IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202103352/A3

NCN [2022] EWCA Crim 1206

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 3 August 2022

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
LORD JUSTICE HOLROYDE
MRS JUSTICE MAY DBE
MR JUSTICE GOOSE

REGINA
v
HARRY BOWMAN

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MR R ENGLISH and MISS R COOPER appeared on behalf of the Appellant
MR R WYN JONES appeared on behalf of the Crown

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J U D G M E N T
(Approved)

1. THE VICE-PRESIDENT: This is an appeal by leave of the single judge against a total sentence of 14 years' detention in a young offender institution for a total of 25 sexual offences. Each of the seven victims of those offences is entitled to the lifelong protection of the provisions of the Sexual Offences (Amendment) Act 1992. Accordingly, during their respective lifetimes no matter shall be included in any publication if it is likely to lead members of the public to identify any of them as a victim of these offences. We shall simply refer to the victims as C1, C2, etcetera.
2. The offences began when the appellant was very young. His victims were even younger. He pleaded guilty to the majority of the offences in January 2021 and to the remainder of them in April 2021. His sentencing was delayed because he was awaiting a trial on other matters, of which he was acquitted and about which we say no more.
3. We shall briefly summarise the offending, so far as possible in chronological sequence. We will refer to relevant provisions of the Sexual Offences Act 2003 simply by the section number, and we will indicate in relation to each offence the term of detention imposed by the judge.
4. Between December 2015 and September 2017, when the appellant was aged 14 to 16, he committed four offences against C2, a girl two years his junior with whom he is said to have had an on/off relationship. We summarise those offences:
5. Count 9, inciting a child under 13 to engage in sexual activity, contrary to section 8. When C2 was 12 the appellant required her to send him indecent images of herself, threatening to commit suicide if she did not do so. C2 naively believed that the threats were serious. She sent him an image of her breasts. Sentence: five years, consecutive to other sentences.
6. Count 10, causing a child to engage in sexual activity, contrary to sections 10 and 13. The appellant required C2 to send further indecent images when she was aged 13. Sentence: two years, concurrent.
7. Count 12, sexual activity with a child, contrary to sections 9 and 13. When C2 was 13, and the appellant 15 or 16, he penetrated her mouth with his penis. Sentence: five years, concurrent.
8. Count 13, inciting a child to engage in sexual activity, contrary to sections 10 and 13. When C2 was 14, and the appellant 15 or 16, he encouraged her to allow him to penetrate her anus with his penis. Sentence: five years, concurrent.
9. Between May and September 2017, when he was aged 16, the appellant committed an offence against C1 of causing a child to watch a sexual act, contrary to sections 12 and 13. This was count 7. C1 had entered into a relationship with the appellant in about February 2017, when she was only 12 years old. When she was 13 he caused her to watch a video showing himself masturbating. Sentence: two years, consecutive to other sentences.
10. In the autumn of 2017 the appellant, aged 16, began a relationship with C3, who was 15. He made an indecent photograph of her, contrary to section 1 of the Protection of Children Act 1978 and sent it to C5. This was count 24. He also committed an offence (count 18) of sexual activity with a child, contrary to sections 9 and 13, by penetrating C3's vagina with his penis. The sentences, concurrent with one another and with other sentences, were one year and five years respectively.
11. In late 2017 or early 2018 the appellant met C4 over the internet. They were both 16. C4 was at a low point in her young life, and the appellant initially appeared to be kind

and reassuring to her. That appearance soon changed. The appellant persuaded her to take her clothes off for him on camera, which she felt she should do because he had been kind. Unbeknown to her, the appellant took screen shots. That was count 19, making an indecent photograph contrary to section 1 of the 1978 Act. He then demanded more images. This was count 20, inciting C4 to engage in child pornography, contrary to section 48. He threatened to send the images he had already recorded to her family if she did not comply. When C4 tried to block him from further communications he did indeed send the images to her mother and sister, telling the mother to teach C4 some manners. This was count 21, distributing indecent photographs of a child, contrary to section 1 of the 1978 Act. He then threatened C4 that if she did not comply with his wishes he would come to her home, the address of which she had given him, petrol bomb the house and kill her. This was charged in count 22, threatening to damage or destroy property, contrary to section 2 of the Criminal Damage Act 1971. He falsely told C4 that he was only 14 and therefore "a minor" against whom the police would not be able to take any action. The judge imposed sentences of one year for each of those offences. Two of the four were concurrent but the sentences on counts 19 and 21 were consecutive.

12. In October 2017 the appellant began a relationship with C5. He was 16, she was 15. He persuaded her to video herself performing sexual acts for him and he secretly took screen shots: count 23, making indecent photographs of a child, contrary to section 1 of the 1978 Act. Sentence: one year, concurrent. At a later date, when she refused his request to visit his house, he threatened to send those screen shots to her mother. C4 therefore went to his house, where he took her to his room and asked her for sex. He persisted in that request despite her refusal, took off her clothes and penetrated her vagina with his penis: count 25, sexual activity with a child, contrary to sections 9 and 13. Sentence: five years, concurrent. Subsequently, the appellant sent one of the screen shots to C2. This was count 26, distributing an indecent photograph of a child, contrary to section 1 of the 1978 Act. Sentence: one year, concurrent.

13. In the summer of 2018 the appellant, by now aged 17, met C6, aged 15, over the internet. He told her he was 18 and lived in Scotland. He persuaded her to send him a nude photograph of herself: count 27, making an indecent photograph of a child, contrary to section 1 of the 1978 Act. Sentence: one year. He then demanded more images, threatening that if C6 did not do what he wanted he would send the image he had already received to her mother or to Facebook. C6 felt she had no choice but to comply. This was charged in count 28, inciting child pornography, contrary to section 48. Sentence: one year. The appellant caused her to penetrate her own vagina: count 29, inciting a child to engage in sexual activity, contrary to sections 10 and 13. Sentence: two years, concurrent. The appellant became increasingly controlling, encouraging C6 to show him scars from her self-harming and telling her she should make the cuts deeper. He pleaded guilty to sending an electronic communication with intent to cause distress or anxiety, contrary to section 1 of the Malicious Communications Act 1988. Sentence: one year.
14. Those offences against C6 were committed during a period both before and after the time when the appellant was first arrested, which was in August 2018. He was not immediately charged with any offences, but must have known he would be. He nonetheless went on to commit further offences, not only against C6 but also against his final victim, C7.

15. C7 was only 13 when the appellant befriended her over the internet. He told her he was 14, but in fact he turned 18 soon after they came into contact. He gave her the impression that he was someone she had met whilst in care, and initially seemed kind. He then quickly changed and demanded indecent images of her, threatening to put personal information about her on social media if she did not do so. She felt she had no choice and therefore complied: count 21, inciting child pornography, contrary to section 48. Sentence: one year. He went on to demand increasingly explicit images. When she told him that she was distressed and felt like self-harming, he encouraged her to cut herself. He caused her to engage in sexual activity by touching her clitoris, penetrating her anus with a hairbrush and touching her vagina: counts 32 to 34, inciting a child to engage in sexual activity contrary to section 10. Sentences: two years, concurrent, on each.
16. When the appellant's electronic devices were seized by the police and examined, a large number of indecent images of children, some as young as two and three, were found. There were 364 images at Category A, 245 at Category B and 613 at Category C. These were charged in counts 35 to 37, making indecent photographs of children, contrary to section 1 of the 1978 Act. Sentences: one year, concurrent, on each.
17. At the sentencing hearing on 24 September 2021, as in this court, the prosecution were represented by Mr Wyn Jones and the appellant by Mr English and Miss Cooper. They made submissions as to the relevant sentencing guidelines. These included, as the judge recognised, not only the relevant offence-specific guidelines but also the over-arching principles guidelines relating to totality, to sentencing children and young people and to sentencing those with mental disorders.
18. Unfortunately no victim personal statements had been obtained. The victims understandably had nonetheless wanted the sentencing hearing to proceed. The absence of any victim personal statement did not, of course, mean that these offences had not caused serious harm to the victims.
19. The judge was assisted by a pre-sentence report and by a psychologist's report. The former reported the appellant as having limited social skills and difficulty in recognising the emotions of others, with consequently limited empathy with his victims. The latter was prepared primarily in relation to the appellant's fitness to plead and to stand trial, but it provided helpful information as to his mental health problems, namely dyslexia, anxiety, depression and autism. Autistic disorder syndrome had been diagnosed in May 2019, when a follow-up appointment was to be arranged, but it appears that that did not happen. The judge also read a letter from the appellant's parents, which showed the much better side of the appellant and described the difficulties he had had in forming friendships because of his mental health problems.
20. In his sentencing remarks, the judge regarded the offending as falling into three groups: the contact offences against girls whom the appellant had met; the non-contact offences against those he met over the internet; and the further offences which were committed to satisfy the appellant's own gratification, such as sending images to a girl's family as an act of revenge when he could not get his own way.
21. The judge identified a number of mitigating factors: youth, the remorse indicated by the guilty pleas, a long period of remand in custody in difficult conditions whilst awaiting sentence, the counselling which the appellant had undertaken in custody, the absence of previous good convictions and the mental health issues. The judge assessed the

appellant as dangerous, but did not think it necessary or appropriate to impose an extended determinate sentence.

22. Looking at the most serious of the offences, the judge assessed counts 12, 13, 18 and 25 as Category 1A offences under the relevant guideline, with a starting point for each of five years' custody and a range from four to 10 years and count 9 as a Category 3A offence under the applicable guideline, again with a starting point of five years. He allowed credit of 25 per cent for the pleas entered in January 2021 and 20 per cent for those entered at a later hearing. He imposed the sentences to which we have referred. He made ancillary orders, which are not challenged and about which we need say no more.

23. It can be seen at once that the judge faced a difficult sentencing process. On the one hand the offending was very serious and was committed over a lengthy period against a number of young, vulnerable victims. On the other hand, the offender was himself very young when the offending began and only just into adulthood when it ended, and he has mental health problems.
24. Unfortunately, there appears to have been a collective oversight by the judge and counsel in relation to counts 12, 13, 18 and 25, the offences of sexual activity with a child contrary to sections 9 or 10 and 13. The maximum sentence for such an offence is 14 years' custody in the case of an adult offender, but only five years if at the time of the offence the offender was aged under 18, as this appellant was. It follows that in imposing five years' detention for each of those offences, the judge was imposing the maximum sentence even though the appellant was entitled to credit for his guilty pleas. This point has been identified by the vigilance of the Criminal Appeal Office lawyer, to whom we are grateful, and it is common ground that those sentences must at the very least be adjusted to reflect the guilty pleas.
25. In addition to that point, Mr English, assisted by Miss Cooper who has been good enough to appear in this court *pro bono*, advances a number of grounds of appeal. He submits that the judge failed sufficiently to reflect the important factor of the appellant's youth, in particular by failing explicitly to consider what sentence was likely to have been imposed as at the dates of the offences. It is further submitted that insufficient weight was given to the appellant's mental health difficulties, which were relevant in assessing the appellant's culpability. Relying on the medical report to which we have referred, Mr English submits that those mental health issues did limit the appellant's understanding of the seriousness of what he was doing. Although it is not suggested that he had no idea that what he was doing was wrong, Mr English submits that his condition did impair his ability to understand the nature and consequences of his actions.
26. Mr English also submits that the judge's starting points in relation to at least some of these sentences are difficult to discern, and that the judge failed to make any reference either to the long delay before sentencing (which was not attributable to any fault on the appellant's part) or to the particular difficulties of serving time in custody during the Covid pandemic.
27. We are very grateful for the submissions on behalf of the appellant.
28. The single judge directed that a prison report be obtained. It showed that the appellant had displayed a poor attitude to his detention and it referred to an adverse adjudication and other issues relating to the appellant's behaviour. Those critical observations related,

however, to dates before the appellant was sentenced and Mr English makes the point that the sentencing process has brought with it an increased understanding by the appellant of the seriousness of what he has done. In any event, those matters occurring whilst in custody cannot and do not make the offending any more serious than it already is.

29. The single judge also directed that prosecution counsel should attend this hearing. We are grateful to Mr Wyn Jones for doing so.
30. The appellant was sentenced some months before the decision of this court in R v Limon [2022] EWCA Crim 39 which emphasised the need to follow the principles in the children guideline where an adult is being sentenced for offences committed as a child. The key point is that if the offender's culpability was reduced by his youth and immaturity at the time of the offending, that level of culpability is not increased by the intervening passing of time. It is therefore necessary to consider what was the maximum sentence which could have been imposed at the time of the offending and what sentence was likely to have been imposed.

31. Viewed as a whole, this was serious sexual offending against victims who were vulnerable by reason of their age and, in some instances, also by reason of their personal circumstances. Over a significant period of time the appellant moved from one victim to the next, sometimes playing them off against each other for his own gratification. In some instances he used lies and deceptions to form an initial relationship with his victim. Once he had acquired a degree of control over his victims he determinedly pursued his sexual aims, quickly resorting to nasty threats and blackmail when it suited him to do so. It has to be said that there is a troubling air of malice and vindictiveness about some of his conduct, going beyond what he perceived to be necessary to achieve his aims.
32. The appellant was under the age of 18 at the time of all the offences except those against C7. His young age was of course an important mitigating factor. It is however necessary to bear in mind the following: he was 16 or 17 at the time of many of the offences, and therefore not a very young child; it is not in our view realistic to regard these offences as youthful sexual experimentation; the last six offences were committed after he had been arrested; and he was an adult when he committed the offences against C7.
33. The appellant's mental health difficulties are also an important mitigating factor. They certainly do not remove all culpability, but we accept that his autistic condition did limit his ability to recognise the emotions of others and perhaps also the seriousness of the harm he was causing.
34. Balancing those considerations we have no doubt that if the appellant had been sentenced as a 17 year old for all the offences which he had committed up to that point, he would have received a substantial period of detention, pursuant to what is now section 250 of the Sentencing Act 2020, for one or more of the offences for which such a sentence was available. His further offending against C7 when he was a young adult, despite having been arrested, makes an even longer period of custody inevitable.
35. At this stage of proceedings, our principal concern must be with the totality of the sentencing, not with its precise structure. We have concluded that, in a difficult sentencing process, the judge failed to give sufficient weight to the important combination of the appellant's youth and mental health difficulties. Having reflected on

the sentencing guidelines applicable to adult offenders, and on the appropriate reductions to be made in accordance with the over-arching principles guidelines to which we have referred, we have concluded that a total term of 10 years' detention was appropriate. The total sentence of 14 years' detention was therefore manifestly excessive.

36. For those reasons we allow the appeal to this extent. We do not alter the terms of detention imposed below on counts 7, 10, 19, 20, 21, 22, 23, 24, 26, 27, 28, 30, 31, 32, 34, 35, 36 and 37. However, we order that all those sentences shall run concurrently, making a total of two years. We quash the sentences imposed on counts 9, 12, 13 and 18 and substitute for each of them a term of two years' detention. They too will be concurrent with other sentences. We quash the sentence on count 25 and substitute two years' detention, consecutive to other sentences. We order that the sentence of two years on count 29, which was previously a concurrent sentence, should run consecutively to other sentences. Finally, we quash the sentence on count 33 and substitute four years' detention, again consecutive to other sentences.
37. Thus the total sentence becomes one of 10 years' detention in a young offender institution. We leave as before the ancillary orders made below.

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