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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 732

No. 202000699 A1

Royal Courts of Justice

Tuesday, 19 May 2020

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE GOOSE
MR JUSTICE HILLIARD

REGINA
V
MEIRION GRIFFITHS

REPORTING RESTRICTION APPLIES:
SEXUAL OFFENCES (AMENDMENT) ACT 1992 APPLY

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MS S. JONES QC appeared on behalf of the Appellant.

The Crown were not represented.

J U D G M E N T – R E V I S E D 1

MR JUSTICE HILLIARD:

1 The provisions of the Sexual Offences (Amendment) Act 1992 apply to the person referred to as 'B' in this judgment. No matter relating to her shall during her lifetime be included in any publication if it is likely to lead members of the public to identify her as a victim of these offences. No reporting restriction applies to Julie MacFarlane ('JM') who waived her right to anonymity.

2 On 13 January 2020, in the Crown Court at Portsmouth, the appellant was convicted of four offences of indecent assault, contrary to section 14(1) of the Sexual Offences Act 1956. On 21 February 2020, he was sentenced by His Honour Judge Hetherington to consecutive terms of two years' imprisonment for each offence, making a total sentence of eight years' imprisonment.

3 The appellant had spent time in detention in Australia awaiting extradition, on remand in custody in England and on a qualifying curfew. In total, this equated to 608 days which the judge said should count towards his sentence. We will return to this aspect because the law requires extradition and qualifying curfew days to be specifically itemised.

4 He now appeals against sentence with the leave of the Single Judge.

5 The appellant had been the rector of a church in Chichester when the offences took place between 1975 and 1982. He was married with two young children. Count 1 related to an incident between 1 May 1975 and 1 September 1976 when the appellant had put his penis into the mouth of JM who was about sixteen years old at the time. She had gone to see the appellant in his study at the vicarage as she had been having doubts about her faith. The appellant told her to kneel in front of him and said that God wanted her to take his penis in her mouth. He then put his penis in her mouth.

6 Count 2 was a multiple incident count involving JM and reflected at least five similar indecent assaults which took place over a period of months. JM's evidence was that she was assaulted very many times. This involved the appellant making JM give him oral sex when he had made various trips with her under the pretext of giving her driving lessons. He had persuaded her parents against her wishes that he should be allowed to give her driving tuition. The appellant had ejaculated, although JM could not recall whether this had been into her mouth. The offending only ended when JM went off to start at university. She not only felt completely confused, but also unsafe, except when she was in the company of others.

7 Count 5 related to a specific incident in 1982 when the appellant had been giving a lift in his car to another parishioner, B, who was then in her 20s. The offence occurred during a period of time when she was vulnerable because of health difficulties. The appellant found a pretext for giving her a lift. He drove her to a secluded spot. Isolating her in that way was a serious feature of the case. She was terrified and screamed to be let out of the car, but the appellant unzipped his trousers, grabbed her hand and used it to masturbate himself. When the journey resumed, B was in such fear that she contemplated jumping out of the vehicle. She was eventually let out at traffic lights.

8 Count 6 also related to a specific occasion in 1982 when the appellant had visited B's home. The appellant demanded to be let in. Once inside he drew the curtains. B was frozen in fear. The appellant removed all her clothing, kissed her breasts and then penetrated her vagina with his finger. He then dressed her and walked out of the property as if nothing had happened. We will detail the effects of the appellant's offending in due course.

9 The appellant emigrated to Australia in 1988. There was an investigation by the Anglican Church of Australia following A's complaint to them in 1999. The appellant made a qualified admission of inappropriate behaviour. In light of the jury's verdicts, we can only regard that as an earlier attempt to evade responsibility for what he had done. He resigned the position he had at that time in the church, but otherwise he denied any wrongdoing and went on to hold other positions in the church in Australia. In due course, he was arrested and remanded in custody awaiting extradition. He was in custody in this country for a time before being released on bail, pending his trial.

10 A trial took place in the summer of 2019. The jury were unable to agree and so the retrial was heard in January 2020. JM and B had to give evidence at both trials when it was suggested to them that they were not telling the truth. The jury rejected that possibility.

11 The judge did not have a pre-sentence report. None was required or asked for, then or now. The judge said that the offending represented an enormous breach of trust by an experienced vicar. There had been an element of grooming carried out under the cloak of spiritual guidance. The appellant bore responsibility for the confusion, fear and helplessness that JM and B had felt at the time of the offences and also for the significant and lifelong effects upon them. The abuse effectively ended JM's close relationship with her parents. She was unable to confide in them. It destroyed her religious belief. She has chronic post-traumatic stress disorder. She explained that the impact of the abuse had lasted a lifetime. B also explained how she had suffered throughout her life with the effects of what the appellant had done. There had been a significant and long-lasting effect on her ability to trust others and form relationships. She also had lifelong post-traumatic stress disorder.

12 The judge referred to the fact that the appellant was 81 years old when sentenced and that he had no previous convictions and was not in good health. We have been told that he had a stroke in 2017 and that his mobility and memory have been affected. His wife was 89 years old. She too was not in good health and was now on her own. The judge accepted that the appellant had done good things in his life, but he was now ruined. The judge was provided with a number of letters which spoke to a better side of the appellant, but in our judgment, they faded into the background when set against the gravity of the offending.

13 The judge said that he had regard to the Sentencing Council's guidance on the approach to sentencing historic sexual offences and to the principles set out in *R v H and others* [2011] EWCA Crim 2753. The judge said that he was obliged to make measured reference to the current sexual offences guidelines, despite the fact that the maximum penalty for one offence of indecent assault at the time of these offences was two years' imprisonment. The judge also referred to *R v Clifford* [2014] EWCA Crim 2245.

14 The judge said that had the offences been committed today, counts 1 and 2 would be classified as offences of rape, contrary to section 1 of the Sexual Offences Act 2003 and that they would be Category 2A offences in the guidelines with a starting point of ten years' imprisonment. Count 5 would be an offence of causing a person to engage in sexual activity without consent, contrary to section 4 of the 2003 Act. It would be, he said, a Category 2A offence, with a starting point of eight years' imprisonment. Count 6 would constitute an offence of assault by penetration, contrary to section 2 of the 2003 Act. He said it would be a Category 2A offence with a starting point of eight years' imprisonment.

15 In fact, because no penetration was involved in count 5, a section 4 offence in Category 2A would have a starting point of two years' imprisonment and a range of one to four years' imprisonment under the guidelines for the Sexual Offences Act 2003.

16 The judge concluded that a combination of consecutive sentences was needed to arrive at an appropriate overall total. He said that he had also to reflect the fact that count 2 was a multiple incident count. He then passed an overall sentence of eight years' imprisonment. He said that the sentence would have been longer if the available maximum penalties had been greater.

17 It is argued on the appellant's behalf by Ms Jones QC, concisely and moderately, that the total sentence of eight years' imprisonment was manifestly excessive in that the judge passed the maximum available sentence and did not allow for mitigating factors or take proper account of the principle of totality when passing consecutive sentences.

18 We begin with the Council's guidance. It is headed "Approach to Sentencing of Historic Sexual Offences". It was produced after the decision in *R v H and others*, above, where this court had considered the same topic. Paragraph 1 of the guidance provides that an offender must be sentenced in accordance with the sentencing regime applicable at the date of sentence. Paragraph 2 underlines that the sentence is limited to the maximum sentence available at the date of the commission of the offence. Paragraph 3 provides that the court should have regard to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003. Paragraph 4 says the seriousness of the offence, by reference to culpability and harm, is the main consideration. The court should not seek to establish the likely sentence had the offender been convicted shortly after the date of the offence. (Such an inquiry would have been particularly artificial and inappropriate here, where mitigating factors such as age and ill-health have only arisen long after the offending.)

19 Paragraph 8 of the guidance provides that an absence of further offending over a long period of time, especially when combined with evidence of good character, may be treated as a mitigating factor. However, the more serious the offence, the less the weight that should normally be attributed to good character. Where good character/exemplary conduct had been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

20 In *R v Clifford*, above, this court considered the guidance. Treacy LJ said at paragraph 30:

> "The Guideline is not seeking to impose an unthinking and mechanistic search for equivalent offences under the 2003 Act. What is required is that sentencing should reflect modern attitudes [...] in the course of which the court may take account of the modern guidelines. The way in which the matter is dealt with in *R v H* at paragraph 47(a) pithily sums up the position:
>
> > 'Sentence will be imposed at the date of sentencing hearing, on the basis of the legislative provisions then current, and by measured reference to any definitive guidelines relevant to the situation revealed by the established facts.'"

The court in *R v Clifford* said that the guidance reflected that approach.

21 Treacy LJ continued:

> "31. In the circumstances of this case, the maximum sentence available on any individual count was markedly less than the maximum available for a number of offences under the 2003 Act [...] There was therefore an inherent limitation on the count by count sentencing process which operated in favour of the appellant and operated as a counterbalance to higher figures in the guidelines.

> 32. In our view, the judge was entitled in the course of his sentencing remarks to observe that some of the offending would now be charged as offences as serious as rape or assault by penetration.
>
> 33. The judge was entitled to draw attention in this way to the gravity of this offending by modern standards, which are to be reflected if old offences such as these are sentenced in the present day [...]
>
> 35. It must be recognised in any event that the judge was sentencing in relation to a multiplicity of incidents involving four different victims. Even with the limitations on the maximum sentence per count, the judge was entitled to structure his sentence by imposing consecutive sentences which would reflect the overall criminality involved according to modern standards and attitudes. Moreover, the use of consecutive sentences was consistent with the Sentencing Council's guideline on totality (see page 7)."

22 In this case, in no instance did the judge pass a sentence which was in excess of the statutory maximum of two years' imprisonment. As Treacy LJ explained in *Clifford*, this was itself a significant counterbalance to the higher figures in present day guidelines. We can see no reason why a sentence of eight years' imprisonment should not have been imposed here, where applying modern standards and attitudes, a sentence well in excess of that would have been justified after taking account of such mitigation as there was. There is, unfortunately, little by way of mitigation when set against the gravity of the offences, although we are especially mindful of the appellant's age and frailty and the difficulties he will have in serving his sentence. Like the judge, we accept that the predicament of the appellant's wife is very sad indeed.

23 By section 143 of the Criminal Justice Act 2003, in considering the seriousness of any offence, the court must consider the offender's culpability in committing it and the harm which was caused. Here, the appellant used a guise of respectability in order to commit these offences. Although this sentence was imposed upon him at an advanced age, the effects of his offending were still being experienced by his two victims many years later.

24 We acknowledge that in ordinary circumstances the principle is that the maximum penalty for any offence should be reserved for the most serious offending of its kind - see, for example, *R v Carroll* (1995) 16 Cr.App.R.(S) 488. Equally, there is a principle exemplified by, for example, *R v Thompson* (1980) 2 Cr.App.R.(S) 244, that it is unusual to impose a maximum sentence where there are genuine mitigating features. We have already indicated our view as to the comparative weight of the mitigation in this case when set against the offending, but in our judgment, the principles in the guidance are the governing ones in a case of this kind. They may have the consequence in circumstances such as these that the maximum sentence is merited whether or not a particular offence can be said to be in the most serious category of its kind and whether or not there are mitigating features.

25 In this case, in our judgment two years' imprisonment for each individual offence cannot be faulted when measured reference is made to the current sentencing guidelines which are relevant to the facts which were established.

26 We turn next to the question of totality. One of the counts was a multiple incident count which could have been charged as five separate offences. For very good reason that did not happen. But the overall position is that the appellant had in fact committed no fewer than

eight offences of indecent assault. We are satisfied that having due regard to modern standards and attitudes, the total sentence of eight years' imprisonment cannot be said to be other than just and proportionate when regard is had to the overall criminality as referred to in *Clifford* and in accordance with the totality guideline.

27 Finally, we return to the question of extradition and qualifying curfew days. Section 243(2) of the Criminal Justice Act 2003 required the judge to announce in open court the number of days for which the appellant had been detained awaiting extradition. Section 240A(8) of the Criminal Justice Act 2003 required the judge to specify in open court the number of days spent on a qualifying curfew. Neither of these things happened in the court below, but we regularise the position now by stating that the appellant was entitled to credit for 430 days' detention in Australia awaiting extradition and that 135 days were spent on a qualifying curfew in this country, resulting in a credit of 68 days. The days he spent on remand in custody here will automatically count. We are told there were 110 such days. As the judge said, that amounts to 608 days in all. Subject to those clarifications, for the reasons we have given, this appeal must be dismissed.

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 has been approved by the Judge.