be force in Miss Hardy’s third ground; the failure to adjust the sentence to reflect the extremely long term served in the intervening period. Adopting the approach in the case of *Green*, *ibid*, and considering what total the combination of both sentences would reach, we observe that the total sentence for both sets of offences would be more than 50 years in custody. Setting that against the factor of the appellant’s

deteriorating health and age, which whilst not determinative, must be reflected in the term imposed, we accept that some, albeit, limited reduction should have been made.

37. The judge had the assistance of the expert opinions of Dr McNerny and Dr Craissati. He considered those reports but reached his own decision that the appellant continued to present a risk to others and found him to satisfy the test for dangerousness. That was a finding open to him on all the facts of the case, in particular the Appellant's history of offending as a background to his acquisition and possession of the weapons. Notwithstanding that finding, the judge determined that it was not necessary to impose an extended sentence. There is no basis whatsoever for the submission that it "may have aggravated the component sentences". As set out above, we find that the component sentences were neither manifestly excessive nor wrong in principle.
38. Dealing with the final ground, we follow the observations of the Single Judge who noted the contents of paragraph 30 of Dr Craissati's report, in which it is described as "sensible to ensure" that the Appellant should not have unsupervised contact with children he knows. In the light of that assessment we can see no arguable basis to criticise the imposition of the Sexual Harm Prevention Order as wrong in principle or excessive in all the circumstances.
39. Accordingly to reflect the submissions made on the failure to adjust the overall length of sentence we quash the sentence on Count 8 and impose in substitution, a sentence of two years plus an extended licence of one year but make those terms run concurrently to the sentences imposed on all other counts. This leads to a total term comprising a determinate sentence of 1 year imprisonment with consecutive Special Custodial Sentences under section 236A of the Criminal Justice Act 2003 made up of custodial terms totalling 15 years with extended licence periods totalling 3 years.
40. To that extent this appeal is allowed.