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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation Number: [2023] EWCA Crim 1679

CASE NO 202303546/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 8 December 2023

Before:

LORD JUSTICE EDIS
MR JUSTICE JEREMY BAKER
SIR ROBIN SPENCER

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX

V

RGX

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MISS S GATES appeared on behalf of the Attorney General
MR E HUGHES appeared on behalf of the Offender

J U D G M E N T

1. LORD JUSTICE EDIS: 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. This judgment has been anonymised by the court to prevent any risk of identification of the victim.
2. This is an application by His Majesty's Solicitor General for leave to refer a sentence to this court under section 36 of the Criminal Justice Act 1988 for review on the grounds that it was unduly lenient. We give leave.
3. The sentences to which this application refers were imposed following the conviction of the offender which occurred on 21 July 2023 following a trial. Those convictions were for one count of assault by penetration of a child under 13 (count 1), three counts of sexual assault of a child under 13 (counts 2, 3 and 6), two counts of rape of a child under 13 (counts 4 and 5) and two counts of sexual activity with a child (counts 7 and 8).
4. Sentence was imposed on 8 September 2023 at the Crown Court. The total sentence was a term of 15 years custodial sentence plus a one-year extended licence, pursuant to section 278 of the Sentencing Act 2020. That form of sentence, a sentence for offenders of particular concern, was required in relation to counts 1, 4 and 5. Originally it had been imposed only in relation to count 5 in that form but subsequently the judge corrected the sentence without having a further hearing in relation to counts 1 and 4 to impose the terms in the appropriate form. An issue had arisen for consideration as to whether time for bringing this Reference ran from the time of the amendment of the sentence. It is now

agreed that time did run from that point, which means that the Reference was lodged in time and we have jurisdiction to consider it.

5. The way in which the sentence was constructed as between the different counts is as follows. In relation to count 5, an offence of rape of a child under 13, the judge imposed the term of 15 years' imprisonment with the extended licence of one year. All other sentences were ordered to run concurrently, which means that that sentence on count 5 was intended to reflect the totality of all the offending of which the offender had been convicted. It was therefore necessary for the judge to impose a term which reflected not only the offending captured within count 5 but also all of the other offending. The issue for us is whether she failed to do that.
6. In relation to count 1, assault of a child under 13 by penetration, the sentence was eight years' imprisonment with an extended licence of one year. In relation to count 2, sexual assault of the same child under 13, the sentence was four years' imprisonment concurrently. Count 3, sexual assault of the same victim, six years' imprisonment concurrently. Count 4, rape of the same victim, 12 years' imprisonment with an extended licence of one year. In relation to counts 6 and 7, convictions for sexual assault and sexual activity with a child respectively, concurrent terms of four years' imprisonment were imposed and in relation to count 8, a further offence of sexual activity with a child family member, a sentence of six years concurrently was imposed.
7. In addition, the necessary orders following convictions of this kind were made in relation to notification, a restraining order and a Sexual Harm Prevention Order and nothing now turns on those. The issue with which we are concerned relates to the length of the sentence for an offender of particular concern imposed in relation to the offences of rape.
8. RGX is now 36 years old. He was the step-father of the victim, being in a relationship

with her mother. The offending began in 2007 and lasted until 2016. At the time when it began the victim was seven years old. The offender at that point was 21 and was 29 when the offending finished. The offending did not finish because he started to exercise any form of self-control or restraint; it finished because his relationship with the child's mother came to an end.

9. The abuse began when the offender was looking after the victim in this family setting when her mother had gone out for the evening. The first offence, which became count 1, involved him putting his hands down her trousers while they were lying together on the sofa in the family home and digitally penetrating her vagina. She was at that time seven years old.
10. There was then a gap in offending of a significant period of time before a series of events occurred when he was taking the victim out in the car for various reasons. This happened regularly and the further offending happened on those occasions, perhaps (she thought) once a fortnight or so. There were very frequent occasions when he would make her masturbate him while they were in the car, which he would park in a garage area or which he would drive to a secluded place so that this could happen. He would then, during these events, take over from her, masturbating himself until he ejaculated. There was an occasion, when the victim was still at primary school, when after an argument with her brother she found herself locked in a bedroom with the offender and he made her masturbate him. This happened several times in the home and that became count 2, which reflected the first occasion and count 3 which was a multiple incident count to reflect at least 10 further occasions when this behaviour occurred when she was between the ages of 10 and 13.
11. On three other occasions when she was still under the age of 13 he made her perform oral

sex on him. He would pull her head down and insert his penis into her mouth. These incidents occurred in the car when it was parked in an alleyway near a supermarket. The location was of course chosen by him so that he could do what he wanted to do without any risk of being disturbed and that involved isolating her away from any source of help and then attacking her in the way we have described. She attempted to resist and she said that because she was not cooperating with him on these occasions he would eventually desist and then masturbate himself to ejaculation. Count 4 was intended to reflect the first of these three occasions and count 5 was a multiple incident count involving the other two. There were therefore three offences of oral rape for which sentence had to be imposed and those offences occurred against the context of the conduct which we have already described and the further conduct which was reflected in counts 6, 7 and 8 on the indictment.

12. Count 6 related to a single incident when he touched her private parts and count 7 related to a single incident of masturbation once she had turned 13, designed to reflect the fact that the offending continued after that birthday until she was 16. Count 8 is a multiple incident count in relation to sexual activity with a child family member. It covered at least 10 incidents of masturbation of him by her when she was between the ages of 13 and 16.

13. Eventually she told people what had happened. The matter was reported to the police who carried out an investigation with the result that we have already described.

14. It is, we think, unnecessary to set out anything further by way of detail in relation to these events. The summary we have given sufficiently describes the crimes.

15. It is necessary to say something about the family circumstances because of the way the judge dealt with the issue of abuse of trust. This was a family in which the offender was

treated by his victim as though he were her father. He was trusted to look after her when her mother was out. He was also trusted to look after her siblings, other children in the family, and in all respects during the time in which this offending was happening acting as a father. As the judge was later to say, this behaviour involved, in her expression, “letting the victim down as a dad”.

16. When he was arrested and interviewed he denied the allegations. There were some text messages which he had sent to the victim in which there were some apologies. He denied sending them, which required an investigation into cell site material which showed that he had in fact sent them despite those denials.
17. So far as the offender himself is concerned, he has no relevant previous experience of the criminal justice system. He has a caution and a warning for other entirely different kinds of offending a very long time ago.
18. The reason why there was a gap between conviction and sentence was that the court, very rightly, needed to obtain a pre-sentence report. The pre-sentence report revealed that notwithstanding his conviction by the jury the offender continued to deny the offending and denied any sexual attraction to children. He said that the victim was lying and suggested a motive. All of this led the author of the report to assess the risk of further sexual offending as high and that risk was a risk of further sexual offending against children.
19. There were character references before the court which we have seen and read. They describe him as a loving and caring person to his own children and step-children. The victim was one of those step-children. The character references obviously speak well of him in his role as a father but, with respect to the way the judge dealt with the matter, make it entirely clear that this offender was in a position of trust so far as those children

are concerned, and in particular so far as the victim was concerned.

20. The victim's life has been very seriously damaged by this conduct in ways which cannot all be foreseen. The court hopes that it will transpire that she is able to make a recovery and that she will not find herself suffering life-long trauma as a result of her experiences as a child. Although that hope is a genuine one, no one can confidently predict that it will be realised. The trauma that she suffered was very severe. She is in some ways alienated from her family. She describes hating herself when she was a child but not really feeling the full impact of it until she began a relationship when she was 16 years old. That relationship did not prosper because she was suffering by now with low moods and angry outbursts. She was prescribed medication to assist her mood but she did not take it. In February 2018 she was in hospital as a result of an attempt on her own life. She felt dirty and alone. She was seriously impacted by the proceedings and further traumatised when she knew that the offender was pleading not guilty and that she would have to be involved in a trial. This caused further depressive episodes for which she received counselling and she began to suffer panic attacks. Her siblings blamed her for what had happened to their father. She is now attempting to rebuild her life and to make a recovery from the disaster which afflicted her childhood.

21. There is no dispute between the parties about the proper approach to sentence in this case. Before us it is agreed that for guideline purposes the case should properly be put into Category 2A in relation to the offences of rape. That is because the victim suffered severe psychological harm as we have already described. It is also because this was a very clear case of an abuse of trust. There was also an element of grooming and a degree of planning. The offender arranged his life and his victim's life so that he was able to have sexual access to her on these very many occasions.

22. A Category 2A offence of rape of a child under 13 on its own as a single offence would attract a starting point of 13 years' custody and the guideline prescribes a range of 11 to 17 years. There were aggravating factors to be taken into account after that categorisation has been arrived at. There were some attempts to stop the child reporting the crimes and there was repeated ejaculation (the offender sometimes disposed of any clothing which contained evidence of that). The locations of the offending operated as aggravating features. Most of it occurred in a car which had been parked in a secluded and isolated place, chosen so that the child could not summon help. The rest of the offending happened in her home where she was entitled to feel safe.
23. The exercise then which the judge had to address was first to select the correct category and the correct starting point. Then, having arrived at that, which she did correctly, her task was to ensure that that starting point and range was adjusted to reflect the fact that this was not a single offence of rape; there were three offences of rape, there was a further offence of digital penetration and there were multiple offences (too numerous to count) of the other kind of sexual activity, namely masturbation by her of him resulting in ejaculation. All of that occurred over a very long time with the consequences for her which we have described.
24. There was some mitigation. He has no previous offending of this kind, although the duration of this offending on this indictment deprives that of much of its force; and the consequences for the offender and the rest of his family have been severe.
25. The Solicitor General submits that in adjusting the sentence from 13 to 15 years to reflect the overall totality of what occurred, the judge seriously undervalued that totality. That error, the Solicitor General says, was compounded by the judge's approach to the issue of trust which was misconceived. In that respect the judge suggested that legally this

conduct may not have been in breach of trust, although in the same sentence she used the expression that we have already cited, namely her finding that the offender had let the victim down "as a dad". She said:-

“It wasn’t necessarily a breach of trust within the legal definition, but you let her down as a dad, and she said to the jury that she still loved you and always would love you as a dad, but she couldn’t understand why this had happened and why you had let her down in this way.”

26. The judge appears to have been led towards that conclusion by her consideration of some previous decisions of this court which she may not have correctly interpreted. Those decisions make the point that not every familial relationship involves trust in the sense of that word used in the guideline. It is a matter of fact whether such a relationship existed or not. The position in fact is very simple and very clear: if a father or step-father, in the circumstances we have described, takes advantage of that relationship in order to perpetrate a long series of offences against a child for whom he is a carer, he is acting in gross breach of trust. That is not a concept which requires much legal elaboration. For those reasons the Solicitor General submits that the judge found herself imposing a sentence which was significantly shorter than it would have been.
27. In very helpful written and oral submissions, Mr Hughes, who appeared before the judge on behalf of the offender and who has persuasively argued his case before us this morning, draws our attention to the fact that the judge did correctly categorise the case for the purpose of the guideline, did refer to all the relevant aggravating features and that the sentence was one which was properly open to her as being within the range that a reasonable judge could apply.
28. While we are grateful for those submissions, we are unable to accept them. In the judgment of this court the conduct that we have described of which this offender was

convicted was offending of the utmost gravity which has caused catastrophic harm to a child whose current position and future has been placed in grave peril.

29. In our judgment, the starting point of 13 years for a single offence and range which extends for a single offence up to 17 years required a much more substantial adjustment than the judge thought appropriate. Therefore, in relation to the two counts of rape, reflecting three offences of rape, we will quash the sentences imposed by the judge and impose in their place a sentence for an offender of particular concern of imprisonment of 19 years concurrently on each of those two counts, with a one year extended licence, a total period of 20 years. The other sentences imposed by the judge will not be amended and will all run concurrently with that sentence which we now impose.

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

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