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NCN: [2022] EWCA Crim 429

IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202103514/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 11 March 2022

Before:

LADY JUSTICE CARR DBE

MRS JUSTICE MAY DBE

MRS JUSTICE COLLINS RICE DBE

REGINA
V
MICHAEL WATSON

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MS L ADDY appeared on behalf of the Applicant.

J U D G M E N T

LADY JUSTICE CARR: The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Where a sexual offence has been committed against a person, no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

Introduction

1. This is a renewed application for leave to appeal against sentence. The applicant is now 62 years old. In September 2021 he was convicted following trial before Recorder Cox QC ("the judge") in the Crown Court at Leeds of four counts of sexual assault contrary to section 3 of the Sexual Offences Act 2003. A month later he was sentenced by the judge to an extended sentence of 10 years' imprisonment pursuant to section 279 of the Sentencing Act 2020, comprising of a custodial term of 7 years and an extended period of licence of 3 years.

The Facts

2. The relevant facts are set out in the Criminal Appeal Office summary and do not need to be rehearsed in any detail for present purposes. The offending involved the applicant's step granddaughter "X" when she was 16 and 17 years old. The first two counts (counts 1 and 2) involved multiple offending over a 4-month period between August 2020 and January 2021. There was a clear breach of trust and also grooming. X described herself as, and the judge found her to be, acutely vulnerable and isolated at the time. The applicant had relevant previous convictions in 2016 in the shape of convictions for six sexual offences involving a girl under the age of 16, of which he was convicted after trial and for which he was then sentenced to 6 years' imprisonment. He was on licence at the time of the index offending having been released at the beginning of 2019.

Grounds of Appeal

3. Ms Addy appears pro bono and the applicant has had the benefit of her representations to us. She submits that the judge's starting point was too high and in the wrong category of the Sentencing Council Guideline for Sexual Offences. A starting point akin to category 1A offending was applied namely, 4 years and then uplifted to 7 years for aggravating features. However, she submits there were no category 1 factors here. This was squarely category 2A offending on counts 1 and 2, carrying a starting pointing of 2 years. The offending in counts 4 and 6 was not even category 2A offending and although counts 1 and 2 were multiple incident counts, counts 4 and 6 were single occasion counts. Globally Ms Addy accepts that the offending could be treated as category 1A offending but that there was only limited scope for going above the 4-year starting point for aggravating features.

The uplift applied by the judge of 3 years was far too much. In addition, it is submitted that the judge double counted some of the features in the case in assessing that appropriate uplift which may explain the overall error relied upon by Ms Addy. In her submission, the custodial term imposed should have been no higher than some 5 years.

Discussion

4. The judge was of course well placed to sentence the applicant following trial. Counts 1 and 2 were category 2A offences with a starting point of 2 years' custody but they were multiple count offences. Further, the overall sentence had to reflect the totality of the applicant's offending including that and the two additional counts, namely counts 4 and 6. There were here multiple significant aggravating features: the applicant's previous convictions involving similar offending; the fact that he was on licence at the time; the grooming which involved gifts and the funding of the purchase of cannabis and the provision of alcohol; the emotional blackmail deployed by the applicant once X had exposed his behaviour whether or not falling within the strict sense of blackmail as referred to in the Guideline. Particularly troubling were the applicant's intimidatory threats to batter X and kick her in the vagina and to break her boyfriend's legs. X suffered lasting damage to her family relationships, being afraid of going far from home and experiencing flashbacks. The applicant demonstrated no remorse.

5. Taking into account the totality of the offending and the multiple significant aggravating features and avoiding any double counting the judge was unarguably entitled to go above a custodial term of 4 years to 7 years. This was what we take the judge to have meant when he referred to the case falling "at the very top of category 1A".

6. There is rightly no challenge to the finding of dangerousness once supported among other things by the author of the pre-sentence report and the judge's assessment that the applicant was both arrogant and lacking any remorse. Nor is there any challenge to the period of 3 years by way of extended licence period.

7. There is in our judgment therefore no merit in this application. The final sentence was, as the single judge commented when refusing leave severe, but it was not arguably manifestly excessive and this renewed application will be dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk