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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
[2023] EWCA Crim 1439.



No. 202302087 A2

Royal Courts of Justice

Tuesday, 24 October 2023

Before:

LORD JUSTICE WILLIAM DAVIS  
MR JUSTICE HOLGATE  
HER HONOUR JUDGE DE BERTODANO

REX

v

EMW

**REPORTING RESTRICTIONS APPLY**  
**(The Sexual Offences (Amendment) Act 1992)**

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MISS G TURUDIJA-AUSTIN appeared on behalf of the Appellant.

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



MR JUSTICE HOLGATE:

- 1 The provisions of the Sexual Offences (Amendment) Act 1992 apply. 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 s.3 of the Act. We refer to the victims in this case as "C1", "C2" and "C4", and to the appellant's former husband as "S".
- 2 On 28 February 2022 in the Crown Court at Oxford, before Mr Recorder Trimmer KC, the appellant was convicted of 13 counts of cruelty to a young person under 16 contrary to section 1(1) of the Children and Young Persons Act 1933, committed between 13 September 1974 and 24 July 1975.
- 3 On 22 May 2023, in the Crown Court at Lewes the appellant was sentenced by the same judge to a total term of 10 years' imprisonment, comprising the following consecutive terms: six months on count 1 (a specimen count of beating C1), six months on count 2 (allowing rat-like animals to run over C1's body), six months on count 3 (a specimen count of locking C1 in a cupboard), nine months on count 4 (a specimen count of hitting C2), six months on count 5 (allowing rat-like animals to run over C2's body), six months on count 6 (a specimen count of locking C1 in a bedroom), nine months on count 7 (using C2's head to mop up her urine from the kitchen floor), six months on count 8 (dunking C2 in a cold bath), two years on count 9 (allowing S to commit sexual assaults on C1 on no less than two occasions), two years on count 10 (allowing S to commit sexual assaults on C2 on no less than two occasions), six months on count 11 (a specimen count of beating C4), six months on count 12 (allowing S to burn C4's back) and six months on count 13 (locking C4 in the attic). She appeals against sentence with the leave of the single judge.
- 4 C1, born in 1966 and C2, born in 1968, were sisters. They had two brothers, C3 born in 1965 and C4 born in 1970. C4 died in 2015. The lives of the four children were turned upside down on 4 September 1974 when their mother was murdered by their father. C1 and C2 were aged 8 and 6 at the time. Initially, the children went to live with their aunt in London, but were removed within a week by their uncle, S, and went with him to his house in Banbury. S had married the appellant in the early 1970s, and they had four children of their own. S took his own life on 8 February 2022, which was to have been the day of his first appearance in court with the appellant as co-defendant in respect of allegations made by C1 and C2.
- 5 C1 and C2 described their time with their aunt and uncle between September 1974 and July 1975 as an unforgettable ordeal. It was a "living hell". They were subjected to sexual abuse at the hands of their uncle, and acts of ill-treatment, violence and neglect, at the hands of both the uncle and the appellant. The ill-treatment was also experienced by C4. Despite social workers having some details in the 1970s, nothing was done.
- 6 In the late 1980s C2 told C1 that she had been sexually abused by S. C1 denied that anything had happened to her, as she was not then able to deal with her memories of what had happened to her as a child. But by September 2019 that had changed, and she reported the abuse to the police. C1 and C2 had not been in contact with each other for over a decade. Following her police interview, C1 messaged C2, and said to her that she had told the police about the abuse. In due course the police contacted C2.
- 7 C1 described the experience that she endured at the hands of S and the appellant, and also remembered the things which had happened to C2 and C4. She said that S had sexually

abused her, it started when she was about eight with him touching her vagina. This happened in the bedroom when she was asleep in bed. She would be in the top bunk and C2 in the bottom.

- 8 They were also treated badly. They were regularly beaten by S using his hand, a belt or whatever was at hand. Both S and the appellant would come up behind C1 and just strike her for no reason and without warning. The appellant would lock C1 in a cupboard under the stairs on S's instructions. The appellant used C2's hair on one occasion to mop up the floor after she had wet herself. C4 was burnt with a cigarette lighter held against his back and locked in the attic because he had cried with the pain. C1 described how the appellant was completely different when S was around, but when he was out she would be pleasant towards them. In his company she would do horrid things to them. C1 thought the appellant had been seeking S's approval. Things finally came to an end when one of the children's relatives came and took them all away from S and the appellant's house.
- 9 C2 was interviewed by the police in February 2020. She explained how she, and her siblings, had been taken away from her aunt in London, and how they had ended up in Banbury. She described the sexual abuse. She was clear that the appellant knew what was going on. On one occasion S told the appellant that: "We have to get rid of it". The appellant then put C2 in the bath and washed her intimately. C2 remembers the appellant giving her advice that she ought to tuck the blankets under her tightly. In the context of what was going on, that advice was clear evidence of her knowledge that the abuse was happening. On another occasion the abuse caused C2 to bleed. She remembered S panicking and calling the appellant upstairs. Again, C2 was bathed by both S and the appellant. The appellant then told S: "You can't do that no more."
- 10 C2 recalled that they frequently had to sit on the sofa and allow rat-like creatures to crawl over them and bite them. She also spoke about the general cruelty she suffered. They would lock her in her room. The appellant used her hair as a mop. S put C4 in the cupboard at the top of the stairs. She remembered C4 shouting from inside. C4 was also put up in the loft. C2 was thrown into a bath of water, and pushed underneath so that she could not breathe. She said that these acts were done both by S and by the appellant. She remembered social workers being involved when she was seven. They had asked questions about what S had done, but she had been too overwhelmed at that stage to be able to answer them.
- 11 The appellant was interviewed by the police. This was a voluntary interview. She said that she had treated the children like her own, and that there had been no incidents that she was aware of. She denied all aspects of the allegations. She believed that S was a good father and husband. They had divorced in 2002 and she had not seen him for many years.
- 12 We have read the victim personal statements of C1 and C2 describing the serious physical and psychological harm caused by the abuse they suffered as children of only six to seven years, and the long term effects they have had to endure.
- 13 The appellant was of previous good character. In a pre-sentence report she continued to maintain her innocence of all the offences. The author said that she had not reflected on her behaviour or gained any insight. She showed no empathy towards the victims. She was assessed as posing a low risk of re-offending, and a medium risk of harm to children, specifically if she had caring responsibilities for young children. But it was acknowledged that that was unlikely to happen in the future.
- 14 A report by a consultant forensic psychiatrist was provided to the judge. The appellant suffers from a chronic depressive disorder of mild to moderate severity, and the early stages

of dementia of mild severity. The consultant advises that the disorders can be managed by Prison medical services, and would not warrant treatment in a hospital. He added that the appellant has not deteriorated significantly since her imprisonment.

- 15 In his sentencing remarks the judge referred to the principles for sentencing in historic cases of sex abuse, and to the maximum sentence of two years' imprisonment which applied to each of the counts on the indictment. He assessed culpability and harm by reference to the definitive guideline for offences under the 1933 Act. He said that all the offences involved high culpability with multiple incidents of serious cruelty, gratuitous degradation, deliberate disregard for welfare, and failure to take steps to protect the children against serious sexual offending, that being the most serious aspect. The judge said that, having seen the victims give evidence and read the victim personal statements, he was satisfied that they had suffered serious psychological developmental and emotional harm. In relation to the lapse of time since the offending, the appellant and S had tried to bribe the victims with cash to prevent disclosure of their behaviour. On the other hand the appellant had committed no further offences since 1975.
- 16 The judge considered that if the offending had been recent, a consecutive sentence of at least six years in relation to each child would have been appropriate. However, he said that he would pass consecutive sentences within the applicable statutory maximum and then consider totality. The judge said that a total sentence of 10 years reflected the overall criminality involved. In his judgment the psychiatric report did not materially induce culpability. He recognised that the sentence would be hard to bear at the appellant's age, and that S had carried a good part of the responsibility for the cruelty; he was the "major actor".
- 17 We are grateful to Miss Turudija-Austin for her clear and concise submissions. In summary, she advances three grounds of appeal:
- (1) Although counts 9 and 10 involved category A culpability and category 1 harm, the judge had been wrong to treat all the offences likewise. The imposition of consecutive sentences on counts 1, 2, 3, 4, 5, 6, 11 and 13 for hitting, locking up and use of animals in relation to three different victims overlooked the fact that, whether medium or high culpability, those categories applied to multiple incidents. Consequently, the principle of totality was not properly applied.
  - (2) The judge failed properly to take into account or make any reduction for the appellant's good character, advanced age, ill-health and the passage of time.
  - (3) The overall sentence was manifestly excessive.

### *Discussion*

- 18 We have had regard to the definitive guidance which came into force on 1 April 2023 before sentence was passed by the judge. In our judgment the judge was entitled to treat the harm in each case as falling within category 1. It would be artificial to try to draw any distinction between one type of cruelty and another. These young children suffered from the overall criminal conduct.
- 19 The current guideline refers to four levels of culpability. Category A relates to very high culpability. Instead, the Recorder found that the offending involved high culpability, which is now category B. A recent offence within category B1 has a starting point of six years' custody within a range of four to eight years. But we do not agree with the Recorder's apparent suggestion that a starting point of six years would have been appropriate for the offences against C4 (counts 11, 12 and 13). That offending did not involve sexual abuse or some of the additional acts of cruelty suffered by C1 and C2. Those offence would fall into category C1, the starting point for which is three years within a range of two to six years.

- 20 The guideline on totality recognises that consecutive sentences are ordinarily appropriate where the offences were committed against different victims, or where the offending was of the same or a similar kind against the same victim, but the overall criminality would not sufficiently be reflected by concurrent sentences. The guideline gives as an example, the commission of domestic violence or sexual offences against the same individual. In our judgment, the same approach can be applied to offences of child cruelty, particularly sustained offending committed over a substantial period of time, as in the present case. But, the court must consider whether the aggregate of a series of consecutive sentences is just and proportionate to the overall criminality.
- 21 One approach is to impose consecutive sentences on each count which have been reduced proportionately relative to the sentence which might otherwise have been passed if that count had stood alone. That is the approach which the judge took here in relation to all counts other than counts 9 and 10, which represented the most serious offending against C1 and C2.
- 22 In this case, the judge had to pass sentences for historic offending in accordance with the principles stated in *R v H* [2012] 1 WLR 1416 and *R v Forbes* [2017] 1 WLR 53. He explained that he had those principles well in mind when explaining how he arrived at the sentences he imposed. It is impossible for us to say that the judge erred in principle. Therefore, this appeal comes down essentially to whether the judge reached a judgment on overall criminality which resulted in a total sentence which was manifestly excessive. Here, we bear in mind that he was the trial judge and best placed to assess the offending, its impact on the victims, and the culpability of the offender.
- 23 In our judgment the overall sentence of 10 years did represent sentence proportionate to the overall criminality. A proportionate reduction relative to the sentence which might otherwise have been passed in relation to individual offences and victims was made. The individual sentences were also moderated to take into account the age of the offences, the maximum sentence available at the time, and the absence of any further offending since then. Although S was the major actor, the offending took place over a substantial period of time in relation to young children; the appellant did nothing to protect them against the abuse, and she had a leading role in relation to some of the conduct. We agree with the trial judge about the weight to be attached to the report of the psychiatrist.
- 24 The appellant had limited personal mitigation available to her. A modest reduction was appropriate to reflect the effect of a substantial custodial term on a person of the appellant's age with early dementia. The current state of her mental health is of no relevance to the offending itself in 1974 and 1975, and it is capable of being managed in prison. We do not attach weight to good character before the offending. This appellant lost that at an early stage in the sustained commission of these offences.
- 25 We have reached the conclusion, therefore, that the overall sentence is not manifestly excessive and there is no basis for this court to interfere with any of the sentences that were passed. For the above reasons the appeal must be dismissed.
- 26 In conclusion, we note that in his sentencing remarks, the Recorder said that the appellant was obliged to pay the statutory surcharge, although no such order appears in the records of the Crown Court. Given the date of the offences, no surcharge order should have been made. For the avoidance of doubt we quash the surcharge order.

**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.