



Neutral Citation Number: [2006] EWCA Crim 2744

No: 2006/04020/A7

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2

Thursday, 2nd November 2006

B E F O R E:

LORD JUSTICE HUGHES
MR JUSTICE HENRIQUES

R E G I N A

-v-

IAN PHILLIP BARRASS

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MR M CANE-SOOTHILL appeared on behalf of the Appellant

J U D G M E N T
(As approved by the Court)

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1. MR JUSTICE HENRIQUES: This appeal, with leave of the single judge, concerns the length of sentence in a case of sexual activity between a young man in his mid-twenties and a girl aged 14. This is not intended to be a guideline judgment.
2. On 23rd June 2006 in the Crown Court at Hull, the appellant pleaded guilty to sexual activity with a child, contrary to sections 9(1) and (2) of the Sexual Offences Act 2003, and he was sentenced on 28th July to a term of 32 months' imprisonment. He was required to comply with the notification provisions, the period being indefinite.
3. On 11th February 2006 the girl, a 14-year old, attended her friend's birthday party in Hull. The appellant was at that same party. Everyone present was drinking alcohol, including

very young persons. During the course of the party the appellant and the girl appeared to be coming quite close, and at one stage the mother of one of the girls heard the appellant making a remark about the girl in question's cleavage. She told the girl to cover herself up, and said "don't forget you are only fourteen." There was a dispute about that, and in the basis of plea the appellant accepted his guilt of the offences on the basis that he did not take sufficient precaution to assure himself of the girl's age, and in particular that she was at least 16 years of age.

4. Some time after 10 o'clock the appellant and the girl went down an alleyway next to the house and into the next door garden, where sexual intercourse took place. The next day the complainant went to the police and made a complaint of rape. The appellant was arrested, and in interview accepted that he had intercourse with the girl. He denied rape, but he accepted that he did nothing to ascertain the complainant's age.
5. In sentencing the judge accepted that the offence was probably a one-off, but it was so serious that a custodial sentence had to be imposed. He said that the starting point was reduced from 5 years to 4 years, and full credit was given for the plea of guilty. We are obliged to Mr Cane-Soothill, who appears for the appellant today, for the information that neither he nor counsel who represented the appellant at the hearing were able to deduce whence the 5-year starting point had been extracted by the sentencing judge. It is of course the starting point in Millberry for cases of rape, and thus not applicable in the present case. Plainly the judge was in error in taking a 5-year starting point.
6. The appellant has 24 previous court appearances for a very large number of offences between May 1992 and January 2006, but none of those were for sexual offences.
7. The pre-sentence report indicates that the appellant stated that the complainant had instigated the sexual contact and had given her full consent. The appellant felt guilty, not because of what he had done but because he had betrayed his partner. He had had a most difficult early life. He had been taken into local authority care. He later attended a special school, due to disruptive behaviour. He was assessed as posing a medium risk of sexual reconviction.
8. It is submitted that the judge took a starting point which was too high; that he failed sufficiently to take into account the basis of plea; that, having decided not to have a trial of any of the issues identified, he failed to give the appellant sufficient benefit of that decision; and he failed to give full credit for the appellant's admissions and co-operation.
9. We have had to consider in what bracket this sentence should have been pitched, and the several sentencing authorities are not easily reconciled. In Corran and others [2005] 2 Cr App R(S) 73, Rose LJ V-P, in a case offering guidance on the new offences created by the 2003 Act, stated in paragraph 13 of the judgment of this court that pre-Act authorities which indicate a sentence of the order of 15 months for a defendant in his twenties, will continue to provide assistance, particularly bearing in mind that life imprisonment was the maximum sentence for the pre-Act offence of having sexual intercourse with a girl under 13.
10. In Davies [2006] 1 Cr App R(S) 213, reported at Thomas B4A-63A01, the appellant, aged 19, pleaded guilty to penetrative sexual activity with a child under the age of 16. The girl was aged 13. She had been drinking. She walked into the beer garden of a public house where the appellant was drinking. Following conversation, they went to a secluded place where sexual intercourse took place. He initially denied guilt, but when confronted with

DNA evidence he admitted it. He was sentenced on the basis the girl told him she was 15, and that she had initiated the sexual activity. A sentence of 16 months was reduced to nine months.

11. In Wingrove a 22-year old appellant admitted having intercourse with a 13-year old on three occasions. An extended sentence with a custodial term of 2½ years and an extension period of 2 years was reduced to a custodial period of 2 years with an extension period of 2 years. That case can perhaps be distinguished from others, in that there was there a continuing relationship which the appellant seemed reluctant to give up. The remaining cases we consider were single one-off offences.
12. In Chadwick, a 19-year old appellant pleaded guilty to sexual activity with a 13-year old girl. The offence took place at a party. Both the appellant and the girl drank too much. He played a part in her becoming drunk. He then exploited the situation. Twelve months' detention was reduced by this court to six months.
13. In the present case, the appellant is 26 years of age, and therefore slightly older than the appellants whose cases we have been considering. On the other hand, the girl was 14, marginally older than the other girls.
14. Whilst the appellant has a poor criminal record, he has no sexual offences on his record and had the most difficult start in life, having been taken into care and thereafter to a special school. As we have commented, the starting point of 5 years was plainly in error. We are conscious that the Sentencing Guidelines Council are considering sentencing in this field and have published a draft report, but are yet to publish established guidelines specific to this category of sexual offence, where both parties are young and there is full consent on the part of the girl.
15. We have recently been handed a document in the form of a statement from the girl's mother. We are pleased to note that she is just starting to make some sort of progress in school. We are pleased that she is catching up, and that teachers are starting to notice that she is paying attention to her work. Her mother expresses concern that the appellant may be released now. That will not be the effect of any variation that we make to this sentence. Of course the court's function, whilst having regard to the predicament of the girl in question, must at the same time ensure that a fair and proper sentence, that is a sentence which is not manifestly excessive, is imposed upon the offender.
16. Considering all the matters, we consider that a sentence of 18 months' imprisonment is consistent with current sentencing practice and accords with the authorities cited. Accordingly, we substitute that sentence for the sentence actually passed. The effect of that is that the notification period, which was previously indefinite, becomes one of 10 years.
17. To that extent, this appeal is allowed.
18. MR CANE-SOOTHILL: I am grateful.
19. LORD JUSTICE HUGHES: Thank you Mr Cane-Soothill.