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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 690

CASE NO 201804540/A1

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 29 April 2021

LORD JUSTICE BEAN

MRS JUSTICE FARBEY DBE

RECORDER OF NEWCASTLE

(HIS HONOUR JUDGE SLOAN QC)

(Sitting as a Judge of the CACD)

REGINA

V

FOWZI HLAL

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NON-COUNSEL APPLICATION

JUDGMENT

MRS JUSTICE FARBEY:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. No matter relating to either of the complainants shall, during their lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of sexual offences. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. On 26 October 2018 HHJ Barnes, sitting in the Crown Court at Hove, sentenced the applicant and his co-defendant, Paul Kariuki, for a number of offences including two offences of rape. The applicant was 21 years old. Both the applicant and Kariuki were made the subject of extended sentences comprising a 15-year custodial period and a 5-year extended licence period under the dangerousness provisions of section 226A of the Criminal Justice Act 2003.
3. The applicant applies for an extension of time in which to renew his application for leave to appeal against sentence following refusal by the single judge. The applicant's former solicitors were notified of the single judge's refusal on 26 February 2019. He contends that his solicitors sent the notification of the single judge's refusal to the wrong prison. He had been unaware of the decision until he contacted the solicitors for an update in October 2020. He subsequently requested the Form SJ which was sent to him on 22 October 2020 and received in the Criminal Appeal Office on 19 November 2020.
4. The applicant had been convicted after a trial of the following offences: count 1, the rape of CP; count 2, possession of criminal property; count 6, the rape of LN; count 7, assault by penetration of LN. In addition, the applicant was sentenced for the possession of Class A drugs with intent to supply. That case was transferred from Bristol Crown Court for sentence. The applicant had pleaded guilty to that matter.
5. The prosecution case was that the applicant and Mr Kariuki were involved in drug dealing and were “cuckooing” vulnerable young women. They took over the address of CP. Both raped her. They then, whilst on bail for that matter, went to Carlisle, where they did the same to LN whom they also raped.
6. In her sentencing remarks the judge referred to the devastating effects of the rapes on the two victims. Both victims had found new depths of misery, feeling dehumanized. One of the victims had indicated suicidal ideation. The applicant and Kariuki had behaved callously and brutally. They were both young, yet both had serious criminal records. The applicant had started his criminal career with robbery. The number and brutality of their offences led the court to conclude that the applicant and Kariuki were both dangerous young men within the statutory definition of dangerousness.

7. The judge said that the applicant's total sentence needed to reflect the use of violence, the repeated supply of Class A drugs, the grooming and the violation of the two extremely vulnerable victims and the very serious consequences for them. Applying the sentencing guidelines on rape the judge said:

"I'm starting at category 2A, but there are so many aggravating features here."

8. The terms of the extended sentence to which we have already referred were intended to reflect the totality of the applicant's offending on all counts.
9. The grounds of appeal do not challenge the finding of dangerousness but contend that the sentence was manifestly excessive and wrong in principle because it did not sufficiently take account of the applicant's youth and lack of maturity or the fact that his previous convictions were much less serious.
10. We are in no doubt that the judge was entitled to treat the rape offences as falling within category 2 harm, given the vulnerability of the victims and the severe psychological harm which the applicant inflicted upon them. The judge was likewise entitled to conclude that the level of culpability was high - falling within culpability A - as the applicant essentially acted with Kariuki. The starting point for a single category 2A offence is 10 years' custody with a category range of 9 to 13 years' custody. The judge was entitled to make a significant upward adjustment and to sentence outside the range to reflect the fact that she was sentencing for two offences of rape and to reflect the totality of the applicant's offending. Her sentencing remarks make clear that that was her approach and it is not open to criticism.
11. We have taken into consideration that the applicant was aged only 19 years old at the time of the main offending. But these were grave offences. The applicant targeted vulnerable women. The offences involved the use or threat of violence. They were committed against the background of cuckooing for the purpose of drug dealing. The second rape was committed when the applicant was on bail. Although these offences marked an escalation in the seriousness of the applicant's offending, he was not a person of good character, having previous convictions for drug offences and for robbery.
12. In these circumstances, we agree with the single judge that it is not arguable that the sentence imposed by the judge was manifestly excessive. There is no good reason for an extension of time, which would serve no purpose. We refuse to extend time and refuse leave to appeal.

13. We note that the applicant was aged 20 at conviction. The sentence was recorded as imprisonment. Given the applicant's age at conviction the sentence should instead have been recorded as detention in a young offender institution pursuant to section 96(1) of the Powers of Criminal Courts (Sentencing) Act 2000. While this would make no material difference to the applicant, we note it for the sake of accuracy.

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

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