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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202300295/A5



Royal Courts of Justice
Strand
London
WC2A 2LL

Neutral Citation: [2024] EWCA Crim 339
Friday 22 March 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE GOOSE

HIS HONOUR JUDGE PATRICK FIELD KC
(Sitting as a Judge of the CACD)

REX

V
NICHOLAS CASEY CODD

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MS J GREENHALGH appeared on behalf of the Applicant.
MR A EVANS appeared on behalf of the Crown.

J U D G M E N T
(Approved)

1. LADY JUSTICE MACUR: On 9 January 2015, the applicant was sentenced in the Crown Court to 20 months' imprisonment and made subject to a Sexual Offences Prevention Order ("SOPO") for a period of 10 years. The facts of his offending leading to that sentence are irrelevant for the purpose of this appeal.
2. On 12 January 2019, the applicant pleaded guilty, before the Magistrates' Court, to five offences of breach of a Sexual Offences Prevention Order, contrary to section 103(1) and (3) of the Sexual Offences Act 2003, and two offences of failure to comply with notification requirements, contrary to section 91(1)A and (2) of the Sexual Offences Act 2003. He was committed to the Crown Court for sentence, pursuant to section 3 of the Powers of Criminal Courts (Sentencing) Act 2000. Again, the particulars of the breaches laid against the applicant are now irrelevant for the purpose of this application.
3. On 8 March 2019, he was sentenced in the Crown Court to 18 months' imprisonment concurrent on all offences. The statutory surcharge was imposed and the SOPO was revoked and an "SHPO" (a Sexual Harm Prevention Order) was imposed for a period of 10 years and included additional conditions to those imposed in the original SOPO.
4. The five breach offences each correctly described in the SOPO were charged as "*contrary to section 103(1) and (3)*" of the Sexual Offences Act 2003, when they should have been charged as *contrary to section 113* of the Sexual Offences Act 2003, since on 8 March 2015 section 113 of the Sexual Offences Act 2003 was repealed by section 113 and paragraph 3(1) of Schedule 5 of the Anti-Social Behaviour, Crime and Policing Act 2014. At the same time, paragraph 2 of Schedule 5 introduced sexual harm prevention orders by inserting sections 103A-103K into the Sexual Offences Act 2003, the breach of which would be an offence contrary to section 103L of the Sexual Offences Act 2003.
5. On 24 March 2022, the applicant was charged with a breach of the SHPO contrary to

section 103(1) of the Sexual Offences Act 2003 and remanded in custody. Again, the particulars of the breaches laid against the applicant are now irrelevant to this application. He was committed to the Crown Court in advance of the plea and trial preparation hearing. The designated judge alerted the prosecution to potential flaws in the proceedings, indicating that a sexual harm prevention order cannot be imposed for breach offences, since they do not fall within Schedules 3 and 5 of the Sexual Offences Act.

6. The case was listed before the Recorder of Manchester on 1 July 2022. The prosecution conceded that the Order was unlawful and offered no evidence, leading to the applicant's immediate release from custody. That is, the inevitable conclusion to be drawn was that the judge, in March 2019, had no power to revoke the SOPO. New counsel were instructed (Miss Greenhalgh) and thereafter sought permission to appeal the sentence passed in March 2019.
7. The sole ground of appeal, conceded by the prosecution in a Respondent's Notice, is that there was no power for the Crown Court to make the sexual harm prevention order, which might only have been made if the applicant had been convicted of an offence listed in Schedule 3 or 5 of the Sexual Offences Act 2003. Neither breaches of a SOPO nor failing to comply with the notification provisions are so listed. It was said that the court could only vary the SOPO if application was made by the applicant or by a prescribed Chief Officer of Police, pursuant to section 108(1) and (2) of the Sexual Offences Act. However, it was noted that the applicant did not submit that the charging error was other than a mere technical defect which did not render the charges a nullity.

Determination

8. We extend time in which to make this application, for it is in the interests of justice to do

so. As rightly indicated in the grounds of appeal and conceded in the Respondent's Notice, as originally enacted, a breach of a SOPO was an offence contrary to section 113 of the Sexual Offences Act 2003. On 8 March 2015, section 113 of the 2003 Act was repealed by section 113 and paragraph 3(1) of Schedule 5 of the Anti-Social Behaviour, Crime and Policing Act 2014. Transitional provisions provided by section 114 of that Act, provided that for a period of 5 years from the commencement date, that is a period of 5 years from 8 March 2015, any breach of a SOPO, made under section 104 of the 2003 Act (as was the SOPO in this case) would still be an offence contrary to section 113 of that Act. If the SOPO remains in force after 8 March 2020 (as here), section 103L of the 2003 Act would have effect. The charges in this case were brought before 8 March 2020; it follows that the applicant should have been charged with the offences contrary to section 113.

9. A legal error made in the formulation of charges, whether arising from a drafting or administrative error which causes no prejudice or embarrassment to the defendant, will not result in those charges being invalid or a nullity (see R v Stocker [2014] 1 Cr App R 18, at paragraphs 42 and 45) and R v Sheldrake [2023] EWCA Crim 95, at paragraph 16. That notwithstanding, the judge in March 2019 had no power to revoke the SOPO, as indicated above. An application to discharge a SOPO must, in accordance with the Criminal Procedure Rules 31, be made by either the defendant or a Chief Officer of Police (see R v Hamer [2017] 2 Cr App R(S) 13 at paragraph 21; R v Ashford [2020] 2 Cr App R(S) 57 at paragraph 18 and also R v Keyword [2021] EWCA Crim 1692).
10. We give leave. We allow the appeal. We quash the Order revoking the SOPO and the substitution of the Sexual Prevention Harm Order. Therefore, the SOPO will be revived (see R v Keyword (supra)). If appropriate, it will of course be open to a Chief Officer of

Police or by the Director General of the National Crime Agency to make applications to the Magistrates' Court for a Sexual Harm Prevention Order against a qualifying offender, who has acted in such as to give reasonable cause to believe that it is necessary for such an Order to be made (see section 103A(3)-(7) of the Sexual Offences Act 2003). To that extent, this appeal succeeds and we may therefore release Miss Greenhalgh and Mr Evans, but thanks for your attendance.

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

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