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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202103153/A4
NCN [2022] EWCA Crim 752

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 12 May 2022

Before:

LORD JUSTICE HOLROYDE

MR JUSTICE SWEENEY

MR JUSTICE EYRE

REGINA

v

ROBERT CAMERON WELLS

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR A WILLIAMSON QC appeared on behalf of the Appellant.

MS J KNIGHT QC appeared on behalf of the Crown.

J U D G M E N T

1. LORD JUSTICE HOLROYDE: This is an appeal by leave of the single judge against sentences of life imprisonment, with a minimum term of 17 years, imposed for 19 sexual offences.
2. The victims of the offences are entitled to the protection of the provisions of the Sexual Offences (Amendment) Act 1992. Accordingly, during their respective lifetimes, no matter may be included in any publication if it is likely to lead members of the public to identify them as victims of these offences. We shall refer to the victims simply as "C1" to "C5".
3. The appellant (now aged 70) was a doctor in general practice both for the NHS and on a private basis. As is now clear, he committed many sexual offences against many victims over a long period of time. He had served two prison sentences for some of those offences before the present offences were prosecuted. We shall endeavour to summarise the relevant history so far as possible in chronological order.
4. Between 1979 and 1985 the appellant committed three offences of indecent assault of a female aged under 14 years and one of indecent assault of a female aged under 16 years. We shall refer to that group of offences as "the Cardiff offences".
5. Counts 1 to 3 on this indictment charged two offences of indecency with a child contrary to section 1 of the Indecency with Children Act 1960, and one of attempting to take an indecent image of a child. These offences were committed in October 1998 against C1, a boy then aged 8. C1 was a friend of the appellant's daughter and was invited to her birthday party. At the party the appellant told C1 that he did not look well and gave him a tablet. The appellant then took C1 by car to what appears to have been an industrial area and into a building where they were joined by another man. C1 was taken into a room where a very young girl was naked and apparently unconscious on a hospital-type bed. A large camera had been set up in the corner of the room. The appellant gave C1 an item described as a "small hammer-like object" and made him insert it into the girl's vagina. The appellant then exposed his penis in C1's face. C1 next remembered waking up in a different location. When he asked what had happened the appellant told him he had been unwell and had been asleep.
6. Count 4 charged indecent assault, contrary to section 14 of the Sexual Offences Act 1956, against C2, a girl then aged 15. She had been a victim of sexual abuse by a family member or friend which had resulted in her becoming pregnant. She was referred to the appellant in connection with having the pregnancy terminated. Although that procedure was not carried out by the appellant, he did purport to carry out a medical examination of the girl, in the course of which he touched and played with her clitoris.
7. In 2000 the appellant began a relationship with C3, an 18-year-old receptionist at a health centre where he worked. She was in very difficult personal circumstances, having refused to enter into a marriage arranged by her parents, and welcomed what appeared to be kindly treatment by a man 30 years her senior. He also behaved with apparent kindness towards her younger sisters C4 and C5, and her mother. C3 began a consensual sexual relationship with him. On one occasion she recalls sitting on the sofa drinking wine with him, but remembered nothing after that. The next day the appellant showed her a video recording which he had made showing her lying naked on the sofa with her legs apart and the appellant inserting his fingers into her vagina. She asked him to delete the recording but he refused to do so. This incident was charged in count 5 as indecent assault contrary to section 14 of the 1956 Act.

8. The appellant then committed a series of offences over a 2-year period against C5, who was aged 9 to 11 at the relevant times. On this indictment the appellant was charged with 13 offences, committed in the early months of 2001: two of rape (counts 12 and 13); six of indecent assault (counts 6, 7, 9, 10, 14 and 17); four of taking indecent photographs of a child contrary to section 1 of the Protection of Children Act 1978 (counts 8, 11, 16 and 18) and one of indecency with a child contrary to section 1 of the Indecency with Children Act 1960 (count 15).
9. In summary, the circumstances of those offences were as follows. On 8 March 2001 the appellant video recorded C5 lying either asleep or unconscious. He exposed and touched her breasts, digitally penetrated her vagina and ejaculated on her stomach. C5 was unresponsive throughout these events. They were charged in counts 6 to 8. On 21 April 2001 a further recording was made of C5 when asleep or unconscious. The appellant rubbed her vagina over her underwear and then digitally penetrated her vagina. The events were charged in counts 9 to 11. On 21 May 2001, a further recording was made in which C5 appeared to be either drugged or drunk. The appellant was heard to say that she was going to 'lose her cherry' that night. He rubbed baby oil over her vaginal area and digitally penetrated her vagina. Later footage showed C5 on a bed. The appellant penetrated her vagina with a candle until she flinched. He then opened her legs, tied her ankles to the bed and masturbated his penis close to her vagina. C5 protested, saying she wanted to put her shorts on, but the appellant ignored her and put his penis into her vagina. C5 cried out in pain and begged him to stop. The appellant instead turned her over and raped her anally. C5 was crying in pain throughout. To complete this course of activity, the appellant again inserted a candle into C5's vagina and then masturbated over her on the bed. These actions were charged in counts 12 to 16.
10. A fourth sequence of footage recorded between April and July 2001 again showed C5 in a barely responsive state. The appellant recorded himself inserting three different candles of varying sizes into her vagina. This conduct was charged in counts 17 and 18.
11. The appellant went on to commit further offences against C5 later in 2002 and early in 2003: two further offences of rape, three of indecent assault and one of taking indecent photographs of a child. He also committed (in February 2003) two offences of administering a drug with intent to girls aged 5 and 11 and indecent assault on one of them. We shall refer to this group of slightly later offences as "the Winchester offences".
12. Finally, between November 2002 and March 2003 the appellant committed an offence of indecent assault against C4, aged 18 at the time (count 19). On an occasion when she was staying in his flat he took her out for a meal and then gave her a cup of coffee which she noticed tasted unpleasant. She fell asleep. When she woke she found that the appellant was beside her and her shorts had been removed.
13. On 8 June 2004, after a 19-day trial in the Crown Court at Winchester, the appellant was convicted of the Winchester offences and sentenced to a total of 15 years' imprisonment. He was released on licence from that sentence in 2014, but recalled to prison a year later because he had failed to comply with the conditions of his licence. One consequence of that breach was that further investigation was carried out. This revealed video evidence of his having committed further offences against C5 at times when she had been either asleep or drugged.
14. Then in 2017, on the second day of a trial in the Crown Court at Cardiff, the appellant pleaded guilty to the Cardiff offences. For those he was sentenced to a total of 7 years'

imprisonment. He was eligible for release on licence from that sentence in October 2020, but has remained in custody in relation to the present offences.

15. When first interviewed about the present offences, the appellant made no comment. When police officers later tried to interview him again, he refused even to leave his cell. He has consistently refused to provide the code which would enable the police to access encrypted areas of his computer. He was charged with the 19 offences to which we have referred and on 4 March 2020 was sent to the Crown Court for trial. He entered not guilty pleas to all charges. The case was listed for trial in July 2021. On the first day he pleaded guilty to counts 4 to 19. He was subsequently convicted by the jury of counts 1 to 3.
16. Each of the victims made a victim personal statement which set out in clear terms the immense harm which the appellant has caused to them all. No pre-sentence report was considered necessary and we are satisfied that none is necessary now.
17. In his sentencing remarks, the judge observed that the offending involved a grotesque abuse of trust and the misuse of the appellant's role as a doctor to gain access to drugs which he used to render his victims "at best compliant and at worst unconscious". There was significant planning of some of the offences and some of the victims were particularly vulnerable. There were elements of sexual grooming. Sexual imagery was recorded and retained. The judge noted that the appellant had prolonged the ordeal of his victims by contesting the allegations made by one, and admitting his offences against the others only at the start of the trial, but nonetheless gave 10% credit for those late pleas. He indicated his categorisation of the offences under the relevant sentencing guidelines, accepting in this regard the submissions of the prosecution as to the corresponding modern offences. He indicated that he had taken care to avoid double counting.
18. The judge considered the issue of dangerousness having regard to the totality of the present offending alongside the previous convictions. At page 4G he concluded:

"... I have not the slightest hesitation in concluding that you continue and will continue into the future to pose a significant risk of serious harm by the commission of further specified offences. Your perverted sexual appetite appears to know no bounds. You have no interest in the law, or in the social rules and norms that are designed to keep people safe. It is who you are. It is what you do. There is no evidence you had any desire, let alone any ability to change."

19. The judge went on to consider the two-stage test for a discretionary "common law" life sentence laid down in Attorney-General's Reference No 32 of 1999 (R v Whittaker) [1997] 1 Cr App R(S) 261 and R v Chapman [2000] 1 Cr App R(S) 377. He was satisfied that the gravity of the offences warranted a life sentence and that there were good grounds for believing that the appellant, notwithstanding his age, may remain a danger to the public for a period of time which could not reliably be estimated.
20. In those circumstances the judge imposed sentences of life imprisonment on counts 1, 6, 9, 12, 13 and 17. He set the minimum term at 17 years. He imposed concurrent terms of 42 months, 66 months and 10 months on counts 4, 5 and 19 respectively. He imposed no separate penalty for the remaining offences.
21. The first ground of appeal challenges the sentences on counts 1, 6, 9 and 17 as unlawful.

We can deal with this ground briefly. As the respondent accepts, the judge had no power to pass sentences of life imprisonment for the offences charged in those counts, each of which carried a maximum sentence of 10 years' imprisonment. Those sentences must accordingly be quashed and lawful determinate sentences substituted.

22. The second ground of appeal relates to the judge's approach to the issue of dangerousness. An earlier submission that the judge was wrong to make a finding of dangerousness is no longer pursued. It is however submitted by Mr Williamson QC, representing the appellant in this court as he did below, that the judge failed to give any or sufficient consideration to the availability of extended determinate sentences of imprisonment and gave no reason for rejecting such sentences. Mr Williamson points out that the offending ended in early 2003. The appellant was then aged 51, but he was 69 by the time he was sentenced. It is submitted that in view of the appellant's age, the absence of further offending and the fact that he is no longer a doctor with access to drugs, an extended sentence of appropriate length would have been sufficient.
23. The third ground of appeal is that that the minimum term was in any event manifestly excessive in length. Mr Williamson submits that the judge adopted an incorrect approach in considering the appropriate length of the minimum term and in considering totality. Although he identified guideline starting points and category ranges, the judge did not say what would have been the notional determinate sentence for each offence. As a result, submits Mr Williamson, all that can be inferred is that the minimum term of 17 years represented a total notional determinate sentence of 34 years after allowing for totality. Mr Williamson submits that, serious though the offences undoubtedly were, they did not merit a total sentence of such length.
24. He goes on to submit that the judge failed to give any or sufficient weight to the fact that since committing these offences, the appellant has served the custodial portion of sentences totalling 22 years for offences of a similar kind, some of which were committed against the victim, C4. He invites our attention to relevant case law including in particular the case of R v Green (Michael) [2019] EWCA Crim 196, in which the court helpfully identified factors which are likely to be relevant when considering what impact a previous sentence should have when a further sentence was to be imposed.
25. Ms Knight QC, who also appeared below, resists these grounds of appeal. She accepts that the judge did not in every respect follow precisely the approach recommended in the Crown Court Compendium, but submits that he sufficiently took into account totality. She points out that the judge who sentenced for the Winchester offences was dealing with what must at the time have appeared to be a comparatively small number of offences by a man with no previous conviction. She submits that the present offences show a very different and much more serious picture, such that the judge was bound to consider a life sentence. She further submits that the decision to impose such a sentence for the offences of rape was not wrong in principle, and that a notional determinate sentence significantly in excess of 30 years was not excessive having regard to the gravity of the offending.
26. Although we have summarised them very briefly, we have well in mind all the written and oral submissions made by counsel. We are very grateful to both of them, in particular for the admirably focused way in which each of them has addressed the key issues in the case.
27. The judge was undoubtedly faced with a most difficult sentencing process. It was complicated by the number of offences, the number of different victims, the passage of

time, the need to adopt the correct approach to historical offences under legislation which has subsequently been repealed, and the need to consider totality not only as between the present offences but also in relation to the overall offending and the sentences already served. On that last point, it is relevant to note that throughout the various criminal proceedings the appellant either contested his guilt or delayed his guilty pleas until the start of his trial. He has at no stage made any attempt to wipe the slate clean, even when being sentenced for the Winchester offences against C4.

28. Each of the two offences of rape of C4 (counts 12 and 13) carried a maximum sentence of life imprisonment. The judge was entitled to find that the two-stage test to which we have referred was satisfied. First, the gravity of those offences against a 9-year-old girl, viewed in the context of associated offences against her and the sexual offences which he had committed or was committing against C1, C2 and C3 was clearly such as to call for a severe sentence. We do not accept the submission that the error made by the judge as to his sentencing powers in relation to counts 1, 6, 9 and 17 caused the judge to make a further error in assessing the seriousness of the rape offences.
29. Secondly, the judge was entitled to find that the appellant would remain a danger for an uncertain period notwithstanding his age. In that respect the appellant's overall offending in all three sets of proceedings, coupled with his unwillingness to admit his guilt, his lack of remorse and his continuing refusal to give access to his concealed digital files all supported the judge's conclusion.
30. As to the availability of extended sentences, we do not accept that the judge failed to consider that possible alternative. It is implicit in the passage we have quoted from his sentencing remarks that the judge was satisfied that an extended sentence, from which the appellant would eventually have been entitled to be released whether or not he was still regarded as posing a danger, would not provide sufficient protection for the public. We note also in this regard that when considering the offences in counts 1 to 3, the judge referred to the appellant's conduct towards 8-year-old C1 as being "a perfect example of the sort of sickening way you treated victims and why only the severest penalty can be justified."
31. In those circumstances we are satisfied that the judge was entitled to exercise his discretion in the way he did. Life sentences were justified for the two offences of rape, and we cannot say that they were either wrong in principle or manifestly excessive.
32. As to the length of the minimum term, however, we are persuaded that the judge fell into error in one respect. As we have indicated, the present offences were committed before the appellant was sentenced for either the Cardiff or the Winchester offences and there has been no re-offending since he was released from the earlier of those sentences. It was therefore appropriate for the judge to consider, as he did, what the overall sentence would have been if all the offending had been dealt with at the same time. In doing so, we accept Mr Williamson's submission that the judge should have made some allowance for the periods which the appellant had already spent in custody for offending of a similar sort including offending against C4. We also accept Mr Williamson's submission that the judge either overlooked that step in the complicated sentencing process or made insufficient allowance for this aspect of totality.
33. For that reason, we are persuaded that the minimum term was manifestly excessive in length. In our view, the minimum term should have been based on a notional determinate sentence after taking into account totality of 28 years.

34. We accordingly allow the appeal to this extent. On counts 12 and 13 (rape), we quash the minimum term of 17 years and substitute on each count a minimum term of 14 years. On counts 1, 6, 9 and 17, we quash the life sentences, and substitute for them concurrent determinate sentences of 8 years on count 1 and 10 years on counts 6, 9 and 17. The sentences on counts 4, 5 and 19 remain as before. As before, no separate penalty is imposed on the remaining counts. The effect of our decision is that the appellant remains subject to a life sentence, with the consequences which the judge explained in his sentencing remarks. He must serve a minimum term of 14 years from 6 September 2021, less the 323 days which he had spent remanded in custody, before he can be considered for release on licence.

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