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NCN: [2022] EWCA Crim 430

IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202102034/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 11 March 2022

Before:

LADY JUSTICE CARR DBE

MRS JUSTICE MAY DBE

MRS JUSTICE COLLINS RICE DBE

REGINA
V
TERRY JOHN HOTSTON

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MR Y CHAMDARAMA appeared on behalf of the Appellant.

J U D G M E N T

LADY JUSTICE CARR: The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

Introduction

1. This is an appeal against sentence with limited leave and a renewed application for leave to appeal sentence on grounds for which leave was refused. For ease of reference we refer in this judgment to the applicant as "the appellant" throughout.

2. The appellant is now 63 years old. He was convicted in March 2021, after trial in the Crown Court at Winchester before HHJ Evans QC ("the judge"), of 12 historic and recent sexual offences involving three female family members. We call the victims "C1", "C2" and "C3". He was sentenced on 3 June 2021 by the judge to a total sentence of 12 years' imprisonment on counts 1, 2 and 4 to 12 as follows:

Count on indictment	**Offence**	**Pleaded guilty or convicted**	**Sentence**	**Consecutive or Concurrent**
1	Sexual Assault of a Child under 13, contrary to s.7(1) of the Sexual Offences Act 2003	Convicted	4 years' imprisonment	
2	Indecency with a Child, contrary to s.1(1) of the Indecency with Children Act 1960	Convicted	1 year imprisonment	Concurrent
4	Indecent Assault, contrary to s.14(1) of the Sexual Offences Act 1956	Convicted	4 years' imprisonment	**Consecutive**
5	Indecent Assault, contrary to s.14(1) of the Sexual Offences Act 1956	Convicted	4 years' imprisonment	Concurrent
6	Indecency with a Child, contrary to s.1(1) of the Indecency with Children	Convicted	2 years' imprisonment	Concurrent

	Act 1960			
7	Indecent Assault, contrary to s.14(1) of the Sexual Offences Act 1956	Convicted	1 year imprisonment	Concurrent
8	Indecent Assault, contrary to s.14(1) of the Sexual Offences Act 1956	Convicted	2 years' imprisonment	Concurrent
9	Indecent Assault, contrary to s.14(1) of the Sexual Offences Act 1956	Convicted	1 year imprisonment	Concurrent
10	Indecent Assault, contrary to s.14(1) of the Sexual Offences Act 1956	Convicted	2 years' imprisonment	Concurrent
11	Sexual Assault of a Child under 13, contrary to s.7(1) of the Sexual Offences Act 2003	Convicted	4 years' imprisonment	**Consecutive**
12	Sexual Assault of a Child under 13, contrary to s.7(1) of the Sexual Offences Act 2003	Convicted	4 years' imprisonment	Concurrent

Total Sentence:	**12 years' imprisonment**

3. The judge failed to pronounce a sentence in respect of count 3 (indecent assault) contrary to section 14(1) of the Sexual Offences Act 1956 involving C2. It is in respect of that failure that the single judge granted limited leave to appeal.

The Facts

4. The offences were committed between 1973 and 2018. They came to light when C1's mother contacted the police in November 2018 after C1 (then aged 11) disclosed that the appellant had touched her inappropriately. C3 then reported the appellant's offending against her to the police in December 2018 and C2 made disclosures in June 2019.

5. The offending, as we have indicated, commenced in the 1970s on C2. She was the appellant's half-sister and 9 years his junior at the time. When she was between 6 and 7 years old the appellant began to show her pornographic magazines and to speak to her about human sexual anatomy. His grooming progressed to exposing himself and masturbating in front of her. He inserted a matchstick into his penis and asked if C2 wanted to push the stick in herself or remove it with her mouth, which she refused to do. The appellant masturbated to ejaculation in front of C2 multiple times, he invited her to his room and would try to put his hands in her underwear. At times he spoke of having sexual intercourse with her. On two occasions he put his penis inside C2's knickers and ejaculated into her clothing. C2 began to avoid the appellant.

6. When she was much older (between 13 and 15) she would baby-sit for the appellant and his wife. When they were alone the appellant would touch her breasts and expose himself.

7. The next victim in time was C3 (the appellant's natural granddaughter). Between 2007 and 2010, when she was 7 to 10 years old and the appellant was in his 50s, he touched C3's vagina inside her underwear on two occasions. There were other times when he tried to take her knickers off but C3 would pull them back up and leave the room. The appellant also sent C3 inappropriate messages on Facebook.

8. C1 was the appellant's step granddaughter. The offending occurred in the years 2016 to 2018, by which time the appellant was in his late 50s and early 60s and C1 was between 9 and 11 years old. When giving C1 lifts to the shops or to football matches the appellant would put his hand down her trousers and stroke her vagina for 3 or 4 minutes at a time. This took place on at least three occasions. The appellant would call C1 "sexy" in front of his friends and attempt to engage her in inappropriate conversations. We have the benefit of and ready detailed and moving victim personal statements from each of C1, C2 and C3.

Renewed Application for Leave

9. Mr Chandarana, who appears *pro bono* on behalf of the appellant and for whose submissions we express our gratitude, submits in summary that the sentence of 12 years' imprisonment overall was manifestly excessive, considering in particular the age of the appellant and the substantial personal mitigation before the court. A total sentence of 12 years' imprisonment was simply not just and proportionate in all of the circumstances. He refers to the Sentencing Council Guideline on Totality, where the court must, where consecutive sentences are being passed, add up the sentences but then consider if the aggregate length is just and proportionate. The overall sentence should have been "around the 10-year mark" in his submission. That term would have been sufficient to mark the gravity of the appellant's offending.

Discussion

10. When refusing leave the single judge said this:

> "In view of the harm caused, the circumstances of the offending and the number of counts over a number of years the sentence is not arguably manifestly excessive. These were not only historic offences committed many years ago but also recent offences and the mitigation to be afforded by your otherwise good character and reputation provides little by way of mitigation. The Judge took into account your health in arriving at the appropriate sentence.
>
> It is not arguable that the total sentence in the circumstances is disproportionate."

11. We agree. This was a complex sentencing exercise. The judge was well aware of and heeded the limits of her sentencing powers so far as the historic offending on C2 was concerned. Mr Chandarana rightly makes no criticism of the overall terms of 4 years for each collection of offending. We comment that the total offending on C2 under current legislation could well have merited a sentence of up to and indeed at 6 years given the multiplicity and regularity of the offending over such a long period of time. The same could be said of the offending on the other victims.

12. The judge was well placed to sentence following trial and she made good use of that advantage thus, for example, it was her assessment that the appellant appeared to have no real understanding of what he had done or the extent of the harm that he had caused. This is borne out by the contents of the pre-sentence report which, amongst out things, recorded the appellant's refusal to concede that he had done something very wrong to his victims. This was sustained offending over very, very many years on three separate female members of the family. Counts 1, 2, 5, 6, 7, 8 and 9 and 10 were multiple incident counts. There was a significant age gap between the appellant and his victims. There was very serious harm caused to C2 in particular: depression; suicide attempts; anorexia, difficulties in forming relationships and bonding with her family amongst other things. C3 was only 12 when she gave evidence at trial, an experience which had a huge impact on her as did the offending itself. The judge expressly took totality into account as an "important" factor alongside the available mitigation, including the appellant's youth at the time of the offending involving C2, his own health conditions including depression alongside his own suicide attempts. As the Sentencing Council Guideline on Sexual Offences makes clear, in the context of this type of offending previous good character is not normally given any significant weight and does not normally justify in a reduction in what would otherwise be the appropriate sentence.

13. Standing back, in circumstances where the 4-year sentences for each collection of offences could justifiably have been considerably higher, 12 years for the totality of the offending

was not, in our judgment, arguably excessive. It cannot be said to be disproportionate to the appellant's overall criminality. Leave to appeal is therefore refused.

14. That leaves us with the sentence on count 3. There is no doubt that the appellant was convicted on count 3. It appears however that the judge overlooked count 3 when pronouncing sentence and that no one noticed the omission at the time as counsel recognised they should have done. As identified in R v P [2014] EWCA Crim 1221, at paragraphs 38 to 43, a sentence on all counts before the court must be pronounced publicly and any corrective amendment also needs to be made in open court. The judge clearly intended to pass a sentence of 4 years' imprisonment on count 3, concurrent with the other sentences imposed on the offending involving C2. We pronounce a sentence of 4 years' imprisonment on count 3 to run concurrently with the sentences on counts 2 and 4 to 10. This does not affect the overall sentence.

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

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