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Neutral Citation Number: [2024] EWCA Crim 632

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2024/01233/A3



Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 5th June 2024

B e f o r e:

LORD JUSTICE WILLIAM DAVIS

MR JUSTICE LAVENDER

THE RECORDER OF LONDON

(His Honour Judge Lucraft KC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E X

- v -

FREDERICK AMBROSE

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Miss J Faure-Williams appeared on behalf of the Attorney General

Mr R Taylor appeared on behalf of the Offender

J U D G M E N T

Wednesday 5th June 2024

LORD JUSTICE WILLIAM DAVIS:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. No matter relating to either victim of the offences shall, during their lifetimes, be included in any publication if it is likely to lead members of the public to identify them as victims of any of the offences. We shall anonymise the two victims as "W" and "C".

2. On 18th May 2023, the offender, Fredrick Ambrose, appeared in the Crown Court at Snaresbrook. He pleaded not guilty to an indictment containing ten counts alleging historical sexual offences against two boys aged between 8 and 11. The court fixed a trial date in November 2023.

3. On 18th August 2023 the case was relisted. The offender was re-arraigned on counts 1 to 4 and 6 to 10 of the indictment. He pleaded guilty to those counts. Count 5 was left on the file on the usual terms.

4. On 7th March 2024, after some delay in obtaining a pre-sentence report, the offender was sentenced as follows: on counts 1, 2, 4, 6, 7, 8 and 10 (indecent assault on a male, contrary to section 15 of the Sexual Offences Act 1956), two years' imprisonment, suspended for two years on each count concurrent; on counts 3 and 9 (indecent with a child, contrary to section 1 of the Indecency with Children Act 1960), one year's imprisonment, suspended for two years on each count, concurrent. Requirements of 250 hours' unpaid work and 20 days' rehabilitation activity were attached to the sentence. A Sexual Harm Prevention Order of indefinite duration was made.

5. His Majesty's Solicitor General now applies to refer those sentences to this court as unduly

lenient, pursuant to section 36 of the Criminal Justice Act 1988.

The Factual Background

6. The offender is now aged 72. Between 1981 and 1991 he was a coach at a youth football club in West London. When in that position he sexually abused two boys whom he coached. The first victim, W, was aged between 8 and 10. The offender was then aged 29 to 31. The offender befriended W's parents. Once he had gained their trust, he offered to look after W on occasions when they went out. On those occasions W would stay at the offender's home. The first time W stayed with the offender they were sitting on a sofa watching television in a room downstairs. The offender unzipped his trousers and exposed his penis. He took W's hand and placed it onto his penis, which became erect. W was not able to recall whether the offender ejaculated. This was an offence of indecent assault (count 1).

7. On another occasion the offender asked W to masturbate him. This was an offence of indecency with a child (count 3). The offender also touched W's penis under his clothing, a second offence of indecent assault (count 2). These offences were indicted as having occurred in the period 1982 to 1984.

8. The second victim, C, was aged 7. The offender was then aged 39. When C had been at the club for about three months, there was a day when his father was not able to pick him up from the club. The offender took C to his home. Whilst there, the offender put C's hand on his penis and went on to masturbate C's penis. These were offences of indecent assault (counts 4 and 6).

9. Thereafter, there were further occasions when the offender took C home with him after C had been at the club, having first taken C to McDonald's. On one occasion the offender masturbated C's penis. This was an indecent assault (count 7). On a different occasion there

was an incident which C later described as "the worst time something happened". The offender took C to a room upstairs, where he pulled down C's shorts and masturbated him. He made C touch his penis with his hand. The offender also put the side of his penis onto C's mouth. These were offences of indecent assault (count 8) and indecency with a child (count 9).

10. Finally, there was an occasion when there was another young boy at the offender's home at the same time as C. The identity of the other boy is not known. The offender sat between them and masturbated both of them. In relation to C, that was an offence of indecent assault (count 10). The offender told C not to say anything about the sexual assaults.

11. In 2016 there was a general appeal by the NSPCC for those who had been members of youth football clubs and who had been sexually abused by coaches at the clubs to come forward and report the abuse. As a result, C reported what had happened to him.

12. The police investigated. In the course of the investigation they contacted W, who was a past member of the club. W and C were interviewed by the police in February and March 2017.

13. The offender was arrested in April 2017. He denied any sexual offending in relation to W and C. He said that neither boy had been to his home.

14. The offender's case was referred to the CPS by the police in March 2018 for a charging decision. The CPS returned the case to the police with a request for further material to be obtained. That sequence of events was repeated four times over the next four years. Between August 2019 and June 2022 the case simply lay dormant apparently in the hands of the police. The final submission to the CPS was in December 2022, following which the

offender was charged.

The Material available to the Judge

15. In April 2014, the offender had pleaded guilty to three offences of indecency with a child. These offences related to two boys of a similar age to W and C. Those boys were also coached by the offender at the same youth football club in West London. One offence was committed in the period 1987 to 1988; the other offences were committed in 1991. As a result, the offender was sentenced to a total of 15 months' imprisonment, which was suspended for a period of two years. A supervision requirement was attached to that sentence.

16. The author of the pre-sentence report, dated March 2024, explained that as part of his supervision requirement the offender had undertaken a sex offender treatment programme. This was said to have changed his mindset. Previously, he had denied grooming the boys he had abused and in relation to whom he had been sentenced in 2014. He then had limited awareness of the harm caused to the boys. He now accepted that he groomed children in order to have the opportunity to abuse them for sexual gratification. He understood the serious harm which he had caused. He expressed his regret for what he had done to W and C, although the author of the report observed that in 2014 the offender had not told the police that he had sexually abused other children. That would have been a real expression of remorse. We note also that the offender's changed mindset had not led him to make early admissions of the offences against W and C.

17. The report set out the offender's personal circumstances. He had worked all his life. He was now retired. Financially he was comfortably off. He owned his home outright. He was unmarried; he had no children. He had suffered for many years from ulcerative colitis, which caused abdominal pain and required medication.

18. Both W and C had made Victim Personal Statements. W said that when he left the football club he was relieved to be getting away from the offender. At the same time he felt guilty in case others would be abused. His memories had resurfaced when the police had approached him in 2017. He had had flashbacks and nightmares. As a result, he did not want to sleep. He had turned to gambling, which led him into debt. His previously successful business had collapsed because he could not cope with it. He repeatedly felt suicidal. He felt overprotective towards his own children, not wishing to leave them alone with other adults.

19. C stated that he had started to take drugs when he was aged 12, because he could not cope with the fact that he had been sexually abused. He had become addicted to drugs. To feed his addiction he had acquisitive crime, in respect of which he spent time in prison. He suffered from PTSD, anxiety and depression. He said that he was now receiving the help he needed.

The Sentence

20. The judge found that the offences had had a lifelong impact on W and C. The offender had abused the trust which had been placed in him. He had groomed the boys to enable his sexual abuse of them. Whilst the offending was not the most serious of its kind, so far as W and C were concerned it was the most serious thing that could have happened to them. The judge observed that their decision to speak to the police in 2017 was enormous for them.

21. The judge said that she had taken the offence of sexual assault of a child under the age of 13 as the equivalent modern offence. She said that her starting point for a single offence would have been four years' custody. Taking into account the multiple offending and allowing for the higher maximum sentence for the modern offence, as opposed to the offence of indecent assault, the judge concluded that, before mitigation and reduction for the guilty plea, a total sentence in the region of seven years' imprisonment would be appropriate.

22. The judge noted the personal mitigation, which included the poor health of the offender and his changed attitude to sexual offending since undertaking the programme imposed on him in 2014. What was of greater significance, so far as the judge was concerned was the delay between the offender being interviewed in 2017 and being charged in 2023. She described it variously as "unconscionable", "wholly exceptional" and "utterly unfair to the victims". She said that, had she been sentencing in 2017 or 2018, she would not have contemplated the sentence she now considered to be appropriate. She set the reduction for the pleas of guilty at 20 per cent. Although the judge did not express herself in explicit terms, the eventual term of imprisonment imposed must mean that the overall sentence before reduction for plea was 30 months' imprisonment. The judge mentioned the Sentencing Council Imposition Guideline, before determining that the sentence should be suspended, albeit that the competing factors within the guideline were not discussed.

Discussion

23. On behalf of the Solicitor General it is submitted that, by reference to Annex B in the Sentencing Council Guideline in relation to sexual offences, taken together with *R v Forbes and Others* [2016] EWCA Crim 1388, the judge was required to sentence the offender in accordance with the sentencing regime at the date of sentence. The correct approach was measured reference to the guideline for the equivalent offences under the Sexual Offences Act 2003, taking into account the need to limit the sentence to the maximum available at the time of the offending. The lack of further sexual offending over a long period, combined with evidence of good character, may be a mitigating factor. However, the more serious the offence, the less the weight to be attributed to this factor.

24. The equivalent modern offences in this case are sexual assault of a child under 13 (indecent assault) and causing or inciting a child under 13 to engage in sexual activity

(indecent with a child). In relation to both offences, higher culpability is established if there is an abuse of trust and/or grooming. In relation to sexual assault, category 1 harm is indicated where there is severe psychological harm. Category 2 harm will be established if there is touching of naked genitalia. Causing a child to engage in sexual activity will involve category 2 harm if there is severe psychological harm.

25. In terms of the modern offences, a category 1A offence of sexual assault of a child under the age of 13 will have a starting point of six years' custody, with a range of four to nine years; whereas a category 2A offence will have a starting point of four years' custody, with a range of three to seven years. The maximum sentence for the offence of indecent assault under the 1956 Act was ten years' custody. A category 2A offence of causing a child to engage in sexual activity provides a starting point of eight years' custody, with a range of five to ten years. However, the maximum sentence for indecency with a child was only two years' custody.

26. The Solicitor General refers to the Sentencing Council general guideline overarching principles in relation to the effect of delay on sentence. A generic mitigating factor is delay since apprehension. A further explanation of this factor is given as follows:

"Where there has been an unreasonable delay in proceedings since apprehension, which is not the fault of the offender, the court may take this into account by reducing the sentence if this has had a detrimental effect of the offender."

27. In *R v Mboma* [2024] EWCA Crim 110, this court considered a sentence said to be unduly lenient imposed on a man aged 26 who had been convicted of sexual offences committed when he was 19. The offences had been investigated promptly. Thereafter, there had been "inordinate and inexcusable" delay. The sentencing judge had imposed a custodial

sentence of two years, which he had suspended for two years. This court concluded that the proper total sentence was four and a half years' custody. The suspended sentence was quashed as being unduly lenient. However, the sentence substituted was an immediate term of three and a half years' custody. That represented what was said to be the appropriate reduction for delay in that case, namely just over 20 per cent. There, the offender had delayed a university course due to having the possibility of proceedings hanging over him for many months, if not years. Moreover, he had reported suicidal feelings to his general practitioner. A reduction of around 20 per cent in a case where the detrimental effect on the offender was very substantial was in line with what was said by this court in *R v Timpson* [2023] EWCA Crim 453 at [23].

28. In all of those circumstances it is submitted by the Solicitor General that, before any mitigating factors came to be considered, the overall sentence ought to have been in excess of seven years' custody. The offences of indecent assault fell to be treated as category 1A offences within the modern guideline for the equivalent offence under the 2003 Act. There were seven such offences involving two different victims.

29. Whilst there was personal mitigation, it was of limited effect. There was no evidence that the offender's health problems could not be managed in prison. The offender's letter to the judge referred to those problems. He said that, provided some consideration was given by the prison authorities to his medical issues, he was confident that he would be able to cope.

30. Some reduction for delay was appropriate. The offender's letter said that the delay put some strain on his life. There was nothing more specific than that.

31. In those circumstances, it is argued, the custodial sentence before reduction for the guilty plea, should have been very much greater than 30 months.

32. On behalf of the offender, Mr Rupert Taylor, who appeared for him at the sentencing hearing as he does before this court, argued that whilst the sentence might be regarded as lenient, it was not unduly so. In his written submissions, Mr Taylor made the following broad points: (a) the sentencing judge was very experienced and had had conduct of the case throughout; (b) the delay was wholly exceptional; (c) the sentencing exercise had enabled the victims to have closure; (d) there was extensive personal mitigation available to the offender; (e) had he been prosecuted promptly, the offender would not be facing prison when the prison estate was overcrowded, and he would not be facing the prospect of dying in prison; (f) the offender had made progress with the requirement for unpaid work; and (g) concurrent sentences would have been appropriate for all of the offences.

33. In oral submissions, Mr Taylor argued that the judge was entitled to have imposed a sentence a little short of four years' imprisonment; and the imposition of a sentence of two years' imprisonment did not amount to undue leniency.

34. The test for whether a sentence is unduly lenient remains that as stated by the then Lord Chief Justice in *Attorney General's Reference No 4 of 1989* [1990] 1 WLR 41, when he said:

"A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate."

35. On the facts of this case we have to consider, first, whether a judge reasonably could conclude that a total sentence of seven years' imprisonment would have been appropriate, before allowing for mitigation and the effect of delay, and before the reduction of 20 per cent for the pleas of guilty.

36. We consider that the judge did not take an unreasonable view of the case when she reached that conclusion. Although there were two victims and nine counts which represented six separate incidents, the offending as indicted was not continuous over months and years. These were specific incident counts. The judge properly sentenced on that basis. She was required to make measured reference to the modern guideline. That did not mean that she was to determine the sentence purely by reference to that guideline with any reduction simply to accommodate the maximum sentence for the offences under the previous legislation. In our judgment, even allowing for the fact that the offences of indecent assault arguably fell into category 1A within the modern guideline for sexual assault on a child under the age of 13, an overall sentence of seven years' imprisonment was not an unreasonable determination to reach.

37. However, where we consider that the judge fell into error was in reducing the sentence in the way that she did to allow for personal mitigation and delay. The personal mitigation was relatively limited. The offending was serious. Thus the good character was of limited weight. Lack of offending since the last offence (around 21 years in this case) is a common feature in historical sexual offences. Where the offences have been committed by a mature adult against young children, the culpability and harm arising from the offences is unaffected by the passage of time without further offending. On his own account, the offender's medical condition was capable of management in prison. The current conditions in prison, vis-à-vis overcrowding, may be relevant where the issue is whether a sentence may be suspended. In our judgment, they cannot serve, other than marginally, to reduce an otherwise substantial custodial term.

38. It is not immediately clear from her sentencing remarks how the judge treated the various factors with which she had to deal. The reality must be that the judge reduced the sentence

by 50 per cent, if not more, to take account of delay. We consider that this was not reasonable. It was not justified on the facts of this case, whether by reference to the relevant guideline or any authority in this court. There is some force in the observation that the author of the pre-sentence report made, that it would have been open to the offender to tell the police in 2014 about what he had done to W and C. Whilst the delay between 2017 and 2023 was not of his making and was undoubtedly unreasonable, the overall circumstances here are very different to the case where an offender commits an offence, the offence is quickly discovered and investigated and there follows a very long, inexcusable delay.

39. In our judgment, a reasonable reflection of all of the factors justifying a downward adjustment of the sentence from seven years' custody would have resulted in an overall term of five and a half years' custody. Applying the reduction for the guilty plea of 20 per cent to that figure gives an overall sentence of four years and four months custody.

40. The offender, as Mr Taylor points out, has already undertaken a significant part of the unpaid work requirement. That is something that must be taken into account in determining the sentence now to be imposed.

Conclusion

41. On any view, the sentence imposed by the judge was unduly lenient. We shall grant leave to His Majesty's Solicitor General to refer the sentence. We shall quash the sentences imposed. In relation to the offences of indecent assault, we shall substitute sentences of four years' imprisonment. This is less than would have been the case had the offender not already undertaken some of the unpaid work. In relation to the offences of indecency with a child, we shall substitute sentences of 18 months' imprisonment. All of those sentences will be served immediately. They will run concurrently with each other. The total sentence is four years' imprisonment.

42. The offender will now be subject to the notification requirements under sections 80 and 82 of the Sexual Offences Act 2003 for life.

43. The offender must surrender to Hatfield Police Station by 12 noon tomorrow, Thursday 6th June 2024.

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

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