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IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT SHEFFIELD
(HIS HONOUR JUDGE REEDS [T20237324])

Royal Courts of Justice
The Strand

London
WC2A 2LL

Case No 2024/00337/A1

Wednesday 25 September 2024

[2024] EWCA Crim 1191

B e f o r e:

LADY JUSTICE WHIPPLE DBE

MR JUSTICE LAVENDER

MRS JUSTICE STACEY DBE

R E X

- v -

AKO HUSSAIN PUR

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Non-Counsel Application

J U D G M E N T

Wednesday 25 September 2024

LADY JUSTICE WHIPPLE: I shall ask Mrs Justice Stacey to give the judgment of the court.

MRS JUSTICE STACEY:

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 the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. The applicant renews his application for leave to appeal against sentence following refusal by the single judge.

3. On 5 January 2024, following a trial in the Crown Court at Sheffield before His Honour Judge Graham Reeds and a jury, the applicant was convicted of one count of assault of a child under 13 by penetration, contrary to section 6(1) of the Sexual Offences Act 2003. He was sentenced to a Special Custodial Sentence under section 278 of the Sentencing Act 2020, comprising a custodial sentence of seven years and an extended licence period of one year. A Sexual Harm Prevention Order was made until further order. The usual consequential notification and safeguarding provisions applied.

4. The single proposed ground of appeal is that although the judge was right to place the offending in category 3 harm of the Sentencing Council guidelines for the offence and correctly acknowledged that there were no culpability A factors present, the judge was wrong then to place the offending above the range for offences in category 3B since there were no

culpability A factors present and the facts were consistent with category 3B. As a consequence, the sentence was manifestly excessive.

5. No pre-sentence report was obtained prior to sentence. None was necessary either then or now (see section 33 of the Sentencing Act 2020).

The Facts

6. The applicant sexually assaulted the complainant, then aged 6, when he was working at her parents' house installing new windows. He was not known to the family of the complainant. He went into her bedroom in the upstairs of the house after she had been collected from school by her father who was talking to another workman downstairs at the time.

7. After asking her to draw a picture of him and then showing an interest in a globe in her room, the applicant pushed the complainant onto the carpet so that she was facedown, pulled down her trousers and underwear, and put his finger in her anus. He told her to keep it a secret.

8. Having become concerned and shouted up to her, the complainant's father went upstairs and saw the applicant coming out of his daughter's bedroom. She told him what had happened. The applicant denied any inappropriate behaviour when he was confronted by the father, and also to the police in interview after his arrest.

9. The applicant was aged 32 at sentence. He had four convictions for five offences from 2 September 2014 to 25 October 2017. His relevant convictions included one offence of exposure and two offences of failing to comply with notification requirements.

10. Category 3B offences under section 6 of the Sexual Offences Act 2003 have a starting point of four years' custody, with a range of two to six years.

11. In sentencing, the judge, who had been the trial judge, considered that there were seven aggravating features that placed the offending outside the range, and that there were no mitigating features. He imposed the Special Custodial Sentence of seven years, as described above.

12. The aggravating features were: (1) that the applicant was trusted by both his employer and the householder; (2) the offence was committed in the complainant's bedroom, where she was entitled to feel safe; (3) there was an element of planning by waiting until she was alone in her bedroom and pretending that there was an innocent reason to go into her room; (4) there was grooming type behaviour by gaining her confidence and by asking her to draw his picture in order to make her more compliant; (5) the attempt to prevent her from reporting the offence; (6) the applicant's previous convictions for a sexual offence (although it was acknowledged that it was some time ago); and (7) the effect on the complainant's father who, although he was not to blame in any way at all, feels a sense of guilt at not having been able to protect his daughter at home.

13. There was no Victim Personal Statement for the complainant.

14. We were referred to three authorities in support of the proposition that the judge was wrong to go beyond the top of the range: *R v HB* [2003] EWCA Crim 671, *R v Forbes* [2016] EWCA Crim 1388, and *R v Ivan* [2020] EWCA Crim 301. However, those authorities are of limited assistance. The cases turn on their own facts which are always specific and individual to the case. It is the Sentencing Council guidelines that are to be construed, interpreted and applied.

15. This assault was chillingly audacious and brazen and of the type that plays into everyone's deepest fears. As was described by the single judge, it was a very bad case of its kind.

16. There were additional aggravating factors: not least the age of the child, the applicant's previous conviction for exposure (which was related to children), and the non-compliance with the notification provisions were particularly troubling.

17. The judge had found that the "case starts" in category B3, but he then gave cogent reasons for moving up beyond the top of the range. He was entitled to do so, given the combination of the sheer number of factors that fell just below the culpability A factors, and the additional aggravating factors identified above, together with the very unusual circumstances of the case.

18. The sentencing judge was best placed, as trial judge, to assess the applicant's culpability and the aggravating features. He set out his reasoning clearly.

20. Accordingly, this renewed application for leave to appeal against sentence is refused.

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

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