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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 902



No.202201083 A3  
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Royal Courts of Justice

Friday, 10 June 2022

Before:

LORD JUSTICE WILLIAM DAVIS  
MR JUSTICE MARTIN SPENCER  
HER HONOUR JUDGE MONTGOMERY QC

**IN THE MATTER OF A REFERENCE BY  
HER MAJESTY'S SOLICITOR GENERAL UNDER  
SECTION 36 OF THE CRIMINAL JUSTICE ACT 1988**

V  
MARK PAGE

**REPORTING RESTRICTIONS APPLY:  
SEXUAL OFFENCES (AMENDMENT) ACT 1992**

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MR B HOLT appeared for HM Solicitor General.  
MR T. BURKE QC appeared on behalf of the Offender.

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**J U D G M E N T**

LORD JUSTICE WILLIAM DAVIS:

- 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 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.

Introduction

- 2 On 9 March 2022 in the Crown Court sitting at Teesside, Mark Page was convicted after trial of Counts 2 to 5 on a five count indictment. Each count charged him with arranging the commission of a child sex offence contrary to s.14(1) of the Sexual Offences Act 2003.
- 3 On 10 March 2022, Page was sentenced as follows: Count 2 - seven years' imprisonment; Count 3 - seven years' imprisonment; Count 4 - 12 years' imprisonment; Count 5 - eight years' imprisonment.
- 4 All of the sentences were ordered to run concurrently. A Sexual Harm Prevention Order of indefinite duration was imposed, the order prohibiting, in particular, access to the internet and travel outside of England and Wales, save under strict conditions.
- 5 Her Majesty's Solicitor General seeks leave pursuant to s.36 of the Criminal Justice Act 1988 to refer the sentence to this court as unduly lenient. Mark Page, for his part, applies for leave to appeal against the sentence, his application having been referred to the full court by the Registrar. We shall consider the applications together.

The Facts

- 6 The offender is aged 63. He is a native of Teesside and prior to his sentence he lived close to Middlesbrough. Between April 2016 and August 2019, he communicated online with child prostitutes living in the Philippines. The purpose of his communication was to arrange sexual activity with children. On two occasions, in October 2016 and March 2019, he travelled to the Philippines and engaged in such activity. The offending was uncovered when in January 2020 the offenders' home address was searched and various electronic devices were found and seized.
- 7 Counts 2 and 3 related to Skype messages recovered on a Lenovo tablet. Between 8 and 18 August 2016 the offender carried on conversations with an individual in the Philippines who used the profile name "Lovely Zamora" ("LZ"). This individual was a child. The offender wanted her to get other children aged between 12 and 14 to appear on a webcam so that LZ could engage in sexual activity with them. LZ sent the offender a picture of a young girl. The offender asked that the activity should involve licking of the vagina of the girl and digital penetration. LZ said she could only lick the girl because she was a virgin. The offender said that, in person, the girl would have to engage in full sexual intercourse. He referred to the fact that he hoped to visit the Philippines later in the year. The offender on 12 August sent money (the equivalent of around £17 sterling) via Western Union to LZ. This was in respect of the proposed sexual activity to be shown to the offender via webcam. The arrangement did not come to fruition. LZ did not make the Skype call. There followed a conversation between the offender and LZ in which he said that he had hoped that there would have been a long-term arrangement between them, but that he now proposed to move on. The offender said this:

"I wanted to do every week but I send money and you don't do so I do not throw away money again. It is a pity, could have done every weekend."

- 8 When LZ said that she would "do it", the offender repeated that they could do it every week, but only when she had done that for which she had already had the money.
- 9 Count 4 concerned events in October 2016 when the offender travelled to the Philippines. During his visit, he was in contact with an unidentified individual. Initially, he wanted to meet this person with a young girl. He asked for a girl aged 12 or 13. He then asked if the individual could find a boy. A 13-year-old boy was found. The offender asked that the two of them come to his hotel the next day. He had a graphic text conversation about what was to take place. The following day there was discussion about the price that the offender was prepared to pay. He said that if the boy would "do for 2k" (namely, approximately £30 sterling), they should come to his hotel and that was agreed. Further text discussion took place about the sexual activity that was to occur. It was to involve penetrative sex. There was a meeting at the offender's hotel. For a period of hours, no messages passed between those involved. The offender then sent a message to the person with whom he had been in text contact earlier saying "tnx babe." He subsequently paid via Western Union the equivalent of £30 Sterling.
- 10 Count 5 also concerned events which occurred when the offender was in the Philippines. He was there between 18 March and 10 April 2019. At some point during his visit, he had sexual intercourse with a girl to whom he referred in text messages as "Jennyvieve". He understood her to be aged 13. They met at a shopping mall one evening. The meeting was arranged by a third party. The offender gave Jennyvieve the sterling equivalent of £15 to pass on to the individual who had arranged the encounter.
- 11 After the offender's arrest, Jennyvieve was located in the Philippines. She confirmed meeting a foreigner in 2019 with whom she had had sex for 1,000 pesos (namely, £15 Sterling). Jennyvieve in fact was 14 at the time.

#### Material before the judge

- 12 During the trial, evidence was called by the offender as to his positive good character. He had had a long career as a radio presenter and for many years he had been the stadium announcer at Middlesbrough Football Club.
- 13 A statement from a police officer involved in the investigation produced material relating to the prevalence of online abuse of young children in the Philippines. In particular, a report from UNICEF in 2016 described the country as "the global epicentre of the live stream sexual abuse trade".
- 14 There was no report from the probation service or from any medical professional in relation to the offender.

#### The Sentence

- 15 The judge set out the facts in relation to each count as we have already rehearsed them. He then said that in relation to Counts 4 and 5, he was satisfied to the criminal standard that the relevant sexual activity had taken place.
- 16 The judge then turned to the Sentencing Council Definitive Guideline for Sexual Offences. In respect of Counts 2 and 5, he said that the relevant sexual offence would have been causing a child to engage in sexual activity. In relation to Counts 3 and 4, he said that the conduct, if carried out in this country, would have constituted the rape of a child. However,

he noted that the indictment specified the offence as arranging to engage in sexual activity with a child.

17 The judge then said this:

"I am required to sentence you having regard to the guidelines for sexual offending issued by the Sentencing Council. In each case, digital penetration, Counts 2 and 3; rape, Count 4; and vaginal and anal penetration, Count 5, I assess the harm as category 1 as the intended offences. In terms of your culpability, because of the degree of planning, the deliberate targeting of very vulnerable children, the substantial disparity in age and the fact that this is a clear case of commercial exploitation, the categorisation is Category A. Further cumulation of factors, in particular in relation to Count 3 and the international element of these offences lead me to the view that it would be appropriate in each case to move up significantly from the suggested starting point."

18 The judge went on to sum up his view of the offending as follows:

"The offences of which you have been convicted involved the grotesque sexual abuse of young children for your own sexual gratification. You took advantage of the poverty and deprivation in an underdeveloped country in which children are routinely forced through economic and social deprivation into acts of prostitution. Your sole purpose was to engage children as young as 12 in vile sexual activity to satisfy your perverted appetite. It didn't matter to you that you were robbing them of the innocence of their childhood. It didn't matter to you what long-term trauma and emotional damage you were leading them to. You obviously delighted in the satisfaction of your own corrupt sexual desire. This was, in my view, the very embodiment of depravity and only a substantial custodial sentence can be justified."

19 The judge stated that were he to impose sentences without regard to the principle of totality, he would have imposed concurrent terms of imprisonment of seven years on Counts 2 and 3, a consecutive term of nine years' imprisonment on Count 4 and a further consecutive term of eight years' imprisonment on Count 5. He said that he would "moderate the totality of the sentence so as to ensure that it remains proportionate to your overall offending." So it was that he imposed concurrent sentences but with an increased sentence on Count 4 to reflect the overall offending. At no point in his sentencing remarks did the judge refer to whether the offender presented a significant risk of serious harm from the commission of further specified offences.

#### The Submissions

20 The Solicitor General takes no issue with the sentences identified by the judge as being appropriate in relation to the individual counts. The significant aggravating factors were set out and they resulted in an appropriate uplift from the relevant starting point in the guideline. The submission is that Counts 4 and 5 related to individuals separate from each other and from those involved in Counts 2 and 3. The judge recognised the consequence of that when he said that consecutive terms of imprisonment would be appropriate in relation to Counts 4 and 5. Whilst the judge was obliged to ensure that the overall sentence was in proportion to the offending, the sentence imposed failed to reflect the seriousness of the offender's criminality.

- 21 The Solicitor General also argues that there was good reason to conclude that the offender fell within the dangerousness provisions in Part 4 of Chapter 10 of the Sentencing Act 2020. It is submitted that the judge should have considered these provisions. This is not a case of a judge having decided that future risk could be managed sufficiently within a lengthy determinate sentence. Rather, in so far as appears from his sentencing remarks, he did not consider the issue at all. However, it is not submitted that this court should interfere with the issue of dangerousness in the sense of considering an extended determinate sentence. The Solicitor General relies on those matters to support his submission that this sentencing exercise in the end was flawed.
- 22 On behalf of the offender, it is submitted that the overall sentence imposed was manifestly excessive rather than unduly lenient. Whether concurrent or consecutive terms should be imposed must be a matter for the judgment of the sentencing judge. Reliance is placed on the experience and expertise of the judge concerned. Further, reliance is placed on the Sentencing Council Totality Guideline:
- "There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive components. The overriding principle is that the overall sentence must be just and proportionate."
- 23 The judge in this case had presided over the trial. He was in the best position to judge what was the proportionate sentence. The judge had concluded that an overall sentence of 12 years' imprisonment was appropriate. The relevant starting point for an offence of engaging in sexual activity with a child was five years' custody. The overall sentence represented an uplift of seven years from that starting point. That cannot be said to constitute an unduly lenient sentence.
- 24 Rather, it is said that the offences were of a similar kind such that the concurrent sentences were appropriate as a matter of principle. The category range for the most serious form of the offence of engaging in sexual activity with a child is four to ten years' custody. The total sentence, it is submitted, should not have been outside that category range.

### Discussion

- 25 We shall deal first with the application made by the Solicitor General. If his submissions are well-founded, the application for leave to appeal inevitably will fail. The correct formulation of what amounts to an unduly lenient sentence is still that provided by the then Lord Chief Justice in Attorney-General's Reference No. 4 of 1989 [1990] 1 WLR 41:
- "A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all relevant factors, could reasonably consider appropriate."
- 26 It follows that for us to conclude that this sentence was unduly lenient, we must find that it was not reasonable for the judge to conclude that a total sentence of 12 years' imprisonment was sufficient to meet the criminality of the offender.
- 27 It was accepted in the court below that the appropriate offence guideline was that relating to Sections 9 and 10 of the Sexual Offences Act 2003. In relation to each count the offence fell within Category 1A. In each case the activity involved penetration so as to place the offence into Category 1 harm. In each case there were multiple culpability features: significant degree of planning; specific targeting of a particular vulnerable child; significant disparity in age; commercial exploitation and/or motivation. The aggravating factors were: encouragement of victims to recruit others; period over which offending occurred;

international element with offending in a country vulnerable to sexual exploitation. The only mitigating factors were lack of previous convictions and the offender's good character. As the guideline makes clear, good character will not normally justify any reduction from what otherwise would be the appropriate sentence in cases of this kind. That is particularly the case where, as here, the offending is grave.

- 28 We conclude that the judge was entirely justified in his conclusion as to the appropriate sentence in relation to each count. The offending in Counts 2 and 3 did not involve completed sexual activity, but that was not due to anything done or not done on the part of the offender. A significant uplift from the starting point from five years was required. Counts 4 and 5 involved the offender travelling to the Philippines and engaging in full penetrative sex with children aged 13 and 14. Custodial terms at the upper end of the category range were appropriate. The judge drew a marginal distinction between the sentences on those counts. In our view, he would have been entitled to conclude that a sentence of nine years' imprisonment was as warranted on Count 5 as it was on Count 4.
- 29 The judge referred to the principle of totality and to the need to ensure proportionality. He did not refer to the terms of the Sentencing Council Totality Guideline. In rehearsing the submissions made on behalf of the offender, we have cited the proposition in the Guideline that there is no inflexible rule. However, the Guideline does go on to identify cases in which "consecutive sentences will ordinarily be appropriate". Such cases include "offences that are of the same or similar kind but where the overall criminality would not sufficiently be reflected by concurrent sentences ... (for example) where offences committed against different people". The rationale behind this proposition is that serious offending against different individuals should be marked by sentences in relation to each individual. For the consequences in relation to each individual to be marked effectively, the sentences should be consecutive.
- 30 In this case, the judge imposed what he considered to be the appropriate overall sentence in relation to the most serious offence, as he found it to be. To aggregate the offending and to impose the overall sentence in relation to a particular count is a proper approach in the right case. Here, the maximum sentence in relation to the individual offences was 14 years' imprisonment, so the aggregated sentence could not exceed that term. For the judge to take the approach he did meant that his sentencing powers were restricted. In our view the restriction he imposed on himself was not reasonable.
- 31 Count 4 involving the 13-year-old boy was quite distinct from Count 5 involving Jennyvieve. Each offence justified a substantial sentence as identified by the judge. Because the offences involved different individuals and were separated considerably in time, the proper course would have been to impose consecutive sentences. We conclude that this is the course that the judge should have taken. Moreover, the offending reflected in Counts 2 and 3 was also separate and distinct.
- 32 We are bound to respect the view of this very experienced judge who conducted the trial. We accept that his task was to determine the sentence that was just and proportionate and we must be slow to interfere with the approach taken by him. However, we are satisfied that the offender's overall criminality was not reflected by the sentence he imposed. It involved an increase of only three years' custody beyond the term he considered to be appropriate for just one of the offences committed by the offender. We have set out the way in which the judge described the offending. We do not disagree with that description. In the light of that description, the sentence imposed in our view was unduly lenient.
- 33 We accept that it would not be appropriate to have imposed the total sentence that would result from ordering the sentences in relation to Count 4 and Count 5 to run consecutively to

each other and to the sentences in relation to Counts 2 and 3. That would result in a total sentence of 24 years' imprisonment. Even for offending of this level of seriousness, that would be disproportionate. We consider that the least sentence that would be appropriate on the facts of this case is one of 18 years' imprisonment. We shall explain how that outcome is to be achieved once we have considered the issue of dangerousness.

- 34 All of our reasoning in relation to the application by the Solicitor General clearly applies equally to the offender's application for leave to appeal against the length of the sentence imposed. It must follow from what we have said that we refuse the application made by the offender.
- 35 On the issue of dangerousness, we agree the judge should have explained his approach when sentencing the offender. When someone commits grave sexual offences of the kind involved here, a significant risk of serious harm from further similar offences must be at least a possibility. The judge may have concluded that the length of the determinate sentence, coupled with the indefinite operation of the Sexual Harm Prevention Order, would be sufficient to deal with whatever risk of future harm there was. If that were the case, he should have set out his reasoning. In any event, he should have considered the need for a pre-sentence report specifically directed at the issue of dangerousness.
- 36 The first question for us in relation to an assessment of dangerousness is whether we should require a report to consider that issue. We have concluded we do not. We are satisfied simply on the basis of the facts of the case: repeated predatory sexual offending over the course of three years, which had been denied throughout by the offender, demonstrates a significant risk of serious harm to the public from further specified offences.
- 37 Having reached that view, we are not obliged to impose an extended determinate sentence. As a result of our review of the offender's overall sentence, he will now be subject to a term of 18 years' imprisonment. By the expiry of that sentence, the offender will be aged 81. Even then, he will remain for the rest of his life subject to the Sexual Harm Prevention Order. Whatever might have been the correct conclusion on the basis of a determinate sentence of 12 years' imprisonment, we conclude that the determinate term which we propose to substitute will be sufficient to protect the public.

### Conclusion

- 38 We give leave to the Solicitor General to make a reference to this court under the provisions of s.36 of the Criminal Justice Act 1988. We find that the sentence imposed on the offender was unduly lenient for the reasons we have set out.
- 39 We quash the sentence imposed by the judge in relation to Counts 4 and 5. In order to achieve the overall sentence we consider to be appropriate, in relation to both Count 4 and Count 5 we substitute a sentence of nine years' imprisonment. Those sentences will run concurrently with the sentences of seven years' imprisonment on Counts 2 and 3. However, they will run consecutive to each other, thereby leading to a total sentence of 18 years' imprisonment.
- 40 We refuse the offender leave to appeal against the sentence.

**CERTIFICATE**

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This transcript has been approved by the Judge.