In the St. Helena Court of Appeal

Citation: SHCA 2/2020

Criminal

In the matter of an appeal against sentence

Appellant

Tyler Stevens

Judgment on appeal against sentence

Heard on 23rd January 2020

Before: Sir John Saunders, President; HHJ R Mayo, Member; and HHJ L Drummond, Member

1. Any reporting of the names of the victims in this Judgement is prohibited indefinitely.

2. The Appellant appeals with leave of this Court against a total sentence of 6 years' imprisonment imposed by the Supreme Court on 5 July 2019. He originally faced an Indictment containing four counts as follows:

   1. Anal rape of S [aged 14] on 31 January 2019
   2. Sexual Activity with a Child involving penetration of her vagina with his penis [S] on 14 December 2018
   3. Sexual Activity with a Child involving penetration of her vagina with his penis [C] [aged 14] between 1 February and 7 April 2018
   4. Sexual Activity with a Child [C] [aged 14] between 1 February and 7 April 2018.

3. A trial was conducted by the Chief Justice, sitting without a Jury, on Count 1 and the Appellant was acquitted. He had pleaded Guilty to counts 2, 3 and 4 at the earliest opportunity. The counts on the Indictment were in reverse order chronologically. It was not in issue at trial that the Appellant had had vaginal intercourse with each complainant.

4. He became friends with C on Facebook in December 2017 when she was 14 years and 3 months of age. The Appellant was born on 8 December 1999, so turned 18 during that month. The Judge found that the Appellant's Facebook contact amounted to grooming behaviour. This is one of the issues raised in this appeal on behalf of the Appellant. C was not allowed to go into town and instead spent time at a playground in The Avenue in Longwood, close to where C lived with her mother. On the first occasion that she and the Appellant met, they kissed and hugged and this formed the basis of Count 4. Thereafter, they exchanged phone calls or text messages on virtually a daily basis.

5. The Appellant admitted having vaginal intercourse with C in February or March 2018 [Count 3]. He was prepared for intercourse on this occasion because he had brought (and wore) a condom. C complained that penetration hurt.

6. Between 19 April and 20 July 2018, the Appellant was serving a sentence of 22 weeks' imprisonment for theft and breach of a community service order (which had been imposed on 28 December 2017) for handling stolen goods. At this juncture, the Appellant sought nude photos of C from her and when these were not supplied, he considered that this relationship was at an end.

7. His post-release licence expired on 28 September 2018. In October and December 2018, the Appellant was issued with Child Abduction Notices by police due to concerns raised by members of the community because of the Appellant's contact with young females. Within the Pre-Sentence Report, which

was available to the Judge before sentence, the author noted that the effect of these Notices would have been fully explained to the Appellant at the time and it was made plain to him that any sexual relationship with a female under 16 would result in prosecution. In November 2018, the Appellant was arrested in relation to his sexual contact with C. He was bailed.

8. The single offence relating to S occurred whilst the Appellant was on bail and after the Abduction Notices had been issued. The Judge found that the Appellant chose to spend time at a playground at Half Tree Hollow "specifically with a view to coming into contact with girls of school age knowing that the playground was a place they frequently congregated". In his evidence at trial, the Appellant maintained that S and he were boyfriend and girlfriend and that they had had intercourse after seeing one another for a few weeks. He acknowledged that this had happened twice. Material from telephone records was adduced during the trial that S and the Appellant had communicated via 154 telephone calls or text messages in the period between 7 December 2018 and 8 February 2019. During the trial, the Appellant accepted that he had ejaculated and did not wear a condom.

9. In the Pre-Sentence Report, the Appellant's troubled youth and background on St Helena were rehearsed. He had fathered a child when aged 16 by a girl of 15. A psychological assessment suggested that it was unlikely that the Appellant enjoyed a "warm, engaged and connected relationship with his mother or carers as an infant". As a consequence, the Appellant presented with "socially constricted and depressive behaviours as an adult" and "significant attachment issues". The Report includes the observation that the Appellant demonstrated "significant deficits in relation to victim empathy" and that, during the interview arranged for the writing of the Report, the Appellant was

"unable to consider the impact of …offending on them. When asked if they are likely to be upset or distressed, [the Appellant] stated that whilst they may pretend to be distressed it is unlikely that they are suffering any consequences at all". A further remark made by the Appellant during the interview was that both complainants contacted him and were keen to pursue relationships.

10. The author or the Pre-Sentence Report concluded that the Appellant posed a high risk of serious harm, in the form of internet sex offences and contact offences: those most at risk were post-pubescent females. This conclusion derived not just from the offences themselves, but from the Appellant's own admission that he is unable to resist the advances of females regardless of their age and the fact that he disregarded advice following the Abduction Notices.

11. We have read the report of Dr McInererny, consultant forensic psychiatrist. He assessed the appellant before sentence and found no symptoms indicating any current mental disorder or symptoms suggestive of a diagnosis of ADHD. The report dealt in some detail with the Appellant's early development and background. Much of this had been rehearsed before the Chief Justice before sentence. We do, however, make mention of one of Dr McInerny's opinion on the maturity of the Appellant in the context of these offences. He said

> "Mr Stevens' offending behaviour should be viewed in the context of an individual who is emotionally immature and who has committed an offence with a minor who perhaps is of a similar emotional age to himself".

12. The Judge observed the Appellant giving evidence at his trial and concluded that he was "not unintelligent". He concluded that the Appellant

presented “a real and clear danger to young girls on St Helena”: if passing sentence in England or Wales, the Judge indicated that he would have passed an Extended Sentence. We have heard submissions from Mr Cooke today on this issue. Our conclusion is that the Judge was justified in reaching the conclusion that Appellant met the test for dangerousness, notwithstanding his age at date of sentence. The Judge had observed the trial and was entitled to form his own judgment. The wilful disregard of the warnings from police and probation officers and further penetrative sexual contact with a 14 year-old whilst on bail for an identical matter add to the picture.

13. Mr Cooke urged us not to reach the same conclusion as the Judge as to grooming behaviour. He pressed on us the fact that, at the age of 19, the Appellant had no friends (male or female) who were his own age. He argues that the age gap was not that wide. We of course take this into account, but our considered conclusion is that the Judge was entitled to conclude that the Appellant used his superior age to ignite both victims’ interest in sexual activity with him. To that extent, he groomed both girls for his own sexual ends.

14. As to the Guidelines, there is no argument before us today that the Judge erred in placing counts 2 and 3 within Category A [culpability] and Category 1 [harm]. The sentencing range for an offender with no previous convictions after trial was therefore 4-10 years, with a starting point of 5 years. It was argued today that the starting point for Count 2 should have been at the bottom end of the range.

15. Count 2 was aggravated by ejaculation and by the fact that the offence was committed on bail and after the Abduction Notices had been served. The Judge’s conclusion as to Count 4 is not criticised.

16. The Judge reached the conclusion that preliminary sentences before reduction for a Guilty plea would be 6 years' imprisonment on Count 2 and 5 years for Count 3. He declared that as "a matter of principle" the sentences on Count 2 ought to run consecutively to the sentences on Counts 3 and 4. To take into account the principle of totality, the Judge stated that he had "reduced the sentence on Count 4 to three years' imprisonment". There must be an error in the Transcript of the Judge's remarks because this reduction patently refers to Count 3. Having applied "full credit" (which we deduce must have been one third) for a plea entered at the earliest opportunity, the sentences which the Judge arrived at were:

Count 2	4 years, consecutive to counts 3 and 4.
Count 3	2 years
Count 4	12 months

17. In his written argument, it was urged on us by counsel for the Appellant that the imposition of consecutive sentences was unjust in all the circumstances and achieved a sentence which was manifestly excessive. Here were two separate complainants and a gap in time of eight months between offences. The Totality Guideline offers no hard and fast rules. But, with reference to the Sexual Offences Guidelines, the continuation of offending on bail was a significant factor and is a statutory aggravating feature.

18. We have expressed our agreement with the Judge's conclusion as to dangerousness. Taking into account the Appellant's relative youth and his troubled early life and the aggravating factors already identified, it is our considered conclusion that the Judge was correct in setting the preliminary sentence at six years: we are not persuaded that this should have been towards

the bottom end of the range. With an appropriate reduction of one third for a Guilty plea, the sentence of four years is not in our view manifestly excessive.

19. We turn to the question of totality. Had the Judge been persuaded that consecutive sentences were not called for here, the Judge would have been quite entitled to increase the sentence for Count 2 to reflect the fact that it was committed on bail and in the teeth of Abduction Notices. Our conclusion is that this would not be the correct way to approach the matter on appeal.

20. Having concluded that the Judge was correct in his assessment of Count 2 and that he was entitled to pass consecutive sentences, we step back to determine whether the total sentence passed was manifestly excessive. Where a Judge concludes that consecutive sentences are called for, he or she must arrive at a final sentence with an aggregate length which was just and proportionate. In our conclusion, this can only be achieved by reducing the sentence on Count 3 to 12 months' imprisonment. Having reduced this sentence, some proportionality between the sentences on counts 3 and 4 must be maintained. We therefore reduce the sentence on Count 4 to six months' imprisonment.

21. We therefore quash the sentences passed on Counts 3 and 4 and substitute therefor sentences of 12 months and six months respectively to be served concurrently with each other. These sentences will run consecutively to the sentence on Count 2, making a total term of five years. To this extent, the appeal is allowed.