IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT SHEFFIELD
HHJ DIXON T20230594, T20230265

CASE NO 202400578/A2

NCN: [2024] EWCA Crim 1251

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 10 September 2024

Before:

LORD JUSTICE SINGH

MRS JUSTICE MAY

MR JUSTICE GRIFFITHS

REX
V
LESLIE THORNTON

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

MR D HEWITT appeared on behalf of the Appellant.

J U D G M E N T

MRS JUSTICE MAY:

Reporting Restrictions

1. The provisions of section 45 of the Youth Justice and Criminal Evidence Act 1999 are engaged in this case because the appellant's former partner's children were under 18 and were concerned in the case. No order was made in proceedings in the Crown Court but, having considered the matter this morning, we make such an order in relation to this appeal. We direct that there must be no publication of any details if they are likely to lead members of the public to identify the children of the former partner as persons concerned in the proceedings. As naming her may lead to their identification, we shall refer to her as "TX" in this judgment.

Introduction

2. On 18 December 2023, in the Crown Court at Sheffield on the date listed for trial, the appellant (then aged 29) pleaded guilty on re-arraignment to two offences of failure to comply with notification requirements, pursuant to section 91(1)(a) and (2) of the Sexual Offences Act 2003 and one offence of breach of a sexual harm prevention order. No evidence was offered against him on count 2, failure to comply with notification requirements, and counts 3, 4 and 6, further breaches of sexual harm prevention order, and not guilty verdicts were entered pursuant to section 17 of the Criminal Justice Act 1967. On 24 January 2024, the appellant was sentenced to 43 months for the offence of breach of a sexual harm prevention order, with sentences of 1 month and 8 months for the notification offences both to run concurrently. He appeals the total sentence of 43 months with leave of the single judge.

The facts of the offending

3. In April 2015, the appellant received a sentence of 3 years' imprisonment for a number of sexual offences in relation to a girl aged 14-15. In consequence of that, he was placed on the Sex Offenders Register and in addition was made the subject of a sexual harm prevention order, with the aim that he should register his residence and limit his activity and residence with any under 16 year olds. The sexual harm prevention order was expressed to remain in force until further order, that is to say, indefinitely. The Schedule of Prohibitions was in the following terms:

> "Prohibited from having any unsupervised contact with any female child under 16 years in any residential property whether or not such contact is with the consent of the child's parent or legal guardian unless;
> you have written permission of any social services department,
> or you are permitted by the terms of any order of a court in England and Wales.
>
> You are prohibited from allowing any female child under the age of 16 years to enter or to remain in any premises you reside unless;
> you have written permission of any social services department,
> or you are permitted by the terms of any order of a court in England and Wales.
>
> You are prohibited from remaining in any residential premises once you become aware of the presence of a female child under 16 years in that residence unless;
> written permission of any social services department,
> or you are permitted by the terms of any order of a court in England and Wales.
> This prohibition does not include unavoidable and inadvertent contact during the course of everyday life.
>
> You are prohibited from contacting or attempting to contact any female child under the age of 16 years directly or indirectly by voice, letter, text message, telephone, e-mail, social network site or by any other means unless;

> The child is related to you and you have written permission of any social services department,
> or you are permitted by the terms of any order of a court in England and Wales.
> This prohibition does not include unavoidable and inadvertent contact during the course of everyday life."

4. The appellant met TX in September 2019. TX had two children, a boy and a girl (the girl was aged 13 at the time of the offences). South Yorkshire Police informed TX that the appellant was a convicted sex offender. Social Services then became involved and TX decided to end the relationship. In December 2020, the appellant contacted TX and told her that he had been found innocent (which was not true) and that he wanted to get back together. The relationship rekindled and the appellant moved back into TX's house where he lived almost continually from January 2021 until May 2022. Some nights he stayed at different premises but he was a frequent visitor at TX's house many nights a week. He was present at that address where her children were present and when other children (cousins of TX's children) visited and were left by their own parents. In May 2022, the police again had contact with TX and told her that the appellant was still on the Sex Offender Register and had never been acquitted. TX challenged the appellant and the relationship ended.

5. Count 1 reflected the failure to comply with notification requirements, in that the appellant failed to inform the police of an address he visited for a period in excess of 12 hours where a child under 18 years was present. Count 5 was a breach of the sexual harm prevention order by the appellant remaining in TX's premises whilst he was aware of the presence of a female under 16, namely TX's daughter. Count 7 was a further failure to comply with sex offender notification requirements. The appellant was required to notify his address with police each year. He did so on 31 December 2021 and thereafter failed

to return on 31 December 2022, going back a week later on 7 January 2023 after being reminded. He did not attempt to give an address at the time he was living with TX and her children from January 2021 to May 2022.

Sentence

6. The appellant was aged 29 at the date of sentence. He had two convictions for 13 offences. In 2014, he had received a fine for theft. On 17 April 2015 (aged 21), he received 3 years' imprisonment for 10 offences of sexual activity with a female child under 16, causing/inciting a female child under 16 to engage in sexual activity and detaining a child without lawful authority. It was this offending which engaged the notification requirements and which gave rise to the sexual harm prevention order concerned in the present offences.

7. There was a pre-sentence report before the court. The judge referred to the relevant Sentencing Council Breach Guideline, placing the appellant's offending in category A culpability by reason of the persistent offending over a long period from January 2021 to May 2021.

8. As to harm, the judge concluded that the circumstances of the offending gave rise to a risk of very serious harm, placing it in the highest category. The offending was aggravated, the judge found, by targeting of the mother, and by the two offences of failure to comply with notification requirements, in respect of which the judge passed concurrent sentences. The judge observed that there was no mitigation, save for the appellant's plea upon re-arraignment on the first day of trial.

Grounds of Appeal

9. Mr Hewitt, for whose comprehensive written and oral submissions we are grateful, makes the following points:

    1. He submits that the judge was wrong to place the offending in A1 rather than A2. He says that the judge's finding that there was a risk of *very serious harm*, placing the offence in the highest category, failed properly to account for the formal acquittals on, in particular, counts 3 and 4. The prosecution offered no evidence on these counts in recognition of the fact that, although there had been contact between the appellant and TX's children and indeed other children who had on occasion visited TX's home, such contact had never been unsupervised.

    2. It is said that the judge sentenced the appellant on the basis that he was targeting the daughter by forming a relationship with TX despite there being no evidential basis for this conclusion. The judge erred in using this to aggravate the offence up from the starting point in category A2 of the guideline after trial from this starting point of 3 years to a notional 4-year sentence after trial.

    3. The judge failed to give any or any adequate weight to the appellant's actual risk to children and/or the disproportionate unworkable nature of the sexual harm prevention order, the terms of which were at odds, Mr Hewitt says, with current sentencing practice.

    4. The judge failed to give any or any adequate weight to the appellant's level of compliance with the sexual harm prevention order or notification requirements over almost a decade since his release from custody at the end of the licence period.

Decision

10. Having reviewed the appellant's history, including the reasons for recall to serve the entirety of his previous sentence and his explanations for his behaviour, the author of the pre-sentence report concluded that:

> "Mr Thornton avoids taking responsibility for his behaviour, blames others, minimises his actions and tends to manipulation situations for his own gain, and when considering previous behaviour, the underlying trigger is likely to be sexual gratification. I am concerned that the illicit sexual impulses which were present in 2015 remain present, and may have been a determining factor in his decision making and as such, further sexual offending could have been the ultimate outcome if these breaches had gone undetected."

When addressing harm the author of the report said this:

> "Despite having previously been incarcerated for sexual offending, being recalled due to similar behaviour which breached licence conditions, and having the appropriate restrictions placed upon him, Mr Thornton has chosen to repeatedly dis-regarded these, which is a significant concern. The current matters portray a lack of transparency with those who are seeking to support him in this regard. The likelihood of future harm is therefore potentially immediate and he is assessed as high in this regard.
>
> There are also concerns in relation to distorted attitudes and the defendant may have relied on these beliefs to overcome barriers to orchestrate situations to gain access to children."

The author characterised the appellant's response to probation supervision as "poor".

11. The judge was entitled to take these concerns into account in evaluating the degree of risk of harm which the appellant presented. The appellant's deceit with regard to his notification requirements further aggravated the breach offence. The judge plainly shared concerns about the appellant's motivation for failing to provide details of where he was staying to his supervisors and lying to TX so as to persist in the relationship, thereby

gaining access to her home. In view of the history, as reviewed in the pre-sentence report, the judge was justified in concluding that there had been no extended period of compliance at any point after the order was made. Having said this, it is right that the appellant has not committed any further offences since his release in 2017. His phones were searched on his arrest and nothing of concern was found save as revealed that he was in a relationship with TX. There was no reported attempt by the appellant to spend time with the children alone or to contact either of them (particularly the daughter), separately for his own purposes over the time when he was in a relationship with their mother. There was a concern that he may have conducted the relationship with the mother so as to orchestrate access to the children but it was no more than that. This being so, as we see it, the features of the history and the present offending giving rise to the assessment of risk put forward by probation and adopted by the judge, properly analysed, put this offence within category A2 in the guideline. The offence was aggravated by the appellant's repeated context in pursuing the relationship in the face of previous recall and by his deliberate failures of notification.

12. It follows that, in our view, a notional sentence after trial of 4 years was excessive. The proper sentence was one of 3 years, discounted by 10 per cent (rounding up slightly) to 32 months to take account of the appellant's late plea. To that extent only, his appeal is successful.

13. By one of his grounds, Mr Hewitt has sought to criticise the terms of the sexual harm prevention order. However, there has been no appeal against the terms imposed and there has been no application to the Crown Court since then to vary them. We say nothing

more about the terms of the order which will remain in force, unaltered for the present.

14. In conclusion, this appeal is allowed. The sentence of 43 months on count 5 is quashed and replaced with one of 32 months. All other sentences and orders remain unchanged. His total sentence is accordingly one of 32 months.

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

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk