

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Neutral Citation Number: [2024] EWCA Crim 1015

IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT
AT BRADFORD
MR RECORDER HAWKS T20220512/S20220421



CASE NO: 2024 02238 A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 30 July 2024

Before:
LORD JUSTICE SINGH

MR JUSTICE JOHNSON

HIS HONOUR JUDGE TIMOTHY SPENCER KC

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

REX

v

WILLIAM HARRISON

(1992 Sexual Offences Act applies)

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MS ABIGAIL HUSBANDS appeared on behalf of the Solicitor General
MR KEVIN MURTAGH appeared on behalf of the Offender

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

1. 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 s.3 of that Act.

Introduction

2. This is an application on behalf of His Majesty's Solicitor General for leave to refer sentences to this Court under s.36 Criminal Justice Act 1988 ("the 1988 Act") on the ground that they were unduly lenient.
3. The Respondent Offender was born on 12 May 1961. He was aged 61 at the time of the offences and 63 at the date of sentence.
4. On 14 September 2023, having pleaded guilty to two sexual offences before the Bradford and Keighley Magistrates' Court, the Offender was committed for sentence pursuant to s.14 Sentencing Act 2020 (or the Sentencing Code).
5. On 25 March 2024, in the Crown Court at Bradford, the Offender pleaded guilty to two offences of child abduction.
6. On 23 May 2024 the Offender was sentenced by Mr Recorder Hawks as follows.
 - On the first matter, which was an offence of causing or inciting a girl under the age of 13 to engage in sexual activity contrary to s.8(1) and (3) Sexual Offences Act 2003, there was a sentence of 4 years' imprisonment.
 - On the second matter, which was causing or inciting a girl under the age of 13 to engage in sexual activity contrary to the same provisions, there was a concurrent sentence of 4 years' imprisonment.
 - On the first count on the indictment, which was an offence of abducting a child contrary to s.2(1)(b) Child Abduction Act 1984, there was no separate penalty imposed.
 - Again on the second count, which was a similar offence, there was no separate penalty

imposed.

Accordingly that made a total sentence of 4 years' imprisonment. Other appropriate orders were imposed, including a victim surcharge order, a sexual harm prevention order and a restraining order.

The facts

7. During the early evening of Saturday 10 September 2022 LT and SP sneaked out from LT's address to go and buy sweets from their local shops. They first went to their local corner shop and then on to the Asda supermarket in Shipley, a 5-10 minute walk from LT's home. The children were both 8 years old at the time.
8. When in Asda, having looked for balloons, they went to the sweet aisle. They did not have enough money to buy the particular sweets they wanted. A man they did not know then offered to buy them the sweets. They described him as being around 50, with grey hair. In fact that man was this Offender.
9. The Respondent Offender did not ask where their parents were or seek anyone's permission to buy the sweets for them. Instead, he put the sweets in his trolley with the rest of his shopping and walked to the till to pay, with the two girls following behind.
10. Having paid, the Offender put the sweets back into his trolley and told the girls to go with him to his car. He was then seen on CCTV looking back twice and waiting for the girls to follow him. They all walked to his car.
11. Once at the car, the Offender asked the girls to get in. He offered them £5 to do so but they refused. They stood outside the car, whilst the Offender got into the driver's seat. He asked, "Do you want to see a picture of my grandkids?" The girls said that they did. He then showed them a photograph on his phone. SP described it as a picture of a big hole. She asked what it was. The Offender replied, "My willy". LT recognised that the photograph depicted a penis, as she had a little brother.

12. SP tried to grab the sweets and walk away, but LT went back over and stood in front of the car. The Offender had his glasses on and was looking at his phone. He then said, "Do you want to see a real one?" and offered the girls £5 again. SP said "No" and began to walk away. LT described them running away. The Offender said, "I'm sorry if I offended you, I just like to show people it."
13. SP and LT went home. LT was crying. On the way back, they saw one of the mums from school. They told her what had happened and she took them home. The police were then called.
14. The Offender was arrested on 12th September 2022. During his interview he admitted being in the shop, buying the girls sweets and that they both went to his car. He suggested that it was not possible to give them the sweets in the shop because of how he had arranged his bags. He said they had just followed him to his car without being invited. He admitted showing the girls a photograph of his penis on his mobile phone but said that was by accident; he had merely been trying to show them a picture of a fish. The Offender suggested that he had been joking when he had asked if they wanted to see his penis for real and said that he had immediately apologised.
15. The police seized the Offender's mobile phone, which contained a number of items of a sexual nature including reference to children.

The sentencing process

16. The maximum sentence for an offence under s.8 Sexual Offences Act 2003 is 14 years' imprisonment. The Sentencing Council has issued a Definitive Guideline for such offences, which was correctly referred to by the Recorder in this case. We will return to that guideline in due course.
17. It is also relevant to mention that in principle an extended sentence could have been passed in this case under s.280 Sentencing Code. For an extended sentence to be available to the court, an assessment of the offender's dangerousness is required in order to determine

whether the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by further specified offences.

18. Section 308(2) Sentencing Code states that in making that assessment, the court must take into account all the information that is available to it about the nature and circumstances of the offence, may take into account all the information that is available to it about the nature and circumstances of any other offences of which the offender has been convicted, may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned earlier forms part, and may take into account any information about the offender which is before it.
19. If an offender is found to be dangerous, an extended sentence is only available if under s.280(1)(e) either the earlier offence condition or the 4-year term condition are met. The earlier offence condition was not met here but the 4-year condition was met.
20. The Offender was, as we have mentioned, 61 years old at the time of the offences. He had three previous convictions for four offences. They were:
 - Sexual assault contrary to s.3 Sexual Offences Act 2003 and committing an offence with intent to commit a sexual offence contrary to s.62 of the same Act.
 - Next, there was an offence of exposure contrary to s.66 of the same Act.
 - Finally, there was an offence of outraging public decency contrary to the common law.
21. On 17 November 2006, having been convicted of those four offences, the Offender received a sentence (which was at that time available to courts) known as Imprisonment for Public Protection (“IPP”). He was released on licence after 6 years' imprisonment, but was recalled in 2014 for failing to disclose being in a relationship with a woman who had children. He was then released on licence.
22. On 14 July 2022 the Parole Board terminated the IPP and revoked the Offender's licence, with the consequence that all of his then licence conditions were revoked. It is troubling that these offences took place just over two months after the revocation of his licence

conditions.

23. Before passing sentence, the Judge had various materials available to him, which we also have. These included a Prosecution Sentencing Note and a Defence Sentencing Note. They did not include a victim impact statement because the parents of the children concerned declined to make such statements.
24. The sentencing court, like this Court, had a pre-sentence report dated 25 April 2024. This noted that the Offender had shown a level of remorse but lacked insight into his offending. Under the heading "Risk of serious harm", the author stated that he was of the view that:

"The risk of harm is high in nature. The target risk group appears to be female children, although the defendant has offended against an adult previously, and used a knife to gain the compliance of his victim on that occasion. The risk is gaining unsupervised contact with a child, and then either exposing himself or masturbating in their presence. There is a significant risk to female children in my view, given the defendant's apparent lack of control and inability to regulate his emotions accordingly.

It is important to note that the offence occurred shortly after his IPP sentence was terminated, when he knew his level of accountability was reduced. It would seem that he benefitted from being subject to restrictions, and it may be that this is because they provided guidance and limits to what he could and couldn't do. I am of the view that any future risk management plan contain strict conditions which permit him no unsupervised access to children, so that the risk to them is limited."

The author continued in the report that:

"[The Offender's] new offence demonstrates that he continues to pose a significant risk of sexual offending, and this is directed towards children. There are questions regarding his ability to control himself where he is experiencing offence focussed thinking."

It is not clear whether the author of the pre-sentence report was aware of the contents of the Offender's mobile phone history but there was no reference made to it in his report.

25. The sentencing court, like this Court, also had a psychiatric report by Dr Nimmagadda dated 12 April 2024. This concluded that the Offender was not suffering from any psychiatric disorder. He had a disorder of sexual preference; that is, exhibitionism. No psychiatric disposal was suggested. However, behavioural interventions and cognitive behaviour therapy ("CBT") intervention was recommended.

26. In a letter from the Offender there was an apology to the girls concerned and he asked for interventions that were more beneficial than custody.
27. There was also an addendum pre-sentence report. In the light of psychiatric report, it was observed that a custodial sentence would punish the Offender and allow access to interventions.
28. In passing sentence the Judge did not explicitly refer to the amount of credit to be given for the guilty pleas but did implicitly state that full credit could not be given. The Judge acknowledged that the Offender had pleaded guilty to the s.8 offences at the magistrates' court but had made it clear that he did not accept his guilt in its entirety. This was why the abduction matters then had to be listed for trial in the Crown Court and guilty pleas were only entered there once the trial had begun. In consequence the victims had had to attend court to be cross-examined on an earlier occasion. This is in accordance with normal practice nowadays. As will become apparent, that cross-examination is treated in law as the first day of the trial.
29. The Judge said that he was "just" persuaded not to pass an extended sentence on the basis of the reports he had read and because the Offender had pleaded guilty. Having referred to the relevant guideline, the Judge stated that this was a category 2B offence. The guideline recommends in such cases a starting point of 6 years' custody, with a range of 3 to 9 years. The Judge said there were aggravating features, being the Offender's previous convictions and the fact that the offending was against two children and not one. However, the Judge then took a starting point, in fact, of 5 years rather than 6 years. He further reduced that to 4 years on the basis of the guilty pleas, the Offender's age and the current situation in prisons.

Submissions on behalf of the Solicitor General

30. On behalf of the Solicitor General Ms Husbands takes no issue with the fact that no separate penalty was imposed on the child abduction counts, given that they were dealt with as an aggravating feature of the s.8 offences. However, she submits that very little credit was due

on those counts since the pleas were entered after cross-examination of the two young witnesses. As the Criminal Practice Directions 2023 make clear at paragraph 6.3.36, the date of the s.28 hearing for cross-examination should be considered to be the first day of the trial. That is a reference to s.28 Youth Justice and Criminal Evidence Act 1999. Further, as the *Definitive Guideline on Reduction for guilty pleas* makes clear, in circumstances where a guilty plea is entered after the first day of the trial, there should be a reduction from the normal 10 per cent, possibly even to zero, and the reduction which would have been available should normally be halved if there had been a *Newton* hearing at which the offender's version of events has been rejected.

31. Finally in this context it is important to bear in mind what this Court said in *Plaku & others* [2021] EWCA Crim 658 at [28]; [2022] 1 Cr App R (S) 7. Where a defendant faces more than one charge and does not at the first stage of proceedings give an unequivocal indication of an intention to plead to all charges, in some cases it will be appropriate to view the charges separately and give differing levels of credit in respect of each offence individually; but in other cases it may be better to take a view across the charges as a whole and make the same reduction in each case. In the present case we have come to the view the latter course would be just and appropriate, bearing in mind that this is not a precise arithmetical exercise but an exercise in judicial judgment.
32. Returning to Ms Husbands's submissions, she also takes no issue with the categorisation of the s.8 offences as being category 2B offences. Accordingly the starting point should have been 6 years' imprisonment, with a range of 3 to 9 years. But as she observes, this would be for a single offence against a child under the age of 13. In this case there were two victims. Ms Husbands submits that the judge fell into error by not increasing that starting point having regard to the aggravating features and the fact that there were two offences against two 8-year-old girls. No explanation was given by the Judge for reducing the starting point to one of 5 years.
33. Further, Ms Husbands submits that the personal mitigation available to this Offender was limited. There was some remorse but that was against the background of not accepting full

responsibility for his offending over a protracted period. There was little personal mitigation other perhaps than age.

34. Next, it has to be borne in mind that the Respondent committed these offences just two months after his licence conditions for the previous IPP had been revoked.
35. Finally, Ms Husbands submits that the Judge should have found the Respondent Offender to be a *dangerous offender*, given the contents of the pre-sentence report and the contents of the Respondent Offender's mobile phone history. In this context Ms Husbands reminds us of *Bryant* [2017] EWCA Crim 1662, in which this court said that consideration should be given to the danger posed by an offender on release and whether ancillary orders, such as a sexual harm prevention order, are sufficient to reduce the level of risk to the public. Ms Husbands submits that it was not sufficient, not least because the psychiatric report in this case suggested that the Offender would benefit from behavioural treatment, which is not available on such orders. She reminds this Court that the licence period could as a matter of law have been extended for up to 8 years. This would have served to protect the public.

Submissions on behalf of the Respondent

36. On behalf of the Respondent Offender Mr Murtagh submits that the sentence in this case was not unduly lenient. He observes that the Recorder who sentenced in this case is highly experienced and efficient. He is respected not only in Bradford but in West Yorkshire generally. Mr Murtagh submits that the Respondent does not in fact pose a danger to members of the public.
37. In relation to categorisation of the s.8 offences, he submits that this was in fact category 3 harm, but in any event it fell into category 2 at the lowest possible level.
38. Finally, Mr Murtagh submits that the Respondent has now woken up to the fact of just how stupid he has been. He is ashamed and immensely apologetic to the families, the Parole Board and Probation Service, who he feels he had let down immensely, not to mention the courts.

Our assessment

39. The principles to be applied on an application under s.36 of the 1988 Act are well established and were summarised in *Attorney-General's Reference (Azad)* [2021] EWCA Crim 1846; [2022] 2 Cr App R (S) 10 at [72] in a judgment given by the Chancellor of the High Court as follows:

"(1) The judge at first instance is particularly well placed to assess the weight to be given to competing factors in considering sentence.

(2) A sentence is only unduly lenient where it falls outside the range of sentences which the judge at first instance might reasonably consider appropriate.

(3) Leave to refer a sentence should only be granted by this court in exceptional circumstances and not in borderline cases.

(4) Section 36 of the 1988 Act is designed to deal with cases where judges have fallen into 'gross error'."

40. Turning to the facts of the present case, we have reached the conclusion that the total sentence passed was unduly lenient. The starting point for the sexual offences should have been 6 years' custody with an increase to reflect the aggravating features in this case, in particular the Respondent's previous record and the fact that there were two children who were the victims in this case. Further, we accept that there was little by way of mitigation in this case. We also accept the reduction to be given for the guilty pleas was decreased by the fact there were offences which had to go to trial and there had to be cross-examination of the child witnesses under s.28. The exercise is not a precise arithmetical one, but we have reached the conclusion that the appropriate custodial period after reduction for guilty pleas should have been one of 6 years.

41. Furthermore, we agree with Ms Husbands that this Respondent should have been found to be a dangerous offender. This was clear on the contents of the pre-sentence report and also bearing in mind the mobile phone history. No explanation was given by the Judge for why he departed from making that finding. In the circumstances we consider that an extended licence period of 5 years needs to be imposed in order to protect the public.

42. Accordingly, we will quash the sentences imposed on the s.8 offences of 4 years'

imprisonment. We substitute an extended sentence on each of those offences to run concurrently, comprising a custodial period of 6 years and an extended licence period of 5 years. There is no need to alter the sentences on the two counts of child abduction for which there was no separate penalty. Like the sentencing court we have had regard to the principle of totality and have taken those matters into account in arriving at the overall sentence.

Conclusion

43. For the reasons we have given, this application for leave by the Solicitor General is granted and on the reference to this Court the sentences are altered in the way that we have indicated.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk