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IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202002036/A3

Neutral Citation Number: [2020] EWCA Crim 1218

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday 4 September 2020

LORD JUSTICE HOLROYDE  
MRS JUSTICE ELISABETH LAING DBE  
MR JUSTICE FREEDMAN

REFERENCE BY THE ATTORNEY GENERAL UNDER  
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REGINA  
V  
OSMAN BASRI

Computer Aided Transcript of Epiq Europe Ltd,  
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Mr P Jarvis appeared on behalf of the Attorney-General

Miss T Brennan (Solicitor Advocate) appeared on behalf of the Offender

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

1. LORD JUSTICE HOLROYDE: Osman Basri pleaded guilty to offences of stalking involving serious alarm or distress, contrary to section 4A of the Protection from Harassment Act 1997 (count 2) and doing an act tending and intended to pervert the course of public justice (count 3). On 9 July 2020, in the Crown Court at Wood Green, he was sentenced by His Honour Judge Aaronberg QC to a total of 10 months' imprisonment. Her Majesty's Solicitor General believes that sentence to be unduly lenient. Application is accordingly made pursuant to section 36 of the Criminal Justice Act 1988 for leave to refer the sentencing to this court so that it may be reviewed.
2. We shall refer to the victim of the stalking offence as "A". A decade ago, when she was aged 14, Mr Basri committed sexual offences against her. In relation to those offences, A is entitled to the life-long protection of the provisions of the Sexual Offences (Amendment) Act 1992.
3. Mr Basri, now aged 47, is more than 20 years older than A. He has in the past been in a long-term partnership and is the father of four children. He became a friend of A's family when she was aged about seven. Mr Basri has the misfortune to be deaf. So, too, do A's parents. A is skilled in sign language, and over the years she has assisted Mr Basri in various ways, including in relation to making purchases over the internet which he could not manage unaided.
4. It appears that Mr Basri became infatuated with A. Over the years he repeatedly told her that he loved her and made persistent attempts to persuade her to enter into a relationship with him. His feelings were not reciprocated by A. Although she had contact with him on friendly terms, she did so largely because she felt sorry for him.
5. In 2010, as we have indicated, Mr Basri committed two offences of sexual assault and two of sexual activity with a child against A. He pleaded guilty and was sentenced to a total of 12 months' imprisonment suspended for two years. He was also made subject to a supervision order.
6. About a year later, and in breach of his suspended sentence, Mr Basri committed two offences of harassment of A. He was sentenced to a community order for two years with requirements including supervision. The suspended sentence was ordered to continue in force unaltered.
7. Between July 2012 and March 2018, Mr Basri committed a number of offences of failing to comply with the notification requirements to which he had become subject as a result of his offences in 2010. In June 2018 he was sentenced for these offences to a total of six weeks' imprisonment.
8. Mr Basri continued to send messages to A declaring his love for her. He followed her, parked outside her house and left cards at her front gate. She asked him to stop, but he continued to bombard her with messages and threatened to kill himself if she would not marry him. A reported his actions to the police, and on 4 November 2019 Mr Basri was arrested. In interview he claimed that he had been in a loving relationship with A, but she had left him for another man. Mr Basri was charged with an offence of stalking A during the period 1 September to 16 October 2019. He was remanded in custody for one week and then granted bail subject to a qualifying curfew.
9. As a result of enquiries made by this court, and further information helpfully provided today by Mr Jarvis, it has emerged that when granted bail Mr Basri breached his notification requirements by failing to notify to the police the fact that he had been

released from custody.

10. On 4 December 2019, Mr Basri appeared before the Crown Court in relation to the September/October stalking charge. He pleaded not guilty. That charge was ultimately left to lie on the file, but it is important to note that Mr Basri was on bail in relation to it when he committed the present offences.
11. About a week after his Crown Court appearance, Mr Basri began sending messages to A from a variety of email addresses which he had created. He also used her details to create accounts in her name on a number of dating websites, and he uploaded personal details about her to the profiles on those websites. This caused A a great deal of distress. She feared that because he had known her for so long, he was able to make the profiles appear realistic and would, as she expressed it, put details of her sexuality "out there for everyone to see".
12. In January 2020, Mr Basri used an alias 'Mark Hall' to send yet further emails to A and Facebook messages to members of her family. This course of conduct was the subject of count 2, the particulars of which were that between 11 December 2019 and 16 January 2020, Mr Basri engaged in a course of conduct amounting to stalking which caused A serious alarm or distress and which had a substantial adverse effect on her usual day-to-day activities, when he knew or ought to have known that his course of conduct would cause A such alarm or distress.
13. On 13 January 2020, Mr Basri persuaded his mother to offer A £5,000 if she would drop the original stalking charge, which was then listed for trial in September 2020. It appears that he had tried to take out a loan of £10,000 with a view to funding this proposed payment. He sent text messages to A telling her to contact his mother, and he also tried to engage her in video messaging. A refused to do what he asked, told him to leave her alone and reported the attempted bribe to the police. Mr Basri was arrested. When interviewed under caution he made no comment. He was charged with the offences which became counts 2 and 3 in a joined indictment which also included the original stalking charge. He was also charged with an offence of fraud in relation to the loan application, which he had made in A's name.
14. On 23 January 2020 a magistrates' court sentenced Mr Basri to nine weeks' imprisonment for the November 2019 offence of breach of notification requirements.
15. On 26 February 2020, in the Crown Court at Wood Green, Mr Basri pleaded not guilty to the latest stalking offence (count 2) but guilty to the offence of doing acts tending and intended to pervert the course of public justice (count 3). The prosecution elected not to pursue the fraud charge. The two charges of stalking were listed for trial on 13 July 2020.
16. On 9 July 2020, Mr Basri pleaded guilty to count 2. The original stalking charge was ordered to lie on the file. The judge was invited to proceed to sentence for counts 2 and 3 and agreed to do so. There was no pre-sentence report, and it is apparent from the transcript that the judge had not been informed in advance that the case would be an effective plea and sentence.
17. There were two victim personal statements from A before the court. She said that Mr Basri's continuing messaging of her, and his attempts at emotional blackmail, had caused her sleepless nights. She cried all the time and was scared to leave her home in case he was waiting outside for her. She found it difficult to form relationships which brought her close to other people. She felt that he was ruining her life and just wished he

would leave her alone.

18. Counsel then appearing for the prosecution opened the facts of the case to the judge. He placed emphasis on the unusual circumstance that A had continued to assist Mr Basri over the years despite the sexual offences which he had committed against her when she was an adolescent. He submitted that under the Sentencing Council's definitive guideline for offences of this nature, count 2 fell into category 2B: culpability B because there was a high degree of planning and the offending conduct lasted for over a month, and harm 2 because A had suffered "some distress". Counsel therefore submitted that the starting point was 36 weeks' custody with a range from 12 weeks to 18 months. He indicated, correctly, that there is no guideline in relation to offences of perverting the course of public justice but submitted that case law shows that such offences usually merit a custodial sentence.
19. As we have indicated, Mr Basri had spent some time remanded in custody and some time subject to a qualifying curfew. Both the judge and counsel believed that the credit to which he was entitled in those respects would roughly equate to a 12-month sentence. It appears that they were all unaware of the sentence of imprisonment which had been imposed on 23 January 2020.
20. Miss Brennan represented Mr Basri, as she does in this court. Before she began submissions in mitigation, the judge indicated that he would impose a sentence which would not result in Mr Basri spending any more time in custody. He said that although he had to sentence for conduct over a period of a month, the reality was that there was a history going back years. He referred to the "appalling difficulty" of custody for a prisoner who could not communicate with anybody else and the particular difficulties faced by someone in Mr Basri's position in custody during the Covid-19 pandemic. Miss Brennan submitted that there should be full credit for the guilty plea to count 3 and some credit for the plea to count 2.
21. In his sentencing remarks the judge referred to the sexual offences in 2010 and said:
  - i. "Most unusually, despite that offending behaviour, the two of you renewed your relationship as friends and unfortunately that meant that you became besotted with her, and although she made it plain that she was not interested in having a relationship with you, you started sending her entirely inappropriate messages, including ones purporting to come from a third party, which caused her distress and alarm in a serious way and you behaved in a number of other ways which were inappropriate adding to her distress."
22. The judge went on to refer to the fact that custody for Mr Basri was far more difficult than it would be for a person who could hear and speak, and he referred to the observations of the Lord Chief Justice in the case of Manning in relation to custody during the pandemic. He did not say how he categorised the count 2 offence under the guideline. Taking into account the guilty pleas, he imposed sentences of 10 months' imprisonment on count 2 and two months' imprisonment concurrent on count 3. He also imposed a restraining order prohibiting direct or indirect contact with A.
23. For the Solicitor General, Mr Jarvis submits that the total sentence of 10 months' imprisonment was unduly lenient. In relation to count 2, it is apparent from the victim

personal statements that A suffered very serious distress and prosecuting counsel below was wrong to submit that the harm was only category 2. The correct category was 1B, with a starting point of two years six months' custody and a range of one to four years. That offence was aggravated by Mr Basri's previous convictions for offences against A and by his being on bail. Count 3 was a serious offence which merited a significant consecutive sentence. If concurrent sentences were to be imposed, the sentence on count 2 should have been increased to reflect the seriousness of the overall offending. Mr Jarvis acknowledges the mitigation available to Mr Basri.

24. For Mr Basri, Miss Brennan places emphasis on the continuing contact between A and Mr Basri over the years. She submits that even if A was in fact prompted by feelings of sympathy, from Mr Basri's point of view that appeared to be friendly contact. She further points out that the period covered by count 2 was little more than one month. The count 3 offence was a clumsy and unsophisticated attempt which A immediately and inevitably recognised as coming from Mr Basri. She submits that the judge was right to take into account the difficulties which Mr Basri faces in custody. If the sentence was lenient, it was not, she submits, unduly so.
25. We are very grateful to both counsel for their very clear and realistic submissions. We have reflected upon them.
26. It seems to us that the judge was faced with a difficult sentencing process, in respect of which he had no opportunity to prepare, and that unfortunately he did not receive the help to which he was entitled. With respect to counsel then appearing for the prosecution, his summary of the facts was not as clear as it should have been. Further, he was, in our view, wrong to place as much emphasis as he did on the friendship between A and Mr Basri over the years. It has to be remembered that A had been very young when first targeted by Mr Basri, that he was a friend of her parents and that she must have felt a particular obligation to help him with the problems which he faced as a result of his deafness. In addition, the submissions made to the judge as to the time which Mr Basri had spent remanded in custody or subject to a qualifying curfew were made in ignorance of the sentence of imprisonment imposed in January 2020. In making those submissions, counsel overlooked the procedural history of the case and failed to recognise that not all the periods to which he referred could count towards sentences on counts 2 and 3.
27. The judge of course had to sentence for the two offences which Mr Basri had admitted and not for wider harm caused to A over the years. However, the background of his behaviour towards A in the past was relevant to the assessment of the harm which she suffered as a result of this stalking offence: the distress caused to her by this latest offence built upon the distress she had suffered in the past. The judge was right to give considerable weight to the difficulties which Mr Basri faced in custody during the pandemic.
28. In the circumstances, we can understand why the judge felt that a lenient sentence was appropriate. With all respect to him however, we are firmly of the view that the total sentence of 10 months' imprisonment failed properly to reflect the seriousness of the offending. We see considerable force in Mr Jarvis's submission that count 2 was a category 1B offence, but even if it was placed into category 2B on the basis that the level of harm caused by it fell just short of "very serious distress", the level of harm certainly justified a significant upward movement from the starting point. The aggravating

features correctly identified by Mr Jarvis necessitated a further significant upward movement. This was a serious case of further offending on bail against a young woman who had been the victim of repeated previous offences and inappropriate behaviour by Mr Basri. It was a further indication that the lenient penalties imposed on Mr Basri for earlier offences had failed to deter him from continuing to make his victim's life a misery. There is no suggestion of any mental health issues affecting Mr Basri's culpability. Even assuming in his favour that he was genuinely besotted with A, he must have been well aware that she did not reciprocate his feelings.

29. As to count 3, we agree with Mr Jarvis that it was a serious offence of its kind, an attempt to buy off the victim of his offending by offering her a substantial sum of money. The fact that she knew it was he who was making the offer does not, in our view, provide any mitigation. The plain fact is that it was an offer of money to drop a serious criminal charge. That offence added considerably to the overall criminality, and it should in our view have been met with a significant consecutive sentence. At the very least it should have resulted in a substantial increase in the sentence for the lead offence, if concurrent sentencing was to be adopted.
30. We agree with the judge that significant weight should be given to the particular difficulty which Mr Basri faces in custody. He was entitled to full credit for his prompt guilty plea to count 3. His plea to count 2 was however entered at a very late stage and could not attract credit of much more than 10 per cent.
31. Making every allowance in Mr Basri's favour, we cannot see that a total sentence of less than two years' imprisonment could be appropriate in the circumstances of this case. It follows that the total sentence imposed below was in our judgment unduly lenient.
32. Mr Basri was released from the sentence imposed below. He did not however remain at liberty. We understand that he was arrested on 5 August 2020, has been charged with yet further offences relating to A and is presently remanded in custody in relation to those offences.
33. For the reasons we have given, we grant leave to the Solicitor General. We quash the sentences imposed below as being unduly lenient. We substitute for them the following: on count 2, 16 months' imprisonment; on count 3, eight months' imprisonment, consecutive to the sentence on count 2. Thus the total sentence becomes one of two years' 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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