Neutral Citation Number: [2018] EWCA Crim 2823

Case No: 201703403 C5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM HHJ S Wright
Inner London Crown Court

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2018

Before :

LORD JUSTICE DAVIS
MRS JUSTICE WHIPPLE
and
HHJ DEAN QC (sitting as a Judge of the Court of Appeal, Criminal Division)

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Between :

R	**Respondent**
- and -	
T F	**Appellant**

- -
- -

Ruth Becker (instructed by **Foxes Solicitors**) for the **Appellant**
James Brown (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date: 6th December 2018

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Approved Judgment

Mrs Justice Whipple :

Introduction

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence and in consequence this judgment has been anonymised in order to prevent identification of the victims of the index offences.

2. This is a renewed application for leave to appeal against conviction and sentence, leave having been refused by the single judge. The application for leave to appeal against conviction is brought 54 days out of time, in circumstances which we shall outline below. We grant that extension of time and we grant leave to appeal against conviction.

3. The renewed application for leave to appeal against sentence is within time. We grant leave to appeal against sentence also.

4. Following a trial before HHJ S Wright at Inner London Crown Court, the appellant was convicted by verdicts delivered over 23 and 24 March 2017 of 9 counts of indecent assault on males (some of whom were children at the time) and two counts of rape. The rape charges were counts 9 and 10, and it is in relation to them that this appeal proceeds, in the main.

5. The appellant was sentenced on 24 March 2017 as follows. The lead sentence was on counts 9 and 10, in relation to which he was sentenced to 11 years imprisonment on each count, to be served concurrently *inter se*. Shorter sentences were imposed for various counts of indecent assault or attempted indecent assault to be served concurrently with count 9. Those shorter sentences were: 2 years on count 2, 1 year on count 3, 2 years on count 5, 2 years on count 6, 2 years on count 7, 8 years on count 8 and 1 year on count 13, all to be served concurrently with count 9. In addition, he was sentenced to 8 years imprisonment on count 8, for indecent assault on a male person, to be served consecutively to count 9; and 2 years imprisonment on count 14, for indecent assault on a male person, to be served consecutively to counts 9 and 14. The resulting total term of imprisonment was 21 years.

6. On 9 June 2017 (before the same judge) a Sexual Harm Prevention Order (SHPO) was made prohibiting unsupervised contact with a child under the age of 16 unless in the presence of the parent / guardian of the child.

7. The appellant was acquitted of Indecency with a Child (Count 1) and two further counts of Indecent Assault on a Male Person (Counts 11 and 12).

Facts

8. In the late 1980s to early 1990s the appellant, then in his thirties, worked in Dagenham. He drove around the Abbeywood area of London in his car targeting male teenagers for sexual encounters. He kept pornography in his car and plied the complainants with cigarettes, alcohol, food, and trips to the seaside. He sexually assaulted them either in his car, in their homes, at his sister's flat, or at his own address.

9. In 2015 the first complainant (hereafter referred to as 'GD') disclosed to his counsellor that he had been abused as a child and named other individuals whom he believed may have also been abused by the appellant. He gave an ABE interview to police in which he

gave the following account. GD said that he was around eleven years old when he first met the appellant who would show him the pornographic magazines that he kept in his car. The appellant would tickle him and repeatedly use the phrase "mind over matter". He attended at the appellant's house where he would take baths whilst the appellant watched him. The appellant engaged in sexual activity with him and would become aroused and ejaculate inside his own trousers. There were occasions on which the appellant would try to insert his fingers inside GD's anus (this is Count 2). He would cuddle and kiss GD and during one such incident GD hurt his arm (this is Count 3). The appellant also repeatedly tried to get GD to perform oral sex on him and eventually he agreed. They were in the appellant's car when the appellant exposed his penis and GD began to blow upon it at the appellant's request. The appellant grabbed his head and pushed it down so that his penis penetrated GD's mouth (this is Count 4). He ejaculated but not in GD's mouth. The appellant suggested that they have sex together although this never actually occurred. Other forms of abuse that the appellant engaged in, but which were not subject to specific counts on the indictment, were placing his hands inside GD's trousers, attempting to masturbate him, and placing GD's penis in his mouth. The abuse continued until GD was aged 16 or 17 and there were periods when it would occur seven days a week. It took place either in the appellant's car or at his house.

10. GD stated that he also witnessed the appellant abuse the second complainant (hereafter referred to as 'AM'). They would all go out in the car together and the appellant would touch whoever was in the front seat. He would put them in the bath together and try and touch them. He took them on trips to the coast and put his hands down their trousers. He would give them both money to purchase LSD. AM was contacted by police and interviewed. He said that he knew the appellant from the age of about 13 or 14 to 17. The appellant would take him to a flat in Woolwich where he would wrestle with him and give him alcohol whilst another man put on a homosexual pornographic film. AM would feel uncomfortable on these occasions at the appellant's physical closeness. There was, however, only a single overtly sexual incident that occurred between them that he could recall. The appellant took him to some garages in his car. He told AM that he wanted him to trust him. He pulled down AM's trousers and inserted AM's penis into his mouth and said, "That's a 'gumbo'" (this is Count 5). The appellant's mouth touched AM's penis. AM did not become aroused and the incident only lasted a few seconds. He believed that the appellant knew that he was uncomfortable. He was probably about 14 at the time of this incident.

11. Another person whom GD named as having been abused by the appellant was the third complainant (hereafter referred to as 'MR') whose date of birth was 30/06/76. He was also interviewed by the police. He said that he first met the appellant when doing a paper round at the age of 15 or 16. One day the appellant took him and two other boys on a trip to the coast. On the return journey the appellant's car broke down. MR was sitting in the back of the car and was concerned about getting home. With the pretence of consoling him, the appellant crouched down on the hard shoulder and placed his hand on MR's bare leg. He moved his hand up inside MR's shorts and started playing with his penis, masturbating him until he became erect (this is Count 6). He pulled down MR's shorts so as to expose his penis completely and then blew on it. The incident came to an end when the other two boys returned to the car. About two weeks later he attended at the appellant's home with a friend. After the friend left the appellant approached MR in the kitchen and grabbed his clothed penis which he then exposed and placed in his mouth. He performed oral sex on MR which only ended when MR ejaculated into his mouth (this is Count 7). The incident lasted about 20 – 30 minutes. MR was confused and did not know whether it was right or wrong or whether or not he enjoyed it. He next saw the

appellant at the appellant's sister's house where GD and MR were also present. The appellant dropped him home and MR's father asked him in for a cup of tea. MR's father then went out with the dog. The appellant aggressively told MR to remove his trousers and pants. Although he did not want to, he was scared at the appellant's tone of voice and so he complied. Having got MR aroused, the appellant removed his own trousers and sat on MR's lap causing him to penetrate the appellant's anus with his penis (this is Count 8). The appellant moved up and down on MR's penis. This continued for about 10 minutes at which point MR pushed him off because he was too heavy.

12. The appellant aroused himself, told MR that it was his turn and ordered him to get on all fours. He was blunt and had aggression in his voice. He penetrated MR's anus with his penis (this is Count 9). MR screamed in pain and told the appellant to stop several times but he continued until he ejaculated inside MR. MR's father returned home and the appellant departed. The indictment states that this offence was committed between 30 June 1991 and 29 June 1992, when MR was 15.

13. MR avoided the appellant for about 4 months after that incident but eventually saw him again. They attended each other's houses without incident. Then the appellant attended at MR's house whilst his father was away. They had tea together and the appellant came up behind him and placed his arms around him. Without warning he pulled down MR's shorts, bent him over, pulled down his own shorts, and penetrated MR's anus with his penis (this is Count 10). MR simply froze. He did not want it to happen. He was making noises of pain during intercourse but the appellant said that he could see that he was enjoying it. The appellant ejaculated. Nothing was said afterwards and MR was left shaking with fear. The indictment stated that this offence was committed between 30 June 1991 and 29 June 1993, when MR was aged 15-16.

14. A fourth complainant, hereafter referred to as CB, came to the attention of the police. He stated that he met the appellant through an interest in Citizens Band radios. The appellant would drive him and others around in his car and give them cigarettes and take-away food. The physical contact by the appellant began with him playing games of 'tickle', with CB and the other boys being tickled on the legs and groin (this is Count 13).

15. There was an incident when CB was about 14 when he was at the appellant's house and the appellant put pornography on the television whilst only he and CB were present. CB was sitting on the sofa. The appellant approached him, pulled down CB's trousers, and started to touch him. The appellant got down on his knees and began to suck CB's penis (this is Count 14). CB felt very uncomfortable and simply froze as he did not know what to do.

16. In his first three police interviews the appellant made no comment. In his fourth interview, in relation to CB's allegations, he admitted his friendship and contact with teenage boys but denied that he had ever sexually abused them.

17. At trial, the Prosecution case was that the appellant engaged in a course of conduct over some years by abusing teenage boys sexually. The case on Counts 9 and 10 was that MR had given a truthful and reliable account that the appellant had anal sexual intercourse with him on two separate occasions.

18. The Defence case generally was that, whilst the appellant accepted that he knew the complainants, he denied that he had ever engaged in any sexual conduct at all at any time with any complainant. The events alleged on Counts 9 and 10 had simply never happened.

19. The appellant gave evidence. In respect of MR he said that he met him via CB radio. He had been to the seaside with him and they had attended each other's houses a number of times. He met MR's father. He never touched MR inappropriately. He had never had anal sex with MR, either in MR's home or anywhere else.

20. The issue for the jury on all counts was whether the complainants had given reliable, honest, and accurate accounts.

Appeal against conviction

21. The appellant's original grounds of appeal against conviction and sentence were dated 22 August 2017. They came before the Single Judge (O'Farrell J) who refused leave to appeal. The appellant by his solicitors applied to renew the application for leave to appeal against sentence. Following the lodging of papers with the Criminal Appeals Office, that Office wrote to the appellant's solicitors on 2 March 2018, putting them on notice of a possible defect in the convictions on counts 9 and 10. In consequence, by a notice dated 18 March 2018 drafted by Mrs Becker, counsel for the appellant at trial and on appeal, the appellant applied to renew his application for leave to appeal against conviction out of time, and at the same time advanced a fresh ground of appeal against conviction. The fresh ground was that counts 9 and 10 should have been charged as buggery pursuant to section 12(1) of the Sexual Offences Act 1956, whereas they were in fact charged as rape pursuant to s 1(1) of the Sexual Offences Act 1956; it was said that this was an error because the offence of rape did not include anal penetration until the law was amended by s 142 of the Criminal Justice and Public Order Act 1994, which came into effect on 3 November 1994, which post-dated the offences in counts 9 and 10. Accordingly, it was said, the convictions on counts 9 and 10 were unsafe and should be quashed.

22. In response to that fresh ground of appeal, the Crown, by Mr Brown who had conduct of the trial and this appeal, lodged a skeleton dated 11 April 2018 by which he conceded that counts of rape should not have been included in the indictment faced by the appellant at trial (a mistake for which Mr Brown candidly apologised). Before us, Mr Brown accepted that this Court had no option but to quash the convictions on counts 9 and 10.

23. However, Mr Brown invited the Court to substitute guilty verdicts of buggery contrary to s 12(1) of the Sexual Offences Act 1956 for those quashed convictions, pursuant to this Court's powers under s 3 of the Criminal Appeals Act 1968 which provides as follows:

> **"3.— Power to substitute conviction of alternative offence**.
>
> (1) This section applies on an appeal against conviction, where the appellant has been convicted of an offence to which he did not plead guilty and the jury could on the indictment have found him guilty of some other offence, and on the finding of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of the other offence.
>
> (2) The Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of the other offence, and pass such sentence in substitution for the sentence passed at

> the trial as may be authorised by law for the other offence, not being a sentence of greater severity.

24. Mr Brown accepts that no proceedings for buggery may be instituted without the consent of the Director of Public Prosecutions, by reason of the restriction contained in s 8 of the Sexual Offences Act 1967 by which proceedings against a man for buggery or gross indecency with another man require the DPP's consent; but he argues that the DPP effectively gave his consent when the reviewing lawyer at the CPS instructed the police to charge the appellant.

25. Mrs Becker resists substitution. In a skeleton argument dated 22 May 2018, she submits that it would not be just to substitute verdicts for buggery in place of the quashed rape convictions. She relies on *R v MC* [2012] EWCA Crim 213 where this Court refused to permit a conviction under s 9 of the Sexual Offences Act 2003 in substitution for an offence under s 14(1) of the Sexual Offences Act 1956, which had been charged in error. Building on that authority, she argues that buggery was not on the indictment; it is not included within the offence of rape by implication and was not a lesser offence which it was open to the jury to convict on; the two offences are different offences under different legislation; indeed, the offence of rape which was charged did not even exist, in relation to penetration by a man of a man, at the time.

26. The Criminal Appeal Office has drawn our attention to a number of authorities which deal with the circumstances when substitution may, or may not, be appropriate. The leading authority is *R v Graham* [1997] 1 Cr App R 302, which sets out a two-stage test. In summary, the Crown must establish (1) that the jury could on the indictment have found the appellant guilty of some other offence; and (2) the jury must have been satisfied of fact which proved the appellant guilty of that other offence.

27. In *R v D (A)* [2016] 2 Cr App R 18, this Court considered an indictment which mistakenly charged the offence under s 14 of the Sexual Offences Act 1956 which concerned indecent assault on a female instead of s 15 of that Act which concerned indecent assault on a man. The Court concluded that on the particular facts of that case the mistake was a simple clerical error which did not render the conviction unsafe, because the trial had been conducted throughout on the basis that the indecent assault was of a man and the jury had been appropriately directed. The Court dismissed the appeal against conviction on that basis. But it went on to consider, in a passage which is *obiter dictum* but which we consider to be important and persuasive in the present case, what the outcome would have been if that had not been the case. The Court (per Turner J) said this:

> "33 In the light of the wording of the section and the authorities to which we have referred, we consider that it cannot be argued that the offence of indecent assault on a man could "ordinarily involve an allegation of" an indecent assault on a woman. On the contrary, the two offences are mutually exclusive. It is obvious that the jury must have been satisfied of facts which proved the defendant guilty of indecently assaulting his male victim, for the purposes of s.3 but this conclusion satisfies only the second limb of the test propounded by the court in *Graham* and not the first."

28. More recently, in *Darroux v R*, the Court refused to substitute a conviction under s 1 of the Fraud Act 2006 in place of a charge brought under s 1 Theft Act 1968. It said (per Davis LJ):

> "68 This is not a case where the counts were misstated by obvious clerical slip or drafting error as occurred in cases such as *R. v Stocker [2014] 1 Cr. App. R. 18* (p.247) and *R. v D(A) [2016] 2 Cr. App. R. 18* (p.241). To the contrary, this was a conscious prosecutorial decision to charge theft rather than fraud by false representation. Besides, theft and fraud are not coterminous, even though they may have dishonesty in common. A thief is not necessarily a fraudster. A fraudster is not necessarily a thief.
>
> 69 Further, whilst the facts here would (on the verdicts of the jury) have grounded convictions for fraud by false misrepresentation, one has to have regard to the actual terms of s.3 of the Criminal Appeal Act 1968. The question is not just whether on the facts the jury could have convicted of some other offence. The question also is whether *on the indictment* (emphasis added) the jury could have so convicted. The importance of these words in the section was emphasised in *Graham* and *D(A)* (cited above). It is difficult to see how that requirement could be satisfied in the present case."

29. In our judgment, this is not a case where a conviction under s 12(1) for buggery can be substituted for a conviction under s 1(1) for rape. Rape of a woman by a man does not "ordinarily involve" an allegation of buggery by a man of another man (or boy). The two offences are different, indeed mutually exclusive. It cannot therefore be said, by reference to the charges on the indictment for rape, that the jury must have been satisfied of the facts necessary to support a conviction for buggery.

30. We quash the convictions under counts 9 and 10 for rape. We decline the application to substitute convictions for buggery. In those circumstances, we do not need to deal with the point relating to the requirement for the DPP to consent under s 8 of the 1967 Act.

31. We allow this appeal against conviction on the fresh ground of appeal. The remaining convictions, reflected in the other counts on which the appellant was sentenced, are unaffected.

32. This outcome is very regrettable. We acknowledge that it is likely to cause MR a great deal of anguish. After all, counts 9 and 10 reflected very serious allegations of abuse against him; he gave evidence against the appellant at trial; and the appellant was convicted of those counts by the jury. We emphasise again the need for all those involved in the preparation and conduct of criminal trials, including prosecutors, solicitors, counsel and the judge, to check that the charges on the indictment are appropriate to the facts of the case, particularly in cases of historic sexual abuse where the relevant provisions have changed over time.

Retrial

33. We invited Mr Brown to address us on the issue of a retrial on counts 9 and 10 in light of our conclusion (which we announced at the hearing, with reasons to follow) that the convictions on those counts would be quashed without substitution. This was not an issue which had been addressed in writing by either party in advance of the hearing.

34. Mr Brown submitted that this Court has no jurisdiction in relation to the question of retrial, which is for the prosecutorial authorities alone. That is the consequence of s 7 of the Criminal Justice Act 1968 which provides as follows:

> **"7.— Power to order retrial.**
>
> (1)Where the Court of Appeal allow an appeal against conviction and it appears to the Court that the interests of justice so require, they may order the appellant to be retried.
>
> (2) A person shall not under this section be ordered to be retried for any offence other than—
>
> (a) the offence of which he was convicted at the original trial and in respect of which his appeal is allowed as mentioned in subsection (1) above;
>
> (b) an offence of which he could have been convicted at the original trial on an indictment for the first-mentioned offence; or
>
> (c) an offence charged in an alternative count of the indictment in respect of which no verdict was given in consequence of his being convicted of the first-mentioned offence."

35. Mr Brown submitted that the offences to be tried in future would be offences under s 12(1) of the 1956 Act. Such offences were not those on which the appellant had been tried at his original trial, they were not offences of which he could have been convicted at his original trial on an indictment for rape, nor were they offences which could stand as alternatives to rape, and thus, he submitted, they were not offences in relation to which this Court could order a retrial. He took us to the judgment of this Court in *R v Walker and R v Coatman* [2017] EWCA Crim 392 where the Court (the Vice President, Hallett LJ, giving the leading judgment) acknowledged that it had no power to order a retrial in circumstances where - in that case - convictions for indecent assault could not be substituted for gross indecency as charged on the indictment (see [36]). See also *R v Lawrence* [2013] EWCA Crim 1054 at [9].

36. Mrs Becker agreed with Mr Brown that this Court lacked jurisdiction over the question of retrial and submitted that this was, in the end, a matter for the Crown. If the Crown decided to bring fresh charges against the appellant, she envisaged making an application to stay the proceedings as an abuse of process, given that it was the Crown's mistake which brought this situation about in the first place, and given the likely prejudice to the appellant in now having to face a trial of the two allegations of buggery against a background of having been convicted of some historic sexual offences and acquitted of others. She said that, however the trial was managed, there was a substantial risk of significant unfairness to the appellant.

37. We accept that s 7(2)(b) precludes this Court from ordering a retrial in this case. This Court has no jurisdiction over that question. That is because, for reasons already given, the appellant could not on the indictment for rape have been convicted of buggery. The statutory condition for a retrial is not met.

38. The matter therefore rests with the CPS. We indicated at the hearing, and we take the opportunity here to state, that we would have grave concerns about the fairness of any

future trial of the two allegations of buggery, bearing in mind the need to be fair not only to MR but also to the appellant. No doubt the CPS will also bear in mind our conclusion on the appeal against sentence.

Appeal against Sentence

39. In light of our decision to quash two convictions, we grant leave to appeal against sentence.

40. The sentences of imprisonment imposed for counts 9 and 10 must also be quashed.

41. The remaining sentences imposed by the judge total 18 years, comprising 8 years on count 8 (which had been ordered to run concurrently with count 9, which direction now falls away), with which the shorter sentences on counts 2, 3, 5, 6, 7 and 13 will run concurrently, 8 years on count 4 to run consecutively, and 2 years on count 14 to run consecutively.

42. The appellant submits that 18 years is manifestly excessive bearing in mind the principle of totality. In particular, a reduction of only three years is inadequate to reflect the removal of the two most serious counts on the indictment.

43. The appellant argued that the sentence on count 4 (of 8 years imprisonment) is manifestly excessive because the facts did not merit such a sentence - this was a brief encounter, and although the appellant ejaculated, he did not ejaculate in the GD's mouth. He further argues that the judge wrongly applied the sentencing guidelines for offences under the 2003 Act directly rather than "having regard" to them as she should have done, she started too high and failed to make an adjustment to reflect the 10 year maximum sentence for this offence under the 1956 Act, and wrongly used the guidelines for an offence of assault by penetration contrary to s 2 of the Sexual Offences Act 2003 in circumstances where there was no anal penetration.

44. Further, the appellant further challenged the imposition of a SHPO on grounds that it was not necessary, noting that the appellant had not offended for 24 years since these offences were committed; that it will be many years from the date of commission of any offence by the time he is released from prison; that he will anyway be subject to notification requirements and licence conditions on release; and that there are no children in the family with whom he will have contact and no foreseeable circumstances in which he would have unsupervised contact with children under the age of 16.

45. Mr Brown resisted the appeal against sentence, submitting that 18 years was a justified and proportionate sentence for this appellant, even after removing counts 9 and 10. The appellant had demonstrated a pattern of offending over many years. He had engaged in systematic grooming and sexual abuse of young boys. There were aggravating factors of significant planning and abuse of trust. Some of the offences had serious aspects of penetration and ejaculation. The harm to the complainants had been very significant. In relation to count 4, he emphasised that GD was young, between the ages of 11 and 13, when this happened, and that it was a very serious assault even if brief. He submitted that the judge was entitled to take the view that she did in relation to the necessity for a SHPO and this Court should not interfere.

46. It appears that neither party brought to the attention of the Judge s 236A of the Criminal Justice Act 2003 which applies to any conviction for penetration of a child under 13 and operates to impose an additional licence period on such an offender, subject to

satisfaction of certain additional conditions. There is no finding by the judge as to GD's age at the time of the offences charged as counts 2 and 4. The dates in the indictment for count 2 span a period when he was 11 to 16; the dates for count 4 span a period when he was 11 to 13. We cannot therefore take the issue of s 236A any further on appeal. We simply note the point.

47. The judge approached this sentencing exercise by putting the various offences into groups. In relation to counts 4 and 8, she identified these as assaults by penetration and considered them by reference to category 2A of the guideline for s 2 of the Sexual Offences Act 2003. In relation to both she said that she could see no reason to depart from 8 years as the guideline starting point and that:

> "I could, but for totality, have passed a sentence of 9 years in relation to counts 4 and 8. It seems to me that there are aggravating features so far as those counts are concerned. They both relate to different people, and on both occasions you ejaculated.".

48. In fact, as the Criminal Appeal Office has pointed out to the Court, (i) the offence under count 4 would not have been an assault by penetration under s 2 of the 2003 Act, which extends to penetration of vagina or anus, and not mouth; it would, however, have been a rape under s 1 of the 2003 Act. Category 2A of the rape guideline gives a starting point of 10 years in a range of 9 to 13 years; and (ii) the offence under count 8 would not have been an assault by penetration either, because it involved the appellant being penetrated by MR, which would more appropriately be considered as non-consensual sexual activity within s 4 of the 2003 Act. Category 2A of the s 4 guideline gives a starting point of 8 years in a range of 5-13 years, which is the same as the s 2 guideline for category 2A, so this point makes no difference in the end.

49. She then considered the two rape convictions, separately from the other offences, and imposed a sentence of 11 years for count 9 saying "I have reduced that from 12 because of totality". She then went on to deal with count 14, on which she imposed a sentence of 2 years.

50. Thus, the judge had totality well in mind and discounted for totality in relation to each offence or group of offences she identified. We see no reason to apply a greater discount for totality now that the convictions on counts 9 and 10 have been quashed. If anything, the appellant has benefited from the error in relation to counts 9 and 10, because it was doubtless in light of those counts that the judge decided to reduce the other sentences to reflect totality in the way that she did. Specifically, we see no merit in the point that a reduction of 3 years is insufficient to mark the removal of counts 9 and 10 given that the judge herself considered that counts 9 and 10 justified an additional three years above the sentence passed on count 8 which involved the same complainant, MR. That was a judgment she was entitled to reach on the facts.

51. There is no merit in the challenge to the sentence passed on count 4. Eight years was not manifestly excessive. We accept that the judge referred to the wrong guideline but the error was, if anything, in the appellant's favour.

52. The judge was entitled to conclude that a SHPO was necessary. The appellant had engaged in a long and predatory pattern of sexual offending and there was every reason to subject him to an order. The SHPO will remain effective indefinitely.

53. We therefore allow this appeal to the limited extent of quashing the sentence of 11 years on each of counts 9 and 10. We reject Mrs Becker's remaining points on appeal. The rest of the sentence will stand undisturbed, as follows:

    i) Count 8, 8 years imprisonment, to which sentences under counts 2, 3, 13, 5, 6, and 7 will run concurrently. (These sentences were previously ordered to run concurrently with the sentence on count 9.)

    ii) Count 4, 8 years imprisonment, to run consecutively;

    iii) Count 14, 2 years imprisonment, to run consecutively.

54. The total term to serve is 18 years.