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IN THE COURT OF APPEAL
CRIMINAL DIVISION

On appeal from Teesside Crown Court
(His Honour Judge Carroll)



Case No: 2023/03497/A5
NCN: [2024] EWCA Crim 853

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 11th July 2024

B e f o r e:

VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE BRYAN

MRS JUSTICE THORNTON DBE

R E X

- v -

MICHAEL JAMES WOODS

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiglobal.co.uk (Official Shorthand Writers to the Court)

Mr I West appeared on behalf of the Applicant

Mr P Cleasby appeared on behalf of the Crown

J U D G M E N T

Thursday 11th July 2024

LORD JUSTICE HOLROYDE: I will ask Mrs Justice Thornton to give the judgment of the court.

MRS JUSTICE THORNTON:

Introduction

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 the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. The applicant, who is now 42 years of age, renews his application for leave to appeal against the imposition of an extended sentence of 26 years following three convictions of rape, contrary to section 1(1) of the Sexual Offences Act 1956, and having pleaded guilty to one offence of failing to comply with the notification requirements, contrary to section 91(1)(a) and (2) of the Sexual Offences Act 2003, for which he was sentenced to a concurrent term of eight months' imprisonment. Each of the extended sentences comprised a custodial terms of 21 years and an extended licence period of five years. Leave to appeal was refused by the single judge.

The Facts

3. The offending took place between August 2000 and December 2001 when, we are told, the applicant was 18 years of age, and this was the basis on which he was sentenced. His victim, who was his partner at the time, was then aged 16 or 17 years. She was vulnerable by virtue of the recent death of her mother, the challenges that she faced at home with her father and

stepmother, and periods in foster care. Between these dates, whilst he was aged 18, the applicant raped the victim on three specific occasions.

4. From the start of their relationship, the applicant sought to isolate the victim from friends and family. He controlled who she could speak to, what she could wear, and what she could eat. The first rape was committed shortly after she had terminated a pregnancy. She was still bleeding and in pain from the procedure when the applicant forced her into his bedroom and told her that he was going to make her pregnant again. The applicant raped the victim while another person was present in the flat. After the offence, the applicant joked with a friend about what he had done. He did in fact make the victim pregnant again.

5. The second rape was committed whilst the victim was sharing a single bed with a third person who was asleep. The applicant made it clear that he wanted sex but she did not want to while someone else was present. The applicant then vaginally raped her and ejaculated. On a third occasion, in the front room of his flat, the applicant anally raped the victim until he ejaculated.

6. In September 2004 the applicant raped a different partner, for which he received a sentence of six years' imprisonment and was made the subject of sex offender notification requirements and a Sexual Offences Prevention Order (as it was then known).

7. In 2014 he was convicted of failing to comply with notification requirements, pursuant to the Sexual Offences Act 2003.

8. In 2016, he was convicted of assaulting another partner, pursuant to section 47 of the Offences against the Person Act 1861, and further failures to comply with notification requirements.

9. In 2017 and 2021 he was convicted of breaching a Sexual Harm Prevention Order and failing to comply with notification requirements.

10. In December 2019, the victim of the rapes in 2000 and 2001 reported the offences to police.

11. In 2021, the applicant was convicted of failing to comply with notification requirements.

12. In 2022, the applicant moved in with a new partner and failed to notify his change of address in accordance with his notification requirements.

13. At the time of the sentences for the rape in 2000/2001, the applicant was 41 years of age.

The Sentencing Exercise

14. In sentencing the applicant the judge observed that, at the time of the offending in 2000 and 2001, the applicant was already by his conduct towards the victim establishing himself as a sexually obsessed and predatory character. He was described by the judge as "sexually aggressive, abusive and entitled".

15. The judge considered that there were elements of additional humiliation in each of the rapes over and above the mere fact of the inherent nature of the offending itself. The first rape occurred after the victim had had a termination and whilst she was still bleeding and in pain from the operation, in the presence of someone in a small flat who was able to hear clearly what was going on. Ejaculation occurred, after which the applicant laughed and joked with a friend about what he had done. The second vaginal rape, with ejaculation, also had elements of humiliation because of the presence of a third person in a single bed. The judge considered that seemed to give the applicant an additional element of control and humiliation that he appeared to enjoy. The third anal rape, with ejaculation, caused obvious pain and was

particularly humiliating to the victim who found it disgusting.

16. Turning to harm, the judge said that he had heard evidence from the victim and had read the Victim Personal Statement. In his sentencing remarks he said as follows:

"It is a profound explanation, in my judgment, of the long-term and sometimes lifelong impact of the harm of controlling, coercive and abusive relationships, where penetrative sex is used as another weapon of control and humiliation. She has suffered emotional breakdowns. She suffers with depression, anxiety, and panic attacks. She has a continuing fear of you discovering where she is even now in her adult life. Even 20 years later with the support of a loving husband and family, she continues to suffer nightmares and distress, and after reporting this matter to the police, she suffered a further breakdown in 2021. The harm is profound indeed."

17. Turning to mitigation, the judge accepted that there needed to be some reflection for the fact that the applicant was still an immature 18 year old young man at the time. The judge went on to say that there was no sign of any insight into the nature of the applicant's offending or the harm caused or any remorse.

Extended sentence

18. In considering the extended sentence, the judge accepted that the applicant's previous convictions, which postdated the offending in question, did not directly aggravate the sentences but were relevant to the consideration of the continuing risk that the applicant presented and the assessment of the applicability of an extended sentence. The judge noted the hostile attitude displayed by the applicant to the pre-sentence report process and the court process in refusing to cooperate.

19. He referred to the analysis in the pre-sentence report that the applicant had demonstrated a persistent refusal to engage with court orders designed to protect the public, and a refusal to

engage with professionals whose role it was to work with him to reduce any future risk. His convictions for rape in 2004 and 2005 and the facts of these rapes against his ex-partner showed a continuation of those very same attitudes towards women and to sex that were displayed in 2000 and 2001.

20. The judge noted that the author of the pre-sentence report analysed the applicant as having attitudes of sexual entitlement, as well as a total disregard for the rights and views of others. He concluded that at the time of the offending the applicant was, and remained, a sexual predator and a bully. Unless and until he engaged appropriately, he represented a significant risk to members of the public of serious harm being occasioned by the commission of further specified offences. The judge concluded that he was entirely satisfied that the applicant met the appropriate test for an extended sentence and imposed an extension period of five years.

Length of custody

21. Turning to the custodial element, the judge considered that the offending fell within category A2 of the guidelines. There was clear evidence of severe psychological harm to the victim, together with elements of additional degradation and humiliation. Given that counts 2 and 3 reflected further sexual violence inflicted on the victim, culpability was, in the round, category A. Each of the offences was towards the top end of that bracket when looked at individually. Sentenced individually, they would amount to 25 to 30 years, which would be reduced to take account of totality to 21 years' imprisonment.

Breach of notification requirement

22. So far as the breach of the notification requirement was concerned, the judge imposed eight months' imprisonment, to run concurrently with the other sentences.

Grounds of appeal

23. The proposed grounds of appeal assert that the sentence was manifestly excessive on two bases:

1. Firstly, the learned judge should not have imposed an extended sentence because there was no sound basis on which for him to conclude that there was a significant risk to members of the public of serious harm from further specified offences.

2. Secondly, the length of the custodial period was too long, given the offences were committed more than 20 years ago, at a time when the applicant was only 18 years old.

24. We were informed at the hearing today that the application for leave is not renewed in relation to the first ground and accordingly we say no more about it.

25. The second ground, namely the length of the custodial period, is pursued before us.

26. In written submissions on behalf of the applicant it is said that the judge fell into error in failing to reduce the custodial sentence to account for the appellant being only 18 years of age at the time of the offending. Reliance is placed in the written submissions on *R v Ahmed* [2023] EWCA Crim 281, in which the court gave guidance on sentencing adults for offences committed when they were children. It is submitted on behalf of the applicant, that the starting point is to ask what sentence the court would have passed if it had dealt with the applicant shortly after his offence.

27. When it applies, *Ahmed* requires the court to have regard to the maximum sentence which would have been available in the case of the offender at or shortly after the time of his offending, and to take as its starting point the sentence which it considers was likely to have been imposed if the child offender had been sentenced shortly after the offending. However at

[33] in *Ahmed*, the Court of Appeal said:

"We emphasise that nothing in this judgment affects the approach set out in *H(J)* and *Forbes* in relation to the sentencing of adult offenders for crimes committed after they had attained the age of 18."

28. As is acknowledged, the applicant was aged 18 at the time of his offending. Accordingly, applying *Ahmed*, the approach set out in *R v H(J)* [2011] EWCA Crim 2753, and *R v Forbes* [2016] EWCA Crim 1388, prevails, namely that an offender must be sentenced in accordance with the regime applicable at the date of sentencing, not the regime which was in force at the time of his offending, providing the sentence is limited to the maximum sentence available at the time of the offending. Sentences should not be applied in a mechanistic way by reference to current sentencing guidelines which are premised on greatly increased maximum sentences.

29. Before us, in oral submissions, Counsel for the applicant emphasised the applicant's age and immaturity at the time of the offending. In response, the prosecution submitted that the judge was well placed to make an assessment of the offending, having heard evidence, including from the victims.

30. Having considered the submissions, our conclusions are as follows.

31. This was, as the sentencing judge said, serious sexual violence with additional elements of humiliation and degradation, as well as coercion and control. Profound and lifelong harm has been caused to the victim. Nonetheless, applying a measured approach to the guidelines, we have taken into account that these rapes were the applicant's first sexual offences, and they were all committed when he was 18 years of age. There is nothing to suggest that he was any less mature than his peers, but it is nonetheless important to give due weight to the fact that he

did not attain full adult maturity overnight.

32. In taking this factor into account we have come to the view that an extended sentence of 26 years was manifestly excessive and should be substituted by an extended sentence of 23 years.

33. Before concluding this judgment, we consider it necessary to clarify the following. In his sentencing remarks the judge referred to a victim surcharge applying and made reference to the order being drawn up in the appropriate sum. The offences pre-date the victim surcharge provisions. Whilst it does not appear that any order was produced (and there is no reference to the surcharge on the Crown Court record sheet). However, for the avoidance of doubt we make clear that the victim surcharge does not apply to the present case.

34. Accordingly, we grant leave to appeal and we allow the appeal. We quash the extended sentences of 26 years and substitute for them concurrent extended sentences of 23 years, each comprising a custodial term of 18 years and an extended licence period of five years.

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

Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
