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IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT
AT WARWICK
HHJ CAMPBELL 20CV1054924
CASE NO 202401929/A4
[2024] EWCA Crim 942

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 18 July 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE STACEY

RECORDER OF WOLVERHAMPTON
(HIS HONOUR JUDGE MICHAEL CHAMBERS KC)
(Sitting as a Judge of the CACD)

REX

V

GREGORY HAGAN

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MR S RIPPON appeared on behalf of the Applicant.

J U D G M E N T

MRS JUSTICE STACEY:

1. The applicant's application for appeal against sentence has been referred to the Full Court by the Registrar.
2. After pleading guilty before the Coventry Magistrates' Court on 27 March 2024 to three counts of making indecent photographs of a child contrary to section 1 of the Protection of Children Act 1978, the applicant was committed for sentence. On 23 May 2024, in the Crown Court at Warwick before HHJ Campbell, he was sentenced to a total term of 18 months' immediate custody, made up of concurrent sentences of 18, 9 and 6 months' imprisonment for each offence respectively. A sexual harm prevention order was imposed for 10 years. Having been convicted of an offence listed in Schedule 3 of the Sexual Offences Act 2003, the applicant was required to comply with the provisions of Part 2 of the Act (Notification to the Police) for a period of 10 years. Having been convicted of an offence specified in the schedule to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009 No 37), the applicant will or may be included in the relevant list by the disclosure and barring service.
3. On 11 July 2023, a warrant was executed at the applicant's address following information concerning the use of peer-to-peer networks and the accessing of indecent images of children from the applicant's IP address. A computer tower and a Sony mobile phone were seized and forensically examined. In total, on the mobile phone there were 922 category A images, 1009 category B images and 503 category C images. The images were both still and moving pictures. The identifiable dates for the images were

between January 2023 and June 2023. The children in the images were estimated to have been between the ages of 2 and 13 years old. The majority were primary school aged females. Some of the videos showed the children in pain or discomfort and the majority of the images were different victims. A significant amount of the pornography was from a particular site portraying mother and son sexual intercourse and pornography involving young girls appearing to be sisters, aged 2 to 3 years old and 4 to 5 years old. The computer tower contained three category A images with an attributable date of 25 August 2022 and titles of files indicative of child sex abuse material that had previously been present on the tower but had been deleted.

4. In interview, the applicant stated that he was responsible for the images and for the movies on devices and he said he looked at them in peer-to-peer sites and transferred them to his phone. He had been looking at these kind of images for 15 years. By the time he was sentenced, he accepted that he viewed the material for sexual gratification, although he had initially denied it in interview with both the police and the probation officer at the pre-sentence report interview.
5. He had been abused as a child by family friends from the age of 5, which he had not dealt with, and the author of the pre-sentence report considered that he would benefit from post-traumatic stress disorder counselling to help him come to terms with the sexual abuse that he had endured and that he needed to complete offence-focused work to enable him to come to terms with his offending.
6. The applicant is now aged 52 and has no previous convictions. He was the registered

carer for his disabled brother (Mark), with whom he lived in the family home. Mark Hagan has cerebral palsy and severe learning difficulties with a mental age of 3 to 5. The applicant had positive character references from his mother and sister, who attest to the support he provides to his brother and had also provided to his very ill father before his death in 2019.

7. At the sentencing hearing, the applicant's responsibilities as his brother's sole carer were relied on to support a community order or a suspended sentence. Since the imposition of an immediate custodial sentence, Mark Hagan is now living in respite care before being moved into supported living accommodation. Due to the nature of the conviction the applicant may no longer be the carer of Mark (as a vulnerable adult), regardless of whether he is serving a custodial sentence and that part of the mitigation is no longer relied upon.
8. There was no dispute that the applicant was entitled to a full one-third credit for his early guilty plea and that, under the guidelines, the starting point for possession of category A images is 1 year's imprisonment with a range of 26 weeks to 3 years. The judge identified the starting point correctly and considered that a number of non-statutory aggravating features applied in his case. Firstly, the age and vulnerability of the children depicted. Secondly, that some of the images featured children in discernible pain and distress. Thirdly, on occasions the moving images involved incidents with animals. Next, the fact that many of the images were moving images and not merely still pictures. Next, the high number of images in the applicant's possession. Another aggravating factor was that the images had been possessed for approximately 5 months. The

applicant stated that after first stumbling on the images inadvertently, he had then however deliberately searched for images portraying young children. He had searched deliberately for category A images and portrayal of familial sexual abuse. Finally, the large number of different victims.

9. After taking account of the applicant's positive good character the judge adjusted the starting point from 12 months upwards to the figure of 27 months, balancing the aggravating and mitigating features. She then deducted one-third to arrive at a final sentence of 18 months for the category A offence. She imposed concurrent sentences of 6 and 9 months for the category B and C images respectively. She then considered whether the sentence could be suspended by reference to the factors identified in the Sentencing Council Guidelines on the Imposition of Community Orders and Custodial Sentences. She concluded that the appropriate punishment could only be achieved by immediate custody. As for the care of his brother Mark, the judge concluded that other family members would be able to step into the breach. Finally she was doubtful about the prospects of rehabilitation.

10. The grounds of appeal advanced were that the tariff of 18 months, following a guilty plea at the earliest opportunity, was manifestly excessive especially given the encouraging pre-sentence report, the recommended that work could be done with the applicant to challenge his sexual attraction to children. The sentence should have been suspended and that the starting point was too high. A prison report, dated 4 July 2024, had been obtained, that indicated that the applicant was coping reasonably satisfactorily in custody with no positive or negative entries or adjudications but no qualifications had been

obtained and no courses attended as yet.

Discussion and Conclusion

11. Given the very high volume of distressing Class A images involving vaginal, anal and oral penetrative activity of very young girls and other category A features, together with the number of aggravating features identified by the judge as set out above, the judge was entitled to conclude that the applicant's good character and positive testimonials from his family members did little to mitigate from the inevitable significant upward adjustment required by the facts of the case. The sentence of 18 months reduced from 27 months for the guilty pleas was well within the guidelines. Nor did it breach the totality principles given the volume of material and the fact of the additional category B and C images possessed by the applicant.

12. The decision not to suspend the sentence was also in accordance with the guidelines. The judge was entitled to conclude that the appropriate punishment could only be achieved by immediate custody and even if the other factors indicating that it would not be appropriate to suspend the custodial sentence were not present. Even if the judge had been wrong to conclude that there was no realistic prospect of rehabilitation, the fact that immediate custody was the only appropriate punishment for the scale of the offending was determinative.

13. For the above reasons, the appeal is dismissed.

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