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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO 202301143/A1

Neutral Citation Number: [2023] EWCA Crim 1205

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday, 10 October 2023

Before:

LORD JUSTICE STUART-SMITH  
MR JUSTICE CHOUDHURY  
THE RECORDER OF NOTTINGHAM  
HER HONOUR JUDGE SHANT KC  
(Sitting as a Judge of the CACD)

REX  
V  
ANDREW MELLIS

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MR R ELLIOTT appeared on behalf of the Applicant

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

MR JUSTICE CHOUDHURY:

*The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. 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 in accordance with section 3 of the Act.*

1. On 8 August 2022 in the Crown Court at Lewes, Her Honour Judge Christine Laing presiding, the applicant, then aged 57, was convicted of the following offences: three counts of rape (counts 1 to 3) against the first victim, to whom we shall refer as V1, and one count of rape (count 4) against the second victim, to whom we shall refer as V2.
2. On 6 March 2023 the applicant was sentenced to 10 years' imprisonment on counts 1 and 2; an extended sentence of 18 years on count 3, comprising a custodial element of 14 years and an extended licence period of four years; and a sentence of four years on count 4, all to run concurrently.
3. The applicant was in a relationship with V1 from 2013 to 2014. On 8 February 2014, V1 informed the police that the applicant had physically assaulted her and had anally raped her during the course of their relationship. The applicant was arrested by the police but denied any offending. V1 subsequently withdrew her complaint, and the matter went no further at that stage.
4. On 24 April 2017, V2, who had no connection with V1, attended a police station and stated that she had been anally raped by the applicant in June 2016. V2 had met the applicant on a dating site and when the applicant said he wanted to have anal sex, V2

made it clear that she did not want to do that. On an occasion when the applicant and V2 had been engaging in consensual vaginal intercourse, the applicant suddenly turned the complainant over and penetrated her anus with his penis. V2 screamed and cried but the applicant told her to "stay down". Once the applicant had ejaculated, he began cuddling V2 who could not stop crying. V2 never saw the applicant again.

5. The applicant was interviewed by the police and maintained that any sexual contact would have been entirely consensual.
6. Police officers subsequently went back to V1 regarding her initial complaint and asked whether she was willing to be interviewed. She was, and this led to the charges under counts 1 to 3. Count 1 related to an occasion when the applicant had walked out of a social event and so V1 had to stay at the home of his brother and sister-in-law. The following day the applicant was angry and accused V1 of sleeping with his brother. The applicant pushed V1 onto a sofa at home and removed the clothing on the lower part of her body. He penetrated her vagina with his penis. The applicant thereafter pushed V1 to one side and went to bed. V1 also complained that the applicant had anally raped her a number of times, this being reflected in counts 2 and 3 - the latter being a multiple incident count. The applicant would force himself upon V1 and hold her down. Initially she would scream, and she resisted being penetrated anally, but each time the applicant carried on. As the abuse continued V1 would not scream and protest as she formed the opinion that the applicant enjoyed her resistance.
7. The applicant was interviewed by the police again on 17 April 2019 in relation to the offending against V1. The applicant maintained that all sexual intercourse with V1 had been consensual.
8. The applicant continued to maintain his innocence after conviction, asserting that the

two victims must have "got together" to concoct their story.

9. By the time of sentencing, the Judge had a psychiatric report from a Dr Ley, a pre-sentence report and an addendum to the pre-sentence report produced in light of Dr Ley's report. Having referred to the definition of 'dangerousness' in section 229 of the Criminal Justice Act 2003, Dr Ley concluded that:

"Considering the above, Mr Mellis does not appear to have an extensive past offending history and no previous sexual offences. However, he has been convicted of very serious sexual offences against 2 different women whose accounts share similarities suggesting a pattern of behaviour. I note, however, he is in a current relationship and his partner supported him during the trial. However, Mr Mellis reports they did not have sex since allegations were made against him. Nevertheless, given the convictions, I would be concerned about the risk of further sexual offences if Mr Mellis were in an intimate relationship with a woman."

10. The addendum to the pre-sentence report stated as follows:

"1.10. In my opinion as long as Mr Mellis remains fully compliant with treatment, continues to maintain abstinence from both alcohol and illicit drugs and that he engages meaningfully with the talking therapy or other psychological treatment whilst serving his sentence, **in my view he is unlikely to commit a further schedule 15 offence in the future.** However, should he return to substance misuse on release and/or become uncompliant with treatment, the risk of him committing a further schedule 15 offence in the future is **considerably raised.**" (Emphasis in original)

11. Although neither of these reports conclusively stated that the applicant was dangerous, the Judge concluded that he was and passed an extended sentence on count 3 in the terms described.
12. It should be noted that the sentence was initially structured as follows: 10 years for each

of counts 1 to 3 to run concurrently and four years for count 4 to run consecutively, making a total of 14 years. However, the Judge adjusted the structure during a post-sentence discussion to make all sentences run concurrently with an uplift on count 3 from 10 to 14 years to reflect the overall criminality involved. That sentence on count 3 was then subject to a four-year extended licence period.

13. The applicant, represented by Mr Elliott of counsel, as he was below, appeals on three grounds. First, it is contended that the Judge should not have found that he was a dangerous offender. He should have given detailed reasons for not following the reports that were available. Second, the sentence was manifestly excessive in that there was a failure properly to consider the principle of totality and the starting point was too high in relation to V1. Thirdly, the Judge did not sufficiently consider the applicant's mitigation, including the delay in the case, and the effect of the delay on the applicant's mental health and physical health.

14. In refusing to grant leave, the single Judge said this:

- i. "It was undisputed that the overall sentencing category these offences was 2B: (8 years starting point and a range of 7 to 9 years). There were three counts which concerned the applicant's partner: count 1 was a single count of vaginal rape and counts 2 and 3 involved at least four incidents of anal rape. Count 4 was a further count of anal rape, perpetrated on an unconnected victim who the defendant had met via a dating website. These were brutal, frightening, and painful offences committed regardless of the degree of opposition and upset/fear shown by the victims.
- ii. The proposed grounds of appeal are that i) the Judge's decision as to dangerousness was unsustainable and it was vitiated by a lack of reasoning, and ii) the overall sentence was manifestly excessive.
- iii. As the applicant's counsel accepts, the Judge was entitled to disagree with the authors of the reports, provided a sufficient and credible explanation was provided. In my judgment that occurred

in this case, given the Judge set out:

- iv. "I'm afraid I disagree with the probation writer in her assessment of risk and, to some extent, Dr Ley as well; although he did seem to accept there was risk. The underlying issue of your personality disorder, in my judgment, is the principal factor for risk. [...] it is, no doubt, exacerbated by your use of alcohol and drugs in the past and I am mindful that if successfully addressed the overall risk reduces. I am mindful of your pledge, effectively to never have sex again [...] and I am also mindful of the amount of time that has passed since these offences occurred but at this point I am concerned with future risk and I am satisfied that you do present such a risk, given the continued lack of insight into your own behaviour or your complete lack of understanding of the impact that your offending has had."
- v. The Judge had presided over the trial, and these were conclusions, appropriately expressed, that she was entitled to reach, particularly given Dr Ley expressed his concerns over the risk of further sexual offences in the context of an intimate relationship with a woman. Furthermore, the probation officer's assessment of low risk was based on full compliance with treatment, complete abstinence from drugs and alcohol and meaningful engagement with therapy/psychological treatment. Otherwise, the risk would be "considerably raised".
- vi. As to the overall length of sentence, these counts involved at least six separate offences of rape, perpetrated on two victims. Notwithstanding the applicant's mitigation (the character references in particular) an overall custodial term of 14 years, reached by concurrent sentences with the lead offence reflecting the overall criminality, was not manifestly excessive or wrong in principle.
- vii. Notwithstanding counsel's helpful submissions, these proposed grounds are unarguable."

15. Having reviewed the matter afresh, we are entirely in agreement with the views of the single Judge. The reports were not conclusive about dangerousness and the Judge was entitled, based on the matters she identified, in particular the applicant's lack of insight or understanding of his own offending, to conclude that the applicant was indeed dangerous.

16. In the course of submissions, Mr Elliott referred us to the decision in JW [2009] EWCA Crim 390. At paragraph 28 the court in that case said as follows:

"Whilst the court is not bound by the assessments made in the reports (and the psychologist's report acknowledges as much), yet if the court asks for the assistance of experts, and, having read their assessments, is minded to reject their conclusions, the court should set out in some detail the reasons for so doing. This was not done in this case."

17. We would note that what amounts to an inadequate explanation will depend on the circumstances of each case and whether sufficient reasons have been provided to enable the defendant in that case to understand the reasons for departing from the reports. Whilst HHJ Laing's reasoning here was brief, we are satisfied that it was adequate in the circumstances for the reasons we have already set out.

18. As to totality, the Judge expressly referred to this principle at 3F of the sentencing remarks. The eventual sentence structure adopted, whereby the sentence for count 3 was increased to reflect the overall criminality involved in the four concurrent sentences, demonstrated a clear and fair application of that principle. There can be no real argument about the categorisation of the offence and indeed Mr Elliott conceded as much in the course of his submissions. The applicant's repeated brutal conduct has resulted in both victims suffering serious and prolonged psychological harm. It is no exaggeration to state that sadly the effects of the applicant's callous abuse are likely to remain with the victims for the rest of their lives.

19. Finally, the Judge also made clear reference to the applicant's personal mitigation, including the fact that he was well thought of by many. Ultimately, what Mr Elliott asks us to do is to step back and to conclude that, viewed overall, the sentence was manifestly excessive. In our view given the number of serious offences committed by the applicant,

the brutality of his conduct and the devastating impact that his behaviour has had on both his victims, the custodial element of 14 years, the finding of dangerousness and the extended licence period of four years were all fully justified.

20. For these reasons, and notwithstanding Mr Elliott's helpful submissions, leave to appeal is refused.

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

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