

**WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.**

**This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.**

NCN: [2019] EWCA (Crim) 1930

IN THE COURT OF APPEAL

CRIMINAL DIVISION



No. 201903312 A4

Royal Courts of Justice

Tuesday, 22 October 2019

Before:

**LORD JUSTICE SIMON**  
**MR JUSTICE GOOSE**  
**MRS JUSTICE COCKERILL DBE**

**REGINA**

**V**

**DAVID WEATHERALD**

---

Computer-aided Transcript prepared from the Stenographic Notes of  
Opus 2 International Ltd.  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
[CACD.ACO@opus2.digital](mailto:CACD.ACO@opus2.digital)

---

MR A. BOYD appeared on behalf of the Appellant.

THE CROWN did not attend and were not represented.

---

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

**LORD JUSTICE SIMON:**

- 1 On 8 August 2019, having pleaded guilty in the magistrates' court, the appellant was committed for sentence to the Crown Court at York. On 29 August he was sentenced by his Honour Judge Hickey on the two committal offences: committal offence one, making indecent images of a child, Category A, contrary to section 1(1)(a) of the Protection of Children Act 1978, a term of ten months' immediate imprisonment; committal offence two, the same charge but in relation to category C images of children, a concurrent term of two months. Various ancillary orders were made and consequences flowed from the sentence; but the issue that arises on appeal for which leave was given by the single judge is whether the sentence should have been suspended.
  
- 2 The appellant is 61 and of previous good character. On 15 November 2017 police officers from the Harrogate On-line Abuse Team executed a search warrant at his home in Knaresborough. They seized computer equipment and the appellant was interviewed the next day. He gave no comment answers to all questions put and it was after this that his computer equipment was examined.
  
- 3 Committal offence one related to the contents of a USB stick found plugged into the back of a television that contained 11 Category A videos, three of which were described as "of an extreme nature". One was 38 minutes long, one was 24 minutes long, but they were all lengthy videos, and the officer accepted he could not summarise them all because they went on too long. Since no issue arises as to the categorisation of the videos as category A, the most serious nature of this type offence, it is unnecessary to give a further description. They involved young children, oral sex, sexual touching and anal rape.
  
- 4 Charge two related to three category C images on the same USB stick as contained the eleven Category A videos. An examination showed that the USB stick had first been used

on 24 July 2017 and last used on 7 October 2017. The images were in fact deleted on the USB stick, a matter of which Mr Boyd has reminded us.

5 The second item seized was a tablet computer. An examination of the tablet showed that search items on the internet had been used which indicated an extensive search for child pornography, including extreme child pornography. Over 3,598 URLs were found under the general category of pornography. Not all were illegal. A second laptop was examined and within the recycled bins were titles suggesting extreme Category A pornography. Further examination showed links to an android device that was not recovered and the possibility of a further USB stick.

6 The appellant was interviewed again in June 2019 with the forensic evidence and made admissions. He said he had viewed material using torrent websites and that he had downloaded the material from the computers to the USB stick so that he could watch the material on television. He accepted that he had become sexually aroused by watching the material and said that the children he looked at were aged between six and thirteen.

7 The Pre-Sentence Report set out the appellant's explanation of how he started watching adult pornography, but then moved on to interfamilial sex. He was excited by viewing extreme images of violence against women and was curious to see what was contained in such videos. He was aroused at the children in the images being forced to have sex. He showed some understanding of the impact on child victims and demonstrated some empathy and remorse. He was assessed as a low risk of reoffending and a medium risk of harm. That risk could be safely managed in the community and an eighteen-month community order with requirements was proposed.

8 The judge acknowledged the substantial mitigation of the appellant's good character at the age of 61, and his personal mitigation was substantiated in the Pre-Sentence Report. He had also pleaded guilty at the first opportunity and had made early admissions to the pleas by the date of the second interview. The judge acknowledged that he was a hard worker, that he had stopped working out of a sense of shame, and that his partner was standing by him. The videos were first used in July and over the next few months into October. They were then deleted. In terms of the aggravating features, there were moving images of an extreme nature, the victims were in discernible pain and distress, and there had been searches for extreme matters that showed his perverted interest in young people.

9 The judge acknowledged that he had been assessed as being a low risk of danger to the public, that there was a realistic prospect of rehabilitation and that he had reasonable personal mitigation, but continued in these terms:

But I am afraid I take the view that the factor outweighing all of those is that it would not be appropriate to suspend a custodial sentence because of the extreme images and their extreme nature. The appropriate punishment can only be achieved by immediate custody.

10 The short point taken by Mr Boyd in the grounds of appeal and in the oral argument before us today is that the sentence should have been suspended.

11 This was serious offending. The Sentencing Guidelines for possession of Category A images indicate a starting point of one year's custody and a range of twenty-six weeks to three years. The judge took a starting point of fifteen months, doubtless because of the two offences. He does not appear to have given credit for any other mitigation before giving a full one third reduction for the plea.

- 12 He went on to consider the guidelines on the imposition of community and custodial sentences. He recognised that there were two factors pointing to the suspending of the custodial sentence, the realistic prospect of rehabilitation and the strong personal mitigation. He also recognised that there were two factors that did not indicate an immediate custodial sentence: the appellant presented no significant risk to the public and he had no history of poor compliance with court orders. Nevertheless, he concluded that the appropriate punishment could only be achieved by immediate custody.
- 13 The Sentencing Council Guidelines for sentencing offenders for possession of indecent images under the Protection of Children Act indicates that where there is sufficient prospect of rehabilitation, a community order with a sex offender treatment programme under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length of custodial sentence and that was the recommendation in the Pre-Sentence Report. We note that the appellant had no previous convictions at the age of 61 and had worked his entire adult life. The offences occurred 22 months before the sentence and there was no suggestion of further offending. The Pre-Sentence Report assessed him as a low risk of general and sexual offending. While he was assessed as a medium risk of serious harm, the risk was likely to decrease if focused work was carried out. The probation service had assessed that the appellant's offending could be managed in the community and suggested an appropriate community order. The videos had been used during a confined three-month period and the material had then been deleted.
- 14 This was a case in which the Pre-Sentence Report made a realistic recommendation that addressed the seriousness of the offence and the risk the appellant posed to the community, and which should have been forwarded. He has spent the equivalent of three months in prison, and in these circumstances we will quash the sentence of ten months' imprisonment, and substitute a sentence of six months' imprisonment, suspended for twelve

months, with a condition that up to 25 Rehabilitation Activity Requirement days be completed within that period. To that extent the appeal is allowed.