IN THE COURT OF APPEAL

CRIMINAL DIVISION

No. 202201726 A2

NCN: [2022] EWCA Crim 1583
Royal Courts of Justice

Tuesday, 8 November 2022

Before:

LADY JUSTICE WHIPPLE
MR JUSTICE JAY
HER HONOUR JUDGE KARU, RECORDER OF SOUTHWARK

REX
V
KATIE WEEKS

REPORTING RESTRICTIONS APPLY:
Sexual Offences (Amendment) Act 1992

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MR D ROBINSON KC appeared on behalf of the Appellant.

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J U D G M E N T

LADY JUSTICE WHIPPLE:

1 The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions, no matter relating to the person who benefits from those provisions shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless it is waived or lifted in accordance with s.3 of the Act.

2 On 13 November 2019, following a trial at Bournemouth Crown Court before HHJ Climie, the applicant (who was then aged 36) was convicted of three counts of causing or inciting a child under 13 to engage in sexual activity not involving penetration contrary to s.8 of the Sexual Offences Act 2003, two offences of taking indecent photographs contrary to s.1(1)(a) of the Protection of Children Act 1978 and two counts of distributing indecent photographs contrary to s.1(1)(b) of the same Act.

3 She was sentenced by the same judge to nine years' imprisonment on each of the causing or inciting counts, those sentences to run concurrent with each other, and to shorter concurrent sentences on the other counts.

4 The single judge has referred her application for an extension of time in the amount of 697 days and for leave to appeal against sentence to the full court.

5 Mr Robinson KC appears for the applicant. He was not trial counsel.

Facts

6 The applicant was having an affair with a committed paedophile named Gareth Southcombe. She used her own son, who was aged between 22 and 24 months during the indictment period, as a sexual prop. Chat logs recovered from Southcombe's phone demonstrated that Southcombe was quite openly a paedophile with a sexual interest not just in young children, but in the victim in particular. The chat logs demonstrated that the applicant, rather than

expressing distaste or disgust at Southcombe's sexual interest in children, encouraged and fuelled it and on some occasions initiated the subject herself. Not only did she openly discuss the victim in a sexual context with Southcombe, but she set up and captured images of herself engaging in sexual activity with her son. Southcombe was a willing recipient. He knew that in respect of the two images of the victim found on his telephone that he was receiving contemporaneous, or near contemporaneous, images of the applicant abusing her son for his sexual pleasure. Whilst there is no evidence of any direct request from Southcombe that led to the two images being sent, he did not disguise either his delight or interest in such images.

7 The offences came to the attention of the National Crime Agency in May 2018, when that agency had cause to investigate Southcombe's online activity. This led to him being arrested at his place of work in Poole Marina on 23 May 2018. On arrest, he was holding a telephone which was found to contain two indecent images of the victim. The first was an image of the victim licking the applicant's breast. This became the subject of Counts 1 to 3 on the indictment. The second was an image of the victim touching the applicant's vagina. This came to be Counts 4 to 6 on the indictment. The phone also contained a photograph of the victim placing a drill to the applicant's nipple, which was not charged as an indecent image, although the applicant's staging of this came to be charged as Count 7. During a search of Southcombe's home, a desktop computer was seized. On it were a number of indecent and extreme images. The initial examination of Southcombe's telephone and the images on it led police to attend the applicant's home address where she lived with her husband and the victim.

8 The applicant was arrested and gave no comment in interview. Examination of the applicant's telephone revealed very little. No messages to or from Southcombe were found, but in the notes section of the telephone was a message dated 20 April 2018 asking Southcombe to confirm that all photographs and videos had been deleted. Examination of

Southcombe's telephone yielded far more information. There were a number of chat logs which included discussions between Southcombe and other paedophiles, many of whom were later prosecuted for a range of child sex offences. The chats were highly explicit and involved discussions about child abuse. These included chat logs between Southcombe and the applicant spanning the period 6 August 2017 to October 2017, which was the tail end of an apparent five-year relationship between them.

9 Of particular note were chats of 6 August 2017 in which the applicant sent the photograph of the victim licking her breast. That photograph was taken at the applicant's home address moments before it was sent. In the discussion that followed, Southcombe told the applicant "So it turns out you are a better peado than me." A little later, the applicant told Southcombe that she had kissed the victim's "willy". The chat the next day was similar in tone, with Southcombe discussing masturbating over images of the victim sent to him by the applicant, also referring to an image of the victim touching the applicant's vagina. It was unknown when that imagine was sent to him.

10 It continued the following day with the applicant seeming to suggest that she was masturbating with the victim next to her. On 10 August 2017, Southcombe said in a message "young is v v good. Think we need to discuss young a lot more don't we?" to which the applicant responded "yeah." There followed a chat where the applicant sent Southcombe a photograph of her when she was seven years old. The chat continued on 12 August 2017 when a sexually suggestive imagine of the victim placing a toy drill into the applicant's mouth was sent, after which the applicant said "getting a good drilling here." The following day the applicant and Southcombe discussed the photograph and the applicant introduced the victim to a sexually fuelled discussion, saying the victim made her "horny" and was a "mini porn star." In the following days there was further discussion of sexual activity with the victim.

11 On 7 October 2017 the applicant was on a family holiday in Cornwall. She sent Southcombe a picture of the victim pressing a toy drill on to her exposed nipple. The image was deliberately staged. This was Count 7. On 18 October 2017 the applicant openly discussed sexual activity with the victim and what would happen if she and Southcombe had children together. On 24 October 2017 Southcombe said "You are not allowed sex play with your son" and the applicant replied "Damn".

12 In August 2018 the applicant asked to be re-interviewed. She gave her account of her relationship with Southcombe, claiming that she did what he said because she felt trapped and controlled by him. She said that other than sending the photograph of the victim licking her breast, she had never sent any other photographs of the victim to Southcombe. She denied knowing that Southcombe had a sexual interest in children. A third interview took place in October 2018 after a full forensic examination of Southcombe's telephone had been completed. In it the applicant described Southcombe's talk about children as fantasy. When asked by officers if she had abused her own child for Southcombe, she replied "yeah". The applicant said she was aware that Southcombe gained sexual gratification from the photographs of the victim that she sent him, but did not know that she was putting the victim at risk.

Sentence

13 In passing sentence, the judge noted that neither the applicant nor Southcombe had a previous record of offending. He dealt with the harrowing facts of this offending. He noted that the matters charged as caused or inciting fell within Category 2A of the Guidelines, which gives a starting point of eight years. He said that the starting point was aggravated significantly by the fact of multiple offences over a period of time. The level of abuse of trust was also a factor and the victim's very young age. The judge said he had guarded against double counting, but still the offences fell towards the top of the range. As mitigation, he took account of her good character and her demonstration of some insight.

He went on to say that the taking of photographs fell within Category 2 of the relevant guideline with a start point of two years but, taking the aggravating features into account, the offences fell at the top of the range which was four years' custody. He said that he had intended to pass a sentence of 10 years' imprisonment, but having heard from the applicant's counsel he was willing to reduce that to nine years' imprisonment to reflect the mitigation advanced. Concurrent sentences of four years for the counts of taking photographs were imposed and 21 months for each two of the offences of distributing the photographs. In the course of his comments, the judge referred in terms to the pre-sentence report and to the other material provided to the court as part of the applicant's case on mitigation.

14 Southcombe was charged with possession of indecent images of children. He was sentenced to two years' imprisonment. He had pleaded guilty to those charges at the first opportunity.

Grounds of Appeal

15 By grounds of appeal drafted by Mr Robinson, the applicant argues that the sentence was manifestly excessive, advancing two grounds:

(1) The starting point should have been reduced to reflect the fact that the offending behaviour was towards the lower end of the scale for offences of this type.

(2) The sentence should have been reduced more to allow for the applicant's personal mitigation. Reliance was placed on the case of *R v YZ* (Andrew Barker) [2019] EWCA Crim 466, noting paras 42 to 47 in particular.

16 Mr Robinson listed various mitigating factors at para.5.3 of the grounds and we set those out as the following list: no previous convictions; first time in prison; exemplary conduct, as set out in the references provided to the court; since conviction, she has demonstrated insight into her offending behaviour; emotional immaturity; delay to sentence caused by Covid 19; pregnant at the time of third interview; second child taken from her after she gave birth to

him; did not see victim, her first child, for five months after her arrest; divorced; lost house; lost job; and groomed by Southcombe, who was connected to a paedophile ring.

17 We are grateful to Mr Robinson for his focused submissions. At today's hearing, he emphasised three points in particular. First, that the offences were towards the lower end of the scale applying Category 2A. Second, that the judge double counted when he elevated from the start point to take account of the victim's youth and the extreme abuse of trust. Third, that the judge had inadequate regard to mitigation.

Conclusion

18 There is no doubt that this is a troubling case. We have reflected carefully on the points that have been made by Mr Robinson and on all the papers in the case to which we have had regard.

19 We regret that we are not persuaded that we should grant leave in this case. It is our conclusion that this sentence was not even arguably manifestly excessive or wrong in principle, those being the criteria we must apply.

20 We deal with the points raised by Mr Robinson in sequence.

21 First, looking at the categorisation of these offences, we agree that Category 2A was plainly applicable to the causing or inciting offences. Under the guideline, the category start point is eight years in a range of five to 10 years' custody, but that start point is for a single offence by a first offender. We are not persuaded that the judge was in error in adopting the guideline start point of eight years as his starting point before adjustment. We accept that the range of activities which may be charged under s.8 varies and it may be possible to think of more serious examples. But on any view this was serious offending. The applicant knew full well what part she was playing in her son's abuse and she offended voluntarily.

22 In our judgment, it is not correct to focus solely on the physical aspects of the abuse in question. It is necessary to look more broadly at the harm inflicted and the culpability which is involved. Just looking at harm, in our judgment, it was arguable that this could have gone up to Category 1, given the extreme youth of this particular victim. We do not criticise the judge's conclusion, supported by prosecution and defence at trial, that this was Category 2A offending. Overall, we are satisfied that eight years was the appropriate starting point for the judge to take. We have had regard to the authority of *YZ*, as we have been asked to do, but we conclude that that is a single case which in the end turned on its own facts. It does not support any wider proposition about how a judge should go about determining sentence. In that case, we note that the judge arrived at a sentence of nine years after trial and that the Court of Appeal was not minded to interfere with that sentence, although they thought it was lenient.

23 The judge, having arrived at the start point of eight years, identified aggravating features. One of the most significant was the fact of multiple offending. It was not just the three offences of incitement which were to be reflected in the lead sentence, but also the photographing and distribution of some of those images. It was therefore appropriate to go up from eight years to reflect the totality of the offending.

24 We move then to Mr Robinson's second point as to whether there has been double counting. In moving upwards from the start point of eight years, the judge noted the gross breach of trust and the extremely young age of this victim. We do not consider that it was double counting to refer to those factors when it came to determining the extent of aggravation. It is right that those factors could equally have been used as adjustments to arrive at the right effective starting point within the category. These were important and serious aspects of this offending and they warranted an upwards adjustment from the eight year start point. Whether that was done by treating them as aggravating factors or as factors which elevated the start point for sentence, is of no consequence.

25 We turn then to Mr Robinson's third point, which goes to mitigation. The judge took account of the mitigation in lowering the sentence from the notional 10 years to nine years. We accept the various points made by Mr Robinson in his grounds of appeal and we accept that there was significant mitigation in this case. But in the round, we conclude that the mitigation was considered by the judge and that he made an appropriate reduction.

26 We accept that this applicant has lost a great deal. That is of course extremely regrettable. The consequences of her offending are doubtless felt not just by her, but by her family, the victim and her second son as well as those who are currently looking after the victim. The applicant will be well aware that her offending has much wider consequences than just on herself. But those points were all considered by the judge and appropriately reflected in the final sentence.

27 In conclusion, we can find no fault with this sentence and we refuse the application for permission to appeal against it.

28 In those circumstances, we also refuse the application for an extension of time, because extending time will serve no purpose. If we had found merit in the application for permission, we would have been willing to extend time in the circumstances which have been explained to us.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript is subject to the Judge's approval.