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NCN: [2022] EWCA Crim 365
IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202104003/A3



Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 17 February 2022

LADY JUSTICE MACUR DBE
MR JUSTICE PEPPERALL
RECORDER OF BRISTOL
(HIS HONOUR JUDGE BLAIR QC)
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

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MR J EVANS appeared on behalf of the Attorney General.

MR S VULLO QC & MR D BENTHALL appeared on behalf of the Offender.

J U D G M E N T

LADY JUSTICE MACUR:

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 their lifetime, be included in any publication if it is likely to lead members of the public to identify them as a victim of the offences. This prohibition will apply unless waived or lifted in accordance with section 3 of the Act.
2. This is an application by Her Majesty's Attorney General for leave to refer a sentence which she regards as unduly lenient, pursuant to section 36 of the Criminal Justice Act 1988.
3. On 4 October 2021 after a trial lasting 18 days, the offender was convicted of 13 offences, namely cruelty to a person under 16 years contrary to section 1(1) of the Children and Young Persons Act 1933, two offences of sexual assault of a child under 13, contrary to section 7(1) of the Sexual Offences Act 2003, two offences of causing or inciting a child to engage in sexual activity, contrary to section 8(1) of the Sexual Offences Act 2003, two offences of sexual activity with a child contrary to section 9(1) of the Sexual Offences Act 2003, two offences of causing or inciting a child to engage in sexual activity, contrary to section 8(1) of the Sexual Offences Act when she was above the age of 13, two offences of sexual activity with a child family member, contrary to section 25(1) of the Sexual Offences Act 2003 and two offences of making indecent photographs of a child contrary to section 1(1)(a) of the Protection of Children Act 1978. The total sentence imposed was one of 9 years' imprisonment. The offender was also made subject to an indefinite Restraining Order and orders made for forfeiture of a laptop, iPhone and camera.
4. The offender is now 55 years of age. She is the mother of S who is now aged 23. The offender was married to S's father for about 12 years. S was their only child. The offender and her husband separated in about 2002 when S was aged 3. Thereafter S lived with her mother and had very little contact with her father.
5. In November 2005 the offender took S (then aged 7) to a Diagnostic Centre in Nottingham. Dr Miller, a consultant and developmental psychology speech and language therapist, diagnosed S with Pathological Demand Avoidance Syndrome (a form of autism). There had earlier, in 2003, been a diagnosis of a Neurodevelopmental Disorder by another doctor.
6. In October 2018, S was assessed by a consultant forensic psychologist, Dr Cutler. Dr Cutler concluded that the victim had never suffered from Pathological Demand Avoidance Syndrome nor from an Autistic Spectrum Disorder. She did conclude that S then suffered from Chronic Post-traumatic Stress Disorder. She had an average IQ but

had possibly underachieved academically and, in Dr Cutler's opinion, S's demonstration of selective mutism as a child was highly likely to have been contrived by the offender.

7. In relation to the assessment that had been made in 2005 and the diagnoses of Pathological Demand Avoidance Syndrome, the prosecution case at trial was that the offender exploited it for her own ends. Not only that, the offender repeatedly took S to medical appointments. Between the ages of 7 and 16 she had over 400 contacts with medical personnel. Apparently, the offender would tell S to remain silent during the appointments. She bought her daughter up to be fearful of medication and to be suspicious of medical opinion.
8. The prosecution said that the offender's manipulation of these consultations was to ensure that the diagnosis was maintained thereby allowing her to continue to isolate her daughter from the outside world.
9. The offender sought to control as much of her daughter's life as possible, even though S attended school in the normal way; the offender restricted S's relationships and monitored her social media. The offender prevented S forming friendships with others and would tell people that it was not safe to talk to S since she could react dangerously. At the same time, the offender told S that it was not safe for her to talk to certain people because they would hurt her and on at least one occasion, she told S that her father would kidnap her and take her away.
10. Over time S came to believe what the offender was telling her. It was the prosecution case that the offender told deliberate lies in maintain an exclusive relationship with S. As it was, S grew up thinking that she suffered from a serious medical condition and that her relationship with her mother was normal and conventional.
11. The offender exerted emotional blackmail to control S. Up until S aged 18 left for ballet school in the autumn of 2016, she would sleep in her mother's bed and bathe together with her every evening because of what she believed was medical advice.
12. S was a very talented dancer. The offender permitted her to go to dance classes, competitions and festivals but on occasions she would convince the victim that she was ill in order to miss auditions or to dissuade her from applying to schools away from home.
13. The first count on the indictment is cruelty to a child between April 2000 and April 2014 involving ill-treatment, isolating S and physically assaulting her. The offender threw things at the victim, would hit her and roughly handle her. The diagnosis of Pathological

Demand Avoidance Syndrome was used to isolate and control S. The offender told S that she would not like cinemas and should not go to restaurants because they were dirty and dangerous.

14. The offender became sexually abusive.

15. Different counts on the indictment represented the sexual assault of S when under 13, between the ages of 13 and 15 and between the ages of 16 and 18. The offender simulated sex with S by getting on top of her, when clothed or unclothed, and moving her body backwards and forwards.

16. Another type of sexual assault occurred during a game invented by the offender which she called "Count the veins": this game involved the offender touching S and vice versa, counting veins on the body including breasts and vagina. On occasion the offender would specifically ask that S touch her vagina, stroke it or play with it.

17. S was invited to suck the offender's breasts whilst aged between 8 and 15. The offender would also touch S's breasts. She would take the opportunity to put her hands down S's costume whilst S was getting into her costumes at dance competitions, move her breasts, lift them and sometimes squeeze them.

18. The two indecent photographs of S were taken in August 2013 and January 2017. Of the two indecent photographs one shows S with her breasts exposed, one hand inside her knickers. The other shows S naked and performing a ballet pose having just got out of the bath.

19. The offending only came to light when S left the family home to attend ballet school. The offender continued to be obsessive and persistent in her controlling abusive conduct of the victim. She would repeatedly call S and threatened to take her own life. She would attend at the school and threatened to remove S.

20. S complained to her father about the sexual and emotional abuse that she was suffering.

21. In January 2017 a police investigation began.

22. At trial the offender denied any sexual activity or cruelty and, despite the evidence from Dr Cutler, continued to maintain that S suffered from the condition Pathological Demand Avoidance Syndrome.

23. S prepared victim impact statements which she read at the sentencing hearing. Understandably, the offending had had a very significant impact upon S's childhood and teenage life. She had been prescribed antidepressants and received counselling. She suffered from nightmares and flashbacks. She could not understand her mother's behaviour and the fact that her whole childhood had revolved around her mother.
24. Fortunately, as the judge found, and despite the abuse she endured, she had grown up into a confident and successful young woman who now runs a successful business; she had flourished since escaping her mother's control.
25. The pre-sentence report, dated November 2021, reported the offender to be apologetic and distressed. Although she maintained she was innocent, she would repeatedly correct herself and say that she had been found guilty and must accept this. She remained of the view, as previously indicated, that her daughter continued to demonstrate traits of autism.
26. The author of the pre-sentence report assessed the likelihood of reconviction as *low*. The offences were calculated and committed to meet her need and she was assessed as a *high* risk to known adults and children.
27. A clinical psychologist's report dated also in November 2021, provided a possible explanation for the offender's behaviour. In Dr Green's opinion there was a degree of morbid grief or attachment disorder along with Factitious Illness Disorder, although a formal diagnosis of that syndrome was not now possible. The offender's behaviour was thought to be likely to be the product of a Complex Anxiety Disorder in which the offender feared abandonment by her daughter and had attempted to keep her close in a dysfunctional relationship. The offender appeared to be an individual suffering with anxiety and depression and post-traumatic stress disorder.
28. The offender is 55 years old. She has no previous cautions, convictions, reprimands or warnings made against her.
29. The judge in his sentencing remarks recorded the chronology leading to trial, which had been impacted by Covid restrictions. Sentencing notes prepared by prosecution and defence counsel were available to him.
30. It was significant in his view that the jury had acquitted the offender of two offences of penetrative sexual assault, and which informed his assessment of culpability and harm, particularly in relation to the offences, contrary to section 8 of the Sexual Offences Act 2003. In his view, the cumulative offending had caused significant and serious psychological harm.

31. Appearing on behalf of Her Majesty's Attorney General, Mr Evans submits that the judge was correct to conclude that the offender's conduct amounted to serious cruelty and led to severe psychological harm. He concedes that the judge correctly characterised each individual offence according to the Sentencing Guidelines, correctly identifying the starting point and category range in relation to each sexual activity and the counts which represented that sexual activity. However, he submits that the overall sentence did not adequately reflect the totality of the offender's criminality bearing in mind the period of time over which the numerous serious offences were committed and the presence of multiple aggravating factors. In short, it was wrong for the judge not to pass consecutive sentences to reach a total period of imprisonment in excess of 9 years which, whilst at the top of the Sentencing Council Guideline's range, would have been merited in respect of any one of the serious sexual assaults.

32. He identifies a raft of aggravating features besides those which would have led to the categorisation of the offences as being of the highest culpability and resulting in serious harm, namely : the significant and high degree of premeditation; the number of offences; duration; and the vulnerability of S who had been isolated and convinced that she was autistic; the deliberate isolation of S; the abuse of trust; grooming ; and , the manipulative controlling behaviour, including making threats to commit suicide to prevent S disclosing the offences.

33. The available mitigation could not begin to outweigh the aggravating features or to excuse the severity and extent of the offending.

34. Mr Vullo QC, who appears together with Mr Benthall on behalf of the offender, emphasizes that the final Reference acknowledges that the judge was correct in assessing culpability and harm and thereafter categorising the offending.

35. It is clear that the judge chose 'lead' offences within the groups of sexual offences and 'loaded' them having regard not only to the aggravating factors pertinent to those individual offences but also bearing in mind the conduct as a whole. The judge had articulated his 'workings out', that is, the lead offence would have had a starting point of four years, but it was aggravated to six in order to take into account the aggravating factors for that offence and then a further upward variation made to reflect the other offending. Overall, this was a 'significant sentence' for a woman with no previous convictions on the basis of the facts that the trial judge found.

36. The judge had observed both S and the offender at close quarters. The offender was "not an utterly wicked woman of a kind that might be portrayed in literature. People in real life are more complicated and there were some redeeming features." He judged the offender's tears as family videos were shown to the jury during the course of the defence case to be "entirely genuine". He was also satisfied that despite the dysfunctional

relationship with her daughter, the offender had promoted and encouraged S's talent for ballet.

37. We have considered the respective submissions made with some care. We agree with Mr Vullo QC that the case is unusual and exceptional.
38. We have no doubt that the judge was correct to assess that the offender had caused significant psychological harm to S over a long period.
39. Equally, it is clear to us that the judge was entitled as trial judge to step back from the picture of the offender painted by the indictment and reach conclusions upon the evidence he heard and in the context of the expert reports that had been prepared.
40. Sentencing in this troubling case was undoubtedly further complicated by the offender's personality disorder. We consider that the judge rightly described the offender as "complex"; he identified the evidence which led him to the view that the offender was not "utterly wicked".
41. This is a lenient sentence. However, do not regard it to be so unduly lenient as to merit our interference.
42. We are not satisfied that he reached a sentence which no reasonable judge could reach in the circumstances. We are satisfied from our review of the sentencing remarks that the judge had conscientiously applied his mind to the details of the case. He had immersed himself within them and thereafter had sufficiently articulated the basis of his decision. There is no factor that he has left out of account.
43. We see nothing wrong with the structure of sentence he adopted in the selection of a lead offence. We are not persuaded that concurrent sentences were wrong in principle.
44. The application is refused.
45. The sentence of 9 years will be confirmed subject to the following minor amendments:
The offender will be credited with 25 days in respect of the period spent on qualifying curfew and the sentence will therefore be 9 years less 25 days.
46. There is no surcharge payable since the offences span a period of time before 1 April

2007.

47. The Restraining Order is wrongly recorded as being made pursuant to section 5 of the Protection from Harassment Act 1997 which was repealed on 1 December 2020 by the Sentencing Act. The record will be corrected to show that the Restraining Order is imposed pursuant to section 360 of the Sentencing Act 2020.

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

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