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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT YORK

HHJ SEAN MORRIS 12NY1318123/12NY0762723

CASE NO 202402669/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 20 September 2024

Before:

LORD JUSTICE DINGEMANS

MRS JUSTICE THORNTON

MR JUSTICE LINDEN

REX

V

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

CRAIG WELSH

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Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR S HOLT appeared on behalf of the Solicitor General

MR N HAMMOND appeared on behalf of the Offender

J U D G M E N T

Draft Approved

LORD JUSTICE DINGEMANS:

Introduction

1. This is a hearing of an application by His Majesty's Solicitor-General, for leave to refer a sentence which the Solicitor-General considers to be unduly lenient.
2. The respondent, Craig Welsh, was convicted after trial of rape and non-fatal strangulation and sentenced to 6 years' imprisonment for the rape and 1 year's imprisonment consecutive for the non-fatal strangulation, making a total of 7 years' imprisonment. The complainant has the benefit of life-long anonymity, pursuant to the provisions of the Sexual Offences (Amendment) Act 1992.
3. The grounds of the application are that the judge was wrong to depart from the starting point of 8 years' custody for the offence of rape, which it was common ground was categorised as category 2B. The sentence should not have been reduced to reflect prison conditions and the reduction for totality was excessive. As Mr Holt put it this morning, the judge fell into "gross error" by giving the sentence that he did for this offending.
4. The application is resisted on the basis the judge was the trial judge and is very experienced. The judge had heard the complainant read out her impact statement. The judge had a pre-sentence report, a psychiatric report and a psychological assessment of Mr Welsh. Mr Welsh had no relevant previous convictions and the judge was entitled to take account of difficult conditions in prison and the sentence was not unduly lenient.

Factual Circumstances

5. Mr Welsh and the complainant had been in a relationship that was coming to an end. They had initially got to know each other through work. They started a sexual relationship in March 2023, a short time later the complainant thought she might be pregnant. At that time she was unsure about whether she wanted to remain in a

relationship with Mr Welsh.

6. So far as the strangulation is concerned, they agreed to meet at the complainant's place of work on 25 May 2023. The complainant was working a night shift in a home where vulnerable residents lived. Mr Welsh attended. He wanted to see a pregnancy test as proof. He became annoyed. He thought the complainant only wanted to end the relationship with him because she was having an affair with another man and the complainant denied that. Fearing an argument was about to start, the complainant asked Mr Welsh to leave. He refused. He was getting angry and banging his head against the wall. The complainant again suggested that he should leave. Mr Welsh moved forward to kiss the complainant, she pushed him away and said "no". He started to apologise and rub her leg. Again, he was told to stop and the behaviour continued to be volatile. He suddenly grabbed the complainant's throat with his hand, it was a tight grip and she could scarcely breathe. His actions left marks on her neck and chest area and he was saying that this was her fantasy and that she wanted this. The complainant continued to ask Mr Welsh to leave and she started filming him and he then did leave. Various calls were exchanged on social media. Mr Welsh said that it was the complainant's fantasy to be grabbed around the neck, which she denied. She maintained that she had told him to stop.
7. The complainant called the police and Mr Welsh also made a report to the police. He was arrested and interviewed on 25 May. He accepted being present. He said he had tried to kiss the complainant and she had said "no", he said that he had his hand on her face and had toppled forward, putting his hand on her chest to stop himself falling into her. He was released on bail. When he answered bail on 27 June, he was interviewed again and provided a prepared statement indicating he had nothing further to say.

8. As far as the rape was concerned, some weeks after the strangulation, the complainant started to bleed. She was worried about her pregnancy. She attended hospital and was told that she had suffered a miscarriage. Mr Welsh was also told of the loss and he went to the hospital with the complainant. A few days later he contacted the complainant. He said to her that he was struggling with the loss and suggested they grieve together. She agreed. He invited her to come to his address where he lived alone. At that time, the complainant was still sore and was lying down, fully clothed, and occasionally drifting to sleep. Initially there was no issue with them cuddling each other but Mr Welsh then started to rub her bottom. She told him to stop but he did not do so, and in the end, he raped her. During the rape, one of his hands was around her throat and the other was pulling down her trousers and knickers. He ejaculated. The complainant remained lying down. She had a shower and he then drove her home. Allegations about other offending were made in September, but the jury could not decide on those matters and it is not necessary to say anything further about them. Following these later allegations, Mr Welsh was arrested and interviewed again and he denied any sexual conduct in relation to the July incident.
9. During sentencing, the complainant provided a victim personal statement. She said to the court the past months had been the hardest of her life. She had suffered physical pain and suffered emotionally and mentally. She still struggled to trust people, she was scared and in a constant survival mode. She was in such pain that she thought it would have been easier had she been killed. She said she had not wished to re-live it all again in front of strangers she did not know and felt victimised, deeply ashamed and exhausted, drained in every possible way.

10. Mr Welsh, who was born on 19 May 1987, had four convictions for 12 offences. He had received a community order for offences of dishonesty, a conditional discharge for being carried in a stolen motor vehicle and he had been fined for handling stolen goods.

There was a pre-sentence report where Mr Welsh was recorded as speaking about the complainant in a negative way. He still maintained his innocence in relation to the matters. So far as is relevant, he had been living on his own in Scarborough. He said he had struggled to hold down full-time employment owing to issues with his mental health and he had found employment with a security firm. He had previously been married and had children and he described having a positive relationship with his ex-wife. He reported that he was neurodivergent and had a diagnosis of ADHD and had been assessed for autism. He was also diagnosed with depression and anxiety, for which he received medication. He had a heart condition and a monitor.

11. Mr Welsh was assessed in the pre-sentence report as having a low risk of reconviction for a serious harmful offence but there was a high risk of offending in relation to the complainant. A report was prepared by Dr Shenoy, following an assessment that took place on 20 May 2024. Dr Shenoy confirmed that there was a long history of ADHD. Mr Welsh had been diagnosed as a child when aged 12 or 13 and had been on treatment since and he was prescribed drugs for that. He was noted to report symptoms of autism and had been diagnosed with anxiety and depression and he was on drugs for those. It was apparent that he had been detained under the Mental Health Act twice in the preceding year. On one occasion when he was on the Humber Bridge, it was presumed he was going to jump but Mr Welsh said he was not (it was after he had found out about the miscarriage). In relation to the second incident, Mr Welsh said that might have been

as a result of him not taking his medication. He had taken overdoses but that had been a cry for help. He said he had half-siblings but they were younger than him. His parents had separated when he was 2 years of age. He did not know about the others as he did not have much contact with them after he went into care at the age of 8. He had left school at the age of 16, not having obtained GCSEs. He had got a job in customer services where he worked for some months, and he had always had difficulty keeping employment. His longest job was with the security firm. He had not taken drugs and rarely drank alcohol. He did not present with psychotic symptoms. He had good insight into mental health problems, namely depression and ADHD and he was aware of the impact of medication on his symptoms. Dr Shenoy did not detect symptoms of autism on his assessment and concluded that he had a diagnosis of adult ADHD, a recognised mental disorder. He had suffered with the condition since childhood and he had anxiety and depression. The doctor said that it was his view that Mr Welsh's mental health problems predated the index offences and he had suffered with those conditions for many years: "I respectfully advise that his mental health disorders be considered as mitigating factors with regard to sentencing." The report concluded by saying that the mental health disorders did not warrant transfer and treatment within a hospital. A short psychological report was also before the court but did not take matters much further.

Relevant guideline and law

12. There is no guideline in relation to the non-fatal strangulation offence. In *R v Cook* [2023] EWCA Crim 452, there was guidance provided to the courts for dealing with the offence which was that the starting point would be 18 months' custody and factors might increase that starting point. As far as the rape was concerned, it was common ground that it was a category 2B rape which has a starting point of 8 years and a range of 7 to 9 years.

As there were two offences, namely the non-fatal strangulation and the rape, the judge had to have regard to issues of totality and the Sentencing Council Guideline on Totality.

As there were issues of mental health, the judge should also have had regard to the Sentencing Council Guideline on Mental Disorders, Developmental Disorders and Neurological Impairments. Paragraph 22 of that makes it clear that:

“Where an offender is on the cusp of custody or detention, the court may consider that the impairment or disorder may make a custodial sentence disproportionate... Where custody or detention is unavoidable, consideration of the impact on the offender of the impairment or disorder may be relevant to the length of sentence and to [other issues]. This is because an offender’s impairment or disorder may mean that a custodial sentence weighs more heavily on them and/or because custody can exacerbate the effects of impairments or disorders.”

It is relevant to report that, so far as we are concerned, we have a prison report which shows that the appellant has become an enhanced prisoner but has suffered mental health outbreaks and outbursts as a result of that in prison.

13. So far as the judge’s sentencing remarks are concerned, they were very short and it is common ground before us that, so far as this Court is concerned, we have to undertake some degree of reverse engineering to work out exactly how the judge got to the sentence that he did. The judge said that his starting point for rape was 7 years which, if he meant that he was starting at that starting point, before taking into account aggravating and mitigating features, was clearly wrong in law because the starting point was 8 years. So far as the judge was concerned, he then said that the psychological report does not provide any mitigation for this offence. The judge was right to say, and it was common ground, that the appellant’s culpability was not affected by his psychological report but we have already referred to paragraph 22 of the relevant sentencing guideline which identifies that there can be mitigation arising from the mental health disorder that the

respondent suffered from. The judge said that he also had to look in the round at everything and take into account the conditions of the prison population at the moment which are dire and, he said, so far as strangulation, which normally starts at 18 months after trial:

“After trial I reduce that for the conditions inside to fifteen and I reduce it again for totality to twelve... As far as the rape is concerned I start at seven years, I reduce that for the conditions inside to six years eight months and I reduce it again for totality...”

14. As was made clear by the Court of Appeal in *R v Tripathi* [2024] EWCA Crim 763 (at paragraph 23), temporary prison conditions will not affect the length of any custodial sentence for longer prison sentences. To the extent that the judge was reducing the sentence to take account of prison conditions rather than as mitigation for the mental health disorder, that was also wrong. Complaint was also made by Mr Holt, as we have already indicated, in relation to the reductions for totality.

This Reference

15. So far as this Reference is concerned it is, as is common ground, very difficult to work out how the judge came to the sentence that he did and it is necessary for us to attempt to revisit the exercise, taking into account the relevant factors. It is common ground that there is a starting point of 8 years for the rape. There were aggravating matters in relation to ejaculation and the commission of the offence on bail. There were mitigating factors so far as there were no relevant previous convictions and the mental health disorder would make prison more difficult. In broad terms the aggravating and mitigating factors balanced each other. In those circumstances, we consider that the sentence which the judge imposed of 6 years for the rape was not just lenient but was unduly lenient.
16. So far as the offence of strangulation was concerned, there was the starting point of 18

months but there were issues again in relation to aggravation, the circumstances in which that offending took place, and the fact that the complainant was pregnant but there were also the matters of mitigation to which we have already referred and the very important issues of totality. Having regard to what we now know in relation to the effect of Mr Welsh's mental disorders in prison and attempting to do the best we can to reflect the mitigation available to Mr Welsh and reflect totality, we consider that a consecutive sentence of 9 months would be appropriate for the sentence in relation to strangulation.

17. In all those circumstances, we allow the Reference and we increase the sentence in relation to the rape from 6 years to 8 years and we reduce the sentence in relation to the strangulation from 12 months to 9 months and keep it consecutive, so that the overall sentence is increased from 7 years to one of 8 years and 9 months. To that extent, the Reference succeeds. We should conclude by thanking Mr Holt and Mr Hammond for the excellence of their written submissions and for the helpful oral submissions.

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

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