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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT SOUTHAMPTON
(MR RECORDER JAMES WATSON KC) [44BB0552020]

Case No 2024/03935/A2

Tuesday 10 December 2024

B e f o r e:

LORD JUSTICE HOLGATE

MR JUSTICE BRYAN

MRS JUSTICE THORNTON

R E X

- v -

PAUL WRIGHT

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Mr A J H Williams appeared on behalf of the Appellant

APPROVED JUDGMENT

LORD JUSTICE HOLGATE: I shall ask Mr Justice Bryan to give the judgment of the court.

MR JUSTICE BRYAN:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to the offences under consideration. Under those provisions, where an allegation has been made that 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. This judgment has been anonymised accordingly.

2. On 29 August 2023 in the Crown Court at Southampton (before His Honour Judge Henry), the appellant (then aged 45) pleaded guilty to count 2 on the indictment, namely an offence of sexual communication with a 10 year old child, "C". Thereafter, on 8 August 2024, following a trial before Mr Recorder James Watson KC and a jury, the appellant was found guilty of count 1 on the indictment, namely the sexual assault of a child under 13 (namely C).

3. On 8 October 2024, the appellant was sentenced by Mr Recorder James Watson KC to 28 months' imprisonment on count 1, with a concurrent term of ten months' imprisonment on count 2. A Sexual Harm Prevention Order for 20 years was also made.

4. Having been convicted of an offence listed in Schedule 3 of the Sexual Offences Act 2003, the appellant was required to comply with the provisions of Part 2 of the Act (Notification to the police). Although the notification period (which does not depend on any order of a court) has been recorded as ten years, the effect of a Sexual Harm Prevention Order of longer duration than the statutory notification requirements has the effect of extending the operation of those notification requirements. We take the opportunity to note that the period of notification is accordingly 20 years.

5. The appellant appeals against sentence by leave of the single judge on the basis that the sentence passed was arguably manifestly excessive.

6. We turn to the facts of the appellant's offending. At the end of August 2020 the mother of C, who was her 10 year old daughter, reported to the police that C had been receiving inappropriate messages from the appellant. The messages were sent via WhatsApp. In it the appellant said: "Hi, you fancy chatting?", to which C replied: "I don't know you". The appellant responded: "Well you do know me. We were told to stop messaging. Keep it between us. Don't tell anyone". He told C that she was "the most beautiful girl I've met. I thought you were older. Don't hate me for being attracted to you. I thought you were 13 or 14". He then said: "If you don't reply I'll know where I stand". C did not reply and blocked the messages. The appellant was in fact known to C and was referred to as an "uncle" within the family, although he was not in fact an uncle. He was, as the Recorder put it, "a responsible adult in the guise of an uncle".

7. The appellant then started to message C on TikTok using a different name. He also put messages up on Facebook saying: "People keep telling me off for falling in love with a young girl". A number of people then contacted the appellant and told him that it was inappropriate to be expressing affection for a young girl.

8. C had not disclosed those messages, and in early August 2020 Mr D, a friend of the

family, invited C and a number of other children to come to his farm to use the swimming pool. C's stepfather was present, as was the appellant. The appellant got into the pool with the children. It was noticed by Mr D and another witness, Ms N, that the appellant was paying particular attention to C.

9. Whilst C seemed to have thought that it was just playing, the appellant was picking her up, placing her legs around his waist and bumping her up and down against him, with lap to lap contact in bathing suits over an extended period of time of about ten minutes. From the observed expressions on his face, the appellant appeared to be experiencing a thrill from what was happening. Ms N reported that she saw the appellant's hands tickling C's body, going towards C's breasts and lingering on her body longer than was appropriate for mere play. The incident only ended when Mr D intervened to thwart the continuation of such conduct. The following day Ms N confronted the appellant and told him that his behaviour had been inappropriate. The appellant responded: "She likes me".

10. On 24 August C's mother found out about the messages and the matter was reported to the police. The appellant was arrested on 26 August and gave a fairly detailed account in interview. He accepted that he had messaged C; that the messages had then become inappropriate; and that he had asked her about what outfit she was wearing and what her sexiest outfits were. As far as the swimming pool incident was concerned, he denied that anything inappropriate had been going on, saying that they were just having fun and it was, in effect, horseplay.

11. The appellant was not of previous good character. He had six convictions for ten offences between May 2007 and February 2024. They included two offences of causing or inciting a child to engage in sexual activity for which he received a suspended sentence order of 40 weeks' imprisonment suspended for two years in May 2007. The appellant breached that order and further conditions were imposed. Then in 2014 the appellant breached the notification requirements of the Sexual Harm Prevention Order. In the interim he had been convicted of pursuing a course of conduct amounting to harassment in relation to an adult female.

12. There was a Victim Personal Statement before the court from C's mother, but not from C, no doubt because of her age.

13. In the pre-sentence report it was noted that the appellant did not accept that the direct sexual offence he committed against C passed any criminal threshold, and he framed it as "over-playfulness". The author of the pre-sentence report identified clear elements of minimisation and denial in the appellant's approach to the offences he had committed. The author was of the opinion that the appellant presented a medium risk of causing serious harm to female children, and identified that the appellant struggled to understand the harm he may have caused, which compromised his ability or willingness to manage the risk of causing serious harm that he presented. The author identified that the appellant could cope in a custodial environment and "an argument against the imposition of the court's ultimate sanction is not readily evident", although he considered that the risk of causing serious harm presented by him was manageable in the community and he favoured a rehabilitative order in the form of a three year Community Service Order.

14. Where the offending fell within the guidelines in terms of categorisation was common ground – at least before the Recorder and in the Grounds of Appeal. In relation to the sexual assault, it was Category 3A, with a starting point of one year's custody and a range of 26 weeks to two years' custody. In relation to the communication offence, it was Category 2B, with a starting point of six months' custody and a range of medium level community order to

one year's custody.

15. In his sentencing remarks, the Recorder made a number of findings of fact, which he was well placed to do as the trial judge. He said:

"[Ms N] describes how you leant over and reached around the waist of [C], that you had your hands on her torso, that you were both tickling and touching, and that your hands were getting: 'close to her breasts'.

She does not say you put your hands on her breasts but it is quite clear from her evidence that that was the direction of travel and conveyed the intent behind your actions, the sexual intent, which underlies the jury's verdict. Sadly for [Ms N] could not stay. She was called away to help an elderly relative and she only had time as she left to ask Mr [D] to: 'keep an eye' on things in the pool. Mr [D] then gave evidence and described a period of about ten minutes, in his estimation, in which he watched the interactions in the pool. Again, interactions which clearly caused him explicit unease and discomfort and no doubt regret that he did not decide to intervene earlier. He described how you pulled [C] up, you grabbed her from behind, that you bounced her up and down on your lap, both facing towards you and, as he described it: 'the other way'. This would have been lap to lap contact, both in bathing suits. This was a set of movements which he described with his hands and in gestures from the witness box. It was clear that you bounced [C] up and down in what to some might have appeared, superficially, to be a playful manner but in fact had, again, a sexual intent, and, as I repeat, brought [C] into contact lap to lap with you on a number of occasions. You: 'pulled her up and against him'. He said that: '[C] was trying to push away'. But you were pulling her back. Every time she pulled away you would pull her back to your body, and he described other antics, as I will describe it, in the swimming pool, which occurred before he decided, Mr [D] that is, that enough was enough and he intervened. It was only his intervention and his order that you got out of his pool immediately which brought the incident to an end.

I pause simply to pass comment that clearly there was no direct touching of naked areas but the context in which contact took place repeatedly over a period of ten minutes when you were both in swimming costumes is rather more direct in terms of intimacy than might have occurred in other contexts.

Secondly, it was not a brief single form of physical contact, nor was it simply once or twice. It was an extended period of physical contact, as I have stated, over at least ten minutes while

Mr [D] was watching, ignoring the period that [Ms N] described earlier.

Thirdly, I draw attention to the fact, because I must have regard

to both harm and the risk of harm, that this activity was only cut short, and your intentions were only thwarted and brought to an end, by Mr [D's] intervention."

16. These features found by the Recorder indicated that in fact this was not one or two incidents of conduct, but an extended period of sexualised conduct of over ten minutes. Sentence could have been imposed on the basis that this was a sustained incident and Category 2 offending. If Category 2B was taken, rather than Category 3A, this would have had a starting point of two years' custody, with a range of one to four years' custody, in contrast to category 3A, with a starting point of one year's custody, with a range of 16 weeks to two years' custody.

17. The Learned Recorder identified that an aggravating factor was the presence of other children. He noted that the appellant had gained C's trust and that, as such, there was an element of indirect grooming. The offending was close to breach of trust. The latter two features were treated as increasing the seriousness of the offending. The Learned Recorder considered that the features identified required an upward adjustment to the top of the range. He then considered that the serious aggravating factor of relevant previous sexual convictions elevated matters further outwith the 3A range, to 30 months, before a downward adjustment for available mitigation. In that regard, he also noted that there had been delay, but there was no direct evidence of detriment to the appellant, and so the impact of delay was limited. As a standalone offence, he would then have reduced sentence to 26 months' imprisonment.

18. In relation to the communication offence, the Learned Recorder identified that there was persistence and a failure to respond to warnings. He placed the offending at the top of the category range (of one year's imprisonment) before taking account of the serious aggravating factor of the relevant previous convictions, which elevated matters outwith the top of the range to 15 months' imprisonment. He then reduced that for available mitigation to 12 months' imprisonment, and reduced it further to ten months' imprisonment after credit for the guilty plea, which was tendered soon after the first plea and trial preparation hearing.

19. The Learned Recorder then considered totality and adopted the appropriate course of treating the sexual assault as the lead offence, to be sentenced on the basis of the totality of the offending, with a concurrent sentence passed on the communication offence. To reflect this, he increased the standalone sentence of 26 months' imprisonment on count 1 to 28 months' imprisonment, and passed a concurrent sentence of ten months' imprisonment in relation to the communication offence.

20. The Learned Recorder noted that the sentence he intended to pass was greater than could be suspended and expressly concluded that the case was one in which immediate custody was required, taking into account in that regard the previous failure to comply with the suspended sentence for sexual offending and the appellant's "durable" and "ongoing" interest in young children.

21. Mr Williams, who appears on behalf of the applicant and was trial counsel, advances in effect three grounds of appeal: first, that the sentence on count 1 of 28 months' imprisonment was manifestly excessive; secondly, that the total sentence should have been short enough to have been suspended; and thirdly, that it should have been suspended.

22. Before us today, Mr Williams sought to persuade us that this was in fact Category 3B offending, not Category 3A, as was common ground at trial and in his own grounds. He did

not seek permission to amend his grounds. His argument was that the Recorder fell short of finding actual abuse of trust, or grooming behaviour. However, we consider that there was an actual abuse of trust in the present case, not least in circumstances where the appellant was effectively left in *loco parentis*, keeping an eye on the children when they were in the swimming pool.

23. The real gravamen of Mr William's submissions was that the sentence imposed was excessive in that the Recorder passed a sentence which was outside the Category 3A range, or would have been, for example, above the starting point had this been sentenced as Category 2B offending on the basis that it was a sustained incident. He submitted that a sentence even at or about the top of category 3A range, to reflect the totality of the offending, would have allowed for a suspended sentence, and that such a sentence should have been passed, having regard to the imposition guideline.

24. We start from a consideration of each offence, before turning to consider the total sentence passed. The issue for our consideration is whether the total sentence, however it was composed, was manifestly excessive. As we have already noted, we do consider that there was conduct amounting to a breach of trust that justified a categorisation of 3A, and we remind ourselves that this was indeed agreed to be Category 3A offending by both prosecution and defence counsel, and treated as such by the Learned Recorder. That also remained the position in the Grounds of Appeal.

25. We consider that such a categorisation was justified. Indeed, in the light of the findings of fact made by the Learned Recorder in the passages that we have quoted from the sentencing remarks, that, if anything, was generous in terms of categorisation under the guidelines in circumstances where there was evidence supporting a Category 2 finding in relation to a sustained nature of the offending.

26. The applicant was therefore perhaps fortunate that he was not sentenced on the basis that it was Category 2 offending, even if it was taken to be Category 2B offending.

27. In relation to the sexual assault, we consider that the combination of the aggravating factors identified by the Recorder and the serious aggravating factor of the relevant previous convictions for sexual offending, when balanced against the mitigating factors that were identified, justified a sentence at the very top of what would be the Category 3 range, namely close to 24 months' imprisonment, which, of course, would also have been the starting point if it had been a Category 2B categorisation.

28. We do not consider that it would have been appropriate to elevate the sentence above that for a stand-alone offence. However, we emphasise at this point – and it is a point to which we will return – that the appellant was not being sentenced in relation to the sexual assault as a stand-alone offence, but to reflect the totality of the offending across both counts.

29. In relation to the communication offence, we consider that the combination of the aggravating factors (in particular the persistence and the failure to heed warnings) and the serious aggravating factor of the relevant previous convictions for sexual offending, when balanced against the mitigating factors that were identified, justified a sentence at the very top of the Category B2 range, close to 12 months' imprisonment, which was the sentence in fact arrived at by the Learned Recorder, reduced to ten months' imprisonment after appropriate credit for the guilty plea.

30. If the sentences had been imposed consecutively, that would have been a sentence of 34 months' imprisonment, and the sentences could have been passed on a consecutive basis

without any criticism. In such a situation though, it was clearly necessary to make an appropriate adjustment to reflect totality so as to arrive at an overall sentence which was just and appropriate to reflect the totality of the offending across both counts. What the Recorder did was to treat the sexual assault as the lead offence, to pass a concurrent sentence in relation to the sexual communication and to treat the sexual communication as an aggravating factor – we would suggest a seriously aggravating factor – in relation to the totality of the offending when setting the sentence on the sexual assault count.

31. What the Grounds of Appeal fail to recognise when it is submitted that the Learned Recorder erred in imposing a sentence of 28 months' imprisonment as one (as it was put in the Grounds) "out-with the category 3A guideline", is that the Learned Recorder had to sentence in relation to the sexual assault to reflect the totality of the offending across both counts. The communication offence was itself a serious sexual offence which was not wholly subsumed within the category 3A sexual assault categorisation.

32. Once that is recognised, together with the factual findings that were made by the Learned Recorder, as quoted above, we do not consider that a sentence of 28 months' imprisonment was manifestly excessive, even if some judges might have made a greater downward reduction in the context of totality. In any event, even if a sentence of 24 months' imprisonment or less could justifiably have been arrived at in reflecting the totality of the offending, we are in no doubt whatsoever that the Recorder did not err in concluding that the appellant's offending was so serious that only an immediate custodial sentence was appropriate, having regard to his previous sexual offending, his poor compliance with a previous suspended sentence order for sexual offences and the continuing risk he presented to young children if he was in the community, as identified in the pre-sentence report.

33. Accordingly, the appeal against sentence is dismissed.
