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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT BURNLEY

HHJ MATHIESON T20237032

Case No. 202400178/A3

Neutral Citation Number: [2024] EWCA Crim 1646

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday, 19 December 2024

Before:

LORD JUSTICE LEWIS  
MR JUSTICE GARNHAM  
MR JUSTICE CONSTABLE

REX  
V  
MATTHEW LINFIELD

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MR O SADDINGTON appeared on behalf of the Appellant

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**J U D G M E N T**

LORD JUSTICE LEWIS:

1. Reporting restrictions apply in this case. In particular the provisions of the Sexual Offences (Amendment) Act 1992 apply. Under those provisions where, as here, allegations have been made that a sexual offence has been committed against a person, no matter that will identify that person is to be published during that person's lifetime unless that prohibition is waived or varied.
2. On 6 December 2023 in the Crown Court at Burnley the appellant, Matthew Linfield, now aged 31, was sentenced for a number of sexual offences involving two separate victims whom we will refer to as C1 and C2. The offences occurred during a period of approximately five years between about 2007 and 2012. The appellant was about 15 years old at the time of the offences against C1. So far as C2 is concerned the appellant was under 18 at the time he committed four of the offences, but he was an adult at the time that he committed three of the offences against C2.
3. In relation to C1, the appellant had pleaded guilty to three offences of sexual activity with a child, contrary to section 13 of the Sexual Offences Act 2003. That section provides that a person under 18 commits a criminal offence if he does anything which would be an offence under any of sections 9 to 12 of the statute if he had been 18 at the time. The offences committed here would fall within either section 9, sexual activity with a child, or section 10, causing or engaging a child to have sexual activity. The appellant was sentenced to 18 months' imprisonment for each of two offences, counts 5 and 6. Those sentences were concurrent to each other but consecutive and had to be served after the sentences imposed in relation to C2.
4. In relation to C2, the appellant was sentenced in respect of seven offences. Four of those, which were committed while the appellant was under 18, were offences of causing a

child to engage in sexual activity contrary to section 13 of the Act. The appellant was 18 when the other three offences were committed. He pleaded guilty to two offences of sexual activity with a child, contrary to section 9 and one offence of causing a child to engage in sexual activity, contrary to section 10. One of the offences of sexual activity with a child contrary to section 9 was taken as the lead offence and a sentence of five years' imprisonment imposed. He was sentenced to three years each for the other section 9 offence and the section 10 offence and then two years' imprisonment for each of the four section 13 offences committed when he was under 18. Those sentences were to be served concurrently to the sentence of five years' imprisonment. The total sentence for the offences against both C1 and C2 was therefore one of six years and six months' imprisonment.

5. The appellant does not criticise the sentences imposed in respect of the seven offences committed against C2. He accepts that that sentence was a just and proportionate sentence given the offending he committed against C2, a much younger boy than he was. He appeals against the sentences of 18 months in respect of the offences against C1.
6. The facts relevant to this appeal can be stated shortly. The appellant was born in 1993. C1 was a year younger. The appellant and C1 were related and the appellant stayed overnight at C1's home from time to time. In about 2007 or 2008 the appellant was about 14 or 15 years old and C1 was about 13 or 14. On the occasion of the first offence, C1 was at home sitting in the dining room playing on his computer. The appellant wanted to engage in sexual activity. He sat next to C1. He touched C1's leg. He put his hand down C1's tracksuit and touched C1's penis. The appellant then pulled C1's tracksuit down and put C1's penis in his mouth. That was count 2 on the indictment. No separate penalty was imposed in respect of that offence.

7. On the second occasion the appellant put his mouth around C1's penis when they were in a bedroom. C1 told the appellant that he did not want to do that and that the appellant should leave him alone. C1 then recalled the appellant putting his hand around C1's penis and C1 telling him to "fuck off". On a third occasion C1 was asleep in bed. The appellant came in and put his hand under the quilt and began masturbating C1. C1 woke up and told the appellant to stop. Those were counts 5 and 6 on the indictment respectively.
8. C2 was about three-and-a-half years younger than the appellant. The offending against him spanned a period of about two years or so when C2 was about 13 to 15 years old and the appellant was 16 to 18 years old. On a number of occasions the appellant would put C2's penis in his mouth. On other occasions he would masturbate C2 and C2 would masturbate him. The appellant would effectively bribe C2 with money. On occasions he paid C2 to let him (the appellant) suck C2's penis and on other occasions to masturbate C2 or have C2 masturbate him. The appellant would show C2, who was of course much younger than the appellant, pornography and would then suck C2's penis.
9. In sentencing the appellant, the judge said that these offences involved two victims, offences on many occasions over many years, and in respect of each victim could properly be described as involving a course of conduct. He said that the victims were young boys who were easy, soft targets for experimentation by the appellant. The offences, although said to be consensual, did not truly involve freely given consent but was a distorted consent engineered by the appellant. The judge referred to the damage done psychologically to each of the victims and we too have read their victim impact statements and we have read of the effect that this offending has had on each of them. They, of course, are not responsible for what happened to them. They are the victims.

10. The judge took one count involving C2 as the lead offence, that was an offence of sexual activity with a child committed by the appellant when he was 18 (that is when he was an adult). The offence was categorised as A1 under the relevant Sentencing Council guideline. That had a starting point of five years' custody and a range of four to 10 years' custody. The judge considered that there would have to be an upward adjustment from five years to about eight years' imprisonment to reflect all the offending against C2. That was reduced by the appellant's extensive personal mitigation. That resulted in a sentence in respect of the offence of about six years and eight months. That was further reduced by 25 per cent to reflect the fact that the appellant pleaded guilty. The appropriate sentence therefore was five years' imprisonment for that count. As we have indicated the judge then imposed sentences of three years or two years in respect of the other offences against C2, those sentences to be served concurrently.

11. In relation to C1, the judge considered that the maximum sentence that he would have imposed if the appellant had been tried when he under 18 years old, would have been a 24 month detention and training order. The judge said he bore in mind that he had to reflect the appellant's age at the time that he committed the offences against C1. The appellant was entitled to a 25 per cent reduction to reflect the guilty plea. The judge therefore imposed a sentence of 18 months' imprisonment in respect of each of the two offences committed by the appellant against C1 to run concurrently with each other but consecutive to the sentence of five years imposed in respect of C2. There was no separate penalty for a third offence against C1.

12. In his clear and focused written and oral submissions, Mr Saddington for the appellant appeals only against the sentence in relation to C1. He submits that the sentence was

wrong in principle and manifestly excessive. He submits that the judge appeared to have taken the maximum sentence that would have been available of 24 months and then simply reduced that by 25 per cent to reflect the guilty plea. He submits that the judge should have imposed the sentence that the appellant would have been likely to have received if he had been sentenced at the date of the offending when he was still a child. He relied on the decision of this court in R v Ahmed [2023] EWCA Crim 281, [2023] 1 WLR 281.

13. We deal firstly with the decision in Ahmed. That case concerned the position when a court is sentencing an adult for an offence committed when he was a child. First, the court held that the sentencing judge would have to have regard to the Sentencing Council Guideline on Sentencing Children and Young Persons if the offender was under 18 at the time of the offending. Secondly, it held that the sentencing judge should have regard to the sentence that would have been likely to have been imposed if the offender had been sentenced when he was in fact a child. That involved considering any statutory maximum that would have been applicable and also the likely length and type of sentence that would have been imposed. In considering that issue there may be relevant Sentencing Council guidelines in force at the time and there may be legislative provisions limiting the length of the sentence. The court observed that where a sentencing judge has to consider multiple offences, the chronology and circumstances of the offending will sometimes enable the sentencing judge to focus on the likely sentence at the time for the offending as a whole. The last observation made was that where the offender committed offences both as a child and as an adult, it would commonly be the case that the later offending is the most serious aspect of the overall criminal behaviour and that later offending as an adult can be taken as the lead offence with possibly concurrent sentences

for earlier offences. In such circumstances the court said the key consideration was likely to be an assessment of the extent to which the offending as a child aggravates the offending as an adult and the principle of totality, that is the sentence must be just and proportionate having regard to all of the offences.

14. First, we start with the appropriate maximum sentence if the appellant had been sentenced for the offences in relation to C1 when the appellant was under 18. Sections 233 to 236 of the Sentencing Act 2020 provide that for an offender aged 12 to 18 the appropriate sentence is a detention and training order and the maximum term for such an order is 24 months. Where such an order is not appropriate then a court may impose a sentence of detention, if that is available, under section 250 of the Act (imprisonment is available here and the maximum term available for such a sentence in this case is five years' imprisonment: see section 13(2) of the 2003 Act). The judge clearly considered that a detention and training order would have been appropriate for the offending in relation to C2 and the maximum term of any order for that offending would therefore have been a maximum of 24 months. We agree. That is the maximum that could have been imposed.
15. Secondly, however, it is appropriate to look not only at the maximum but to determine the sentence that it is likely would have been imposed and in deciding that to take account of any potentially relevant guidelines. In this case it is appropriate to have regard to the Sentencing Council Guideline on Sexual Activity with a Child or Causing or Inciting a Child to Engage in Sexual Activity, contrary to section 9 and 10 respectively, of the 2003 Act. The section 13 offence is an offence of committing an act whilst under the age of 18, which falls within one of those sections. Mr Saddington agreed that in principle it was appropriate to have regard to that guideline. However, it must be borne

in mind that that guideline is given in the context involving offences which can only be committed by adults and where the maximum sentence is 14 years' imprisonment, not the maximum of five years' imprisonment as is the case of a person under section 18 who committed an offence which would fall within section 9 or 10 if he had been over 18 at the time. The starting point and the range of sentences under the guideline would therefore need to be adjusted to reflect that difference in the case of a person aged under 18 sentenced for a section 13 offence. In addition, regard must be had to the Guidelines on Sentencing Children and Young People as the appellant was about 15 years old at the time of the offences against C1.

16. In relation to the sentencing guideline, count 5 would have been categorised as a 1B offence. It involved the appellant putting the victim's penis in the appellant's mouth and so would have fallen within Category 1 under the guidelines. None of the factors for culpability A were present in relation to C1 and so the offence would be Category 1B. The starting point for an adult would be one year's custody, with a sentencing range from a high level community order to two years' custody. That must be scaled down to reflect the lower maximum sentence for those under 18 when considering offences under section 13. A starting point of somewhere in the region of four months or so for one offence would seem broadly appropriate on the facts of this case for a single offence. There were of course though three offences and the offences against C1 were part of a course of conduct. The appellant was older. There was no true consent. The appellant was using the younger boy as a means of sexual experimentation or gratification. There was of course mitigation as the appellant had no previous convictions and the judge accepted that he had shown remorse.

17. In all the circumstances a sentence of somewhere in the region of about six months would



have been appropriate on count 5 to reflect the appellant's offending in this case in relation to C1 and bearing in mind that the total sentence would need to be proportionate. That sentence would need to be reduced by 25 per cent to reflect the guilty plea, which would have resulted in a sentence in the region of about four months for count 5. A sentence in the region of three months, that is, four months reduced to three months to reflect the guilty plea, would be appropriate in relation to count 6 to run. The sentences for counts 5 and 6 are to be served concurrently to each but consecutive to the sentence of five years imposed in relation to C2. No separate penalty was imposed in relation to the third offence against C1 and we see no reason to alter that.

18. We stress that each case turns on its own particular facts. Here the offending involved a course of conduct against two young victims. It continued when the appellant was much older than the second victim and indeed involved conduct after he had become an adult. It involved payments or financial inducements in relation to the second victim. We have sought to fix a sentence in relation to the offences against C1 which, together with the other sentences in relation to C2, ensures a total sentence that is fair, just and proportionate to the offending overall. In other circumstances if a court were only dealing with the sorts of offences committed against C1 and no other offences were involved, a different type of sentence or a different length of sentence might be appropriate. A custodial sentence might not be appropriate if the circumstances were different. It would not be appropriate therefore to treat the type or level of sentence imposed on the facts of this case as necessarily appropriate in a different case.
19. In the circumstances, therefore, we allow the appeal to this extent. We quash the sentence of 18 months on counts 5 and 6. We substitute a sentence of four months' imprisonment on count 5 and three months' imprisonment on count 4. Those sentences

will be served concurrent to each other but consecutive to the sentence for the other offences. The total sentence therefore will be one of five years and four months' imprisonment.

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

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