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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

On appeal from the Crown Court at Truro  
(His Honour Judge Simon Carr)



Case No: 2023/04287/A1

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Wednesday 24<sup>th</sup> July 2024

**B e f o r e:**

**LORD JUSTICE SINGH**

**SIR ROBIN SPENCER**

**HIS HONOUR JUDGE TIMOTHY SPENCER KC**  
**(Sitting as a Judge of the Court of Appeal Criminal Division)**

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**R E X**

**- v -**

**GARETH JAMES HILL**

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**Mr R Taylor** appeared on behalf of the Appellant

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

**LORD JUSTICE SINGH:** I shall ask Sir Robin Spencer to give the judgment of the court.

**SIR ROBIN SPENCER:**

1. This is an appeal against sentence brought by leave of the full court, following initial refusal by the single judge.

2. We make an order pursuant to s. 45 Youth Justice and Criminal Evidence Act 1999 in relation to the children concerned in these proceedings. No matter relating to any of those children shall, while they are under the age of 18, be included in any publication if it is likely to lead members of the public to identify any of them as a person concerned in the proceedings.

3. On 24 November 2023, in the Crown Court at Truro, the appellant (now aged 43) was sentenced by His Honour Judge Simon Carr to a total of 5 years' imprisonment for a series of six offences of breach of a Sexual Offences Prevention Order ("SOPO"), contrary to section 113(1)(a) of the Sexual Offences Act 2003. He had pleaded guilty to those offences at the first hearing in the Crown Court on 22 September 2023 and was afforded appropriate credit of 25 per cent for his guilty pleas.

4. Five of the six offences (counts 2 to 6) arose from breaching the SOPO without reasonable excuse by being present on domestic premises where a child under 16 was present and when the child's parent was not always present and was unaware of the appellant's previous convictions. The final offence (count 7) arose from the appellant's possession of a mobile phone in circumstances which breached the terms of the SOPO.

5. For the offences in counts 2 to 6, each of which involved a different child, the judge imposed consecutive sentences of 12 months' imprisonment on each, totalling 5 years' imprisonment. On count 7, the sentence was 12 months' imprisonment, which was ordered to

run concurrently.

**The technical issues**

6. In place of the existing SOPO the judge made a Sexual Harm Prevention Order ("SHPO"), pursuant to s. 345 Sentencing Act 2020, in terms broadly similar to the terms of the SOPO. It escaped the attention of counsel and the judge that, surprisingly perhaps, there was in fact no power to make a SHPO because the offences of which the appellant had been convicted were not listed in Schedule 3 or Schedule 5 to the Sexual Offences Act 2003, which is a requirement for the making of a SHPO.

7. This error was detected by the lawyer in the Criminal Appeal Office, to whom the court is grateful, and was brought to the attention of the full court when the renewed application for leave to appeal against sentence came before it in April 2024.

8. It follows, and is common ground, that the SHPO made as part of the appellant's sentence must be quashed. It is also common ground – and we emphasise – that the practical effect is that the pre-existing SOPO now continues in force. That order would have ceased to have effect had the SHPO been lawfully made. There was and is no power to vary the terms of the SOPO, which remains in force indefinitely until further order.

9. A further technical error was detected by the lawyer in the Criminal Appeal Office in relation to the indictment, which we need to address at the outset. The offence charged in counts 2 to 7 is breach of a Sexual Offences Prevention Order, contrary to section 113(1)(a) of the Sexual Offences Act 2003. That would be the correct section of the Act if the offence was committed before 8 March 2020. After that date, however, when SOPOs were replaced by SHPOs, the correct offence for breach of a SOPO is an offence contrary to section 103I(1) of the 2003 Act. That is the consequence of the transitional provisions contained in s.114

Antisocial Behaviour, Crime and Policing Act 2014, as amended and currently in force.

10. In the present case, the offences in counts 4 to 7 of the indictment were alleged to have taken place between dates after 8 March 2020 and should therefore have been charged contrary to section 103I(1) of the Sexual Offences Act 2003. The dates of the offences alleged in counts 2 and 3 spanned the period before and after 8 March 2020 and so are similarly caught. In relation to this issue we adopt the approach of this court in *R v Stocker* [2013] EWCA Crim 1993; [2014] 1 Cr App R 18, and apply the same test. Counsel agree with this course. We are satisfied that this was a purely technical defect which caused no prejudice and did not cause the indictment to be a nullity. Had the point been spotted, the error could have been cured by a simple amendment to the Statement of Offence in each count. The Particulars of Offence would have remained the same.

### **The facts**

11. We turn to the facts of the offences. In May 2011 the appellant was sentenced to 2 years' imprisonment for a large number of offences of downloading and distributing images of sexual abuse of children. The Crown Court made a SOPO. That order was subsequently amended in 2013, and it is that order that the appellant breached in committing the present offences.

12. The SOPO had conditions relating to the appellant's contact with children. It prohibited him from being in any domestic premises where there was a child under 16, unless the appellant had the permission of that child's parent or guardian who was at all times present and was aware of the appellant's previous convictions and the SOPO.

13. As we have explained, counts 2 to 6 relate to occasions when the appellant had breached the SOPO by being in the presence of young children without informing their parents about his previous convictions or the SOPO. The parents of those children subsequently stated that they

would never have allowed their children to be anywhere near the appellant if they had known of his offending history.

14. The complainant in count 2 was the sister of a man with whom the appellant had begun a relationship. She met the appellant in about 2017. He did not use his true surname, but a different name, as he did throughout these offences. The complainant had two young children, a boy and a girl. She often brought the children to visit her brother and the appellant. On occasions she left her son with them while she went to visit her mother. Her son had also stayed the night at the address where her brother and the appellant lived. This offending took place between 2018 and 2021. The complainant found out about the appellant's convictions in December 2021. He had told her that he had been to prison, but had said it was for an offence of violence.

15. Count 3 related to offending when the appellant had begun a friendship with a woman he met in a public house. She would visit the appellant and his partner and take her nine year old daughter with her. Thereafter the appellant and his partner babysat for the girl and took her out for the day. The appellant had picked the girl up alone from Cub Scouts. The mother subsequently found out about the appellant's previous convictions and contacted the police. This offending took place between 2019 and 2021.

16. The complainant in count 4 became friendly with the appellant and his partner. They would visit the complainant's home on occasions when the complainant's baby daughter was present. The complainant only became aware of the appellant's previous convictions when she was told by others when Social Care became involved in her child's welfare. This offending took place between October 2020 and December 2021.

17. The complainant in count 5 owned a field where the appellant and his partner kept some chickens and ducks. In 2021 the appellant went to the complainant's home some 50 times for coffee and on occasions his seven year old daughter had been present. On two occasions in 2021 the appellant was in a room alone with the daughter. Once again, the complainant had no idea about the appellant's previous convictions or he would not have let the appellant have any contact with his daughter.

18. Count 6 had a link with count 2 in that the complainant in count 2 had a partner with five children. Their dates of birth ranged from 2007 to 2020. Count 6 related to the youngest child's first birthday party to which the appellant had been invited in August 2021. The party was held in the back garden and the appellant attended with his partner. Throughout the day the children played party games and the appellant interacted with them. At no time had the complainant been aware of the appellant's previous convictions.

19. In June 2019, and on subsequent occasions, a police officer had attended unannounced at the appellant's home and would confirm with the appellant and reinforce the conditions of his SOPO. The appellant would confirm that he knew and understood the prohibitions in the order. The SOPO also placed restrictions of the familiar kind on the appellant's possession or use of any device capable of accessing the internet. On visits by the police in May 2021, and again in December 2021, the appellant confirmed to the officer that he did not own a mobile phone. It was only when the offending in count 5 was reported to the police that they became aware that the appellant did in fact have a mobile phone.

20. On a subsequent unannounced visit to the appellant's address on 10 January 2022, the police found two mobile phones in the appellant's bedroom, one of which was capable of accessing the internet. The search history included pornography.

21. The appellant was arrested and interviewed by the police that day in relation to the offending in counts 2 to 6. He was interviewed again in October 2022. The appellant claimed that all of the parents bar one had been aware of his previous convictions. Obviously, that is not borne out by his guilty pleas. He now accepts the position. The appellant therefore accepted breaching his SOPO, but at that stage only in relation to one of the complainants (count 2).

**The sentencing hearing**

22. The appellant had convictions in 2011 for making and distributing indecent photographs of children, as we have already outlined, for which he served a sentence of 2 years' imprisonment. In May 2018 there was a conviction for failing to comply with the notification requirements arising from those earlier convictions, for which he was made the subject of a community order for 12 months, with various requirements attached. The breach there involved failing to notify the police, as he was required to do, that he had spent more than 12 hours at an address or other private place where children under 18 were present. That breach took place in 2017 and therefore pre-dated any of the current offending, but not by much. He would certainly still have been subject to the community order when the current offending began.

23. There was a pre-sentence report. The appellant said that he had been bullied into admitting the offences for which he received the 2 year sentence in 2011. He made it clear to the author of the report that he still resented the imposition of the SOPO as a breach of his human rights. It had impacted on his ability to have normal relationships. Whenever he had revealed his convictions to others in the past, he had been subjected to verbal and physical abuse. He insisted that in the current series of offences he had never been left alone with any of the children. The author of the report said that it was a matter of concern that the appellant took so little responsibility for his offending.

24. In his sentencing remarks the judge said that the appellant had pleaded guilty to long-term and systematic breaches of the SOPO. Over a period of years he had befriended women and young children. The children were all under the age of 10. The appellant was thought to be so trustworthy that he was allowed to be with the children. He was invited to birthday parties, and on occasions he had the opportunity to be alone with some of the children. He used a false name so that the parents would not be able to Google him or research his previous offending. He lied about the reason he had been to prison, suggesting that it was for an offence of violence. Each and every parent had been horrified to find out about his convictions and his entrenched interest in children. They would never have allowed the appellant near any of their children had they known the true position.

25. The judge described the appellant's previous convictions in 2011 as not only downloading but also distributing child abuse images of the worst possible category and in substantial amounts. That was why he had received a sentence which was unusually harsh. The reason was that, despite his effective good character and the fact that they were non-contact offences, the appellant was seen then to be such a risk to children.

26. The judge referred to the contents of the pre-sentence report and said that the appellant still purported to have no sexual interest in children, whereas in fact his sexual interest in children was entrenched and lifelong. It would never go away, and he would never cease to be a risk to children.

27. The judge said that although each offence individually would fall within category B2 of the relevant Sentencing Council guideline, with a starting point of 12 months' imprisonment, standing back and looking at the offending as a whole, these were very serious and persistent breaches and therefore fell within category 1A of the guideline, with a starting point of 3 years'



imprisonment and a range up to 4 ½ years. The judge referred to the period of time over which the offending took place, the deception involved, the number of children, and the appellant's attitude. The judge recognised as some limited mitigation the impact of the appellant's offending on his own parents who were in poor health and for whom he had substantial caring responsibilities.

28. The judge took into account prison overcrowding. He indicated that the appellant would receive 25 per cent credit for his guilty pleas.

29. The judge then imposed the sentence of five years' imprisonment. We observe that this represents a sentence before credit for the guilty plea of 6 years 8 months.

### **The grounds of appeal**

30. On behalf of the appellant, Mr Taylor submits that this was simply too long and that the total sentence was manifestly excessive. In his written grounds of appeal Mr Taylor took issue with some of the judge's analysis and findings on the facts, but his real criticism, in his admirably succinct oral submissions, is that the judge simply started too high. He points out that 6 years 8 months is 3 years 8 months above the starting point for category 1A.

### **Discussion and conclusion**

31. We think that there is force in Mr Taylor's submissions. We well understand why the judge considered that, taken as whole, this offending was properly in category 1A, with a range of up to 4 ½ years' imprisonment. We remind ourselves that the maximum sentence for a single offence is 5 years' imprisonment. We also think that the judge was correct to structure the sentence as he did, with consecutive sentences on each of counts 2 to 6, to reflect the fact that there were five separate episodes each of which involved a different child or children. The judge made no specific reference to totality in his sentencing remarks, but that must have been

the reason for the concurrent sentence on count 7 (the breach relating to the prohibited possession of a mobile phone).

32. However, standing back, we have to ask ourselves whether a sentence of 6 years 8 months' imprisonment, before credit for the guilty pleas, was just and proportionate. We observe that it was more than 2 years above the top of the range for the most serious category 1A offending. We think that the resulting sentence of 5 years' imprisonment, after credit for the guilty plea, was manifestly excessive.

33. In our judgment, the sentence on each count, before credit for plea, should have been 12 months, producing a total of 5 years' imprisonment before credit for plea. This would be only 6 months above the top of the range for category 1A. With a reduction of 3 months on each count for the guilty plea, the total sentence should therefore have been 3 years 9 months' imprisonment.

34. Accordingly, we allow the appeal. We quash each of the sentences of 12 months' imprisonment and instead impose sentences of 9 months' imprisonment on each count. The structure of the sentence remains the same. The sentences on counts 2 to 6 will run consecutively to each other, making the total sentence of 3 years 9 months' imprisonment. The sentence of 9 months' imprisonment on count 7 will be concurrent.

35. We quash the Sexual Harm Prevention Order. All other ancillary orders remain in place.