IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2021/02565/B4
NCN: [2022] EWCA Crim 999

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday, 10 May 2022

**B e f o r e:**

**LORD JUSTICE POPPLEWELL**

**MR JUSTICE TURNER**

**THE RECORDER OF NEWCASTLE**
**HIS HONOUR JUDGE SLOAN QC**

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**R E G I N A**

**- v -**

**MARC RICHARD STOKES-DENSON**

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Transcript of Epiq Europe Ltd,
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**Mr S Tettey** appeared on behalf of the Applicant

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

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Tuesday, 10 May 2022

**LORD JUSTICE POPPLEWELL:**

1. On 6 July 2021, the applicant was convicted on two counts following a trial at Liverpool Crown Court before His Honour Judge Murray and a jury. Count 1 was an offence contrary to section 14(1) of the Sexual Offences Act 2003 of arranging or facilitating sexual activity with a child contrary to section 9 of that Act. Count 2 was an offence of attempting to have a sexual communication with a child contrary to section 1(1) of the Criminal Attempts Act 1981.

2. On 9 July 2021 he was sentenced by His Honour Judge Murray to imprisonment for 5½ years on count 1; and 18 months, to run concurrently, on count 2. The judge imposed a Sexual Harm Prevention Order for an indefinite period. Having been convicted of an offence listed in Schedule 3 of the Sexual Offences Act 2003, the applicant was required to comply with the notification provisions of Part 2 of the Act; that was for an indefinite period, which applied automatically by reason of the length of his sentence.

3. He seeks to renew his application for leave to appeal against conviction and sentence following refusal by the single judge, and applies for an extension of time in which to do so.

4. The applicant had used a website to engage in text and Skype communications with a woman calling herself Becky and her 12 year old daughter Lizzie. They were, in fact, both undercover police officers. The messages involved making arrangements between the applicant and Becky for him to meet them both in order to engage in penetrative sexual activity with Lizzie. The communications went on over a period of over two months. Those with Becky were extensive and explicit. We need not set them out in any detail; they involved the applicant discussing with Becky plans to have oral, vaginal and anal sex with Lizzie in the presence of Becky. The communications with Lizzie were less explicit, but were premised on

Becky having told Lizzie of his plans.

5. The defence case, supported by the applicant's account in evidence, was that he did not intend to attend the meeting being discussed, but was role-playing with Becky because he was angry that any mother could contemplate such behaviour, and he wanted to obtain sufficient evidence about her intentions to be able to report her to the police. This was against the background, he said, of his having initially come across a person with very similar details on the website offering to make their child available for sex, and his having reported them to the site administrator, Draco, by a private message. He said he had been told by Draco that the person had been blocked from the website. This aspect of his account had been mentioned in his interview but police enquiries had not resulted in evidence either confirming or contradicting such contact with Draco.

6. The applicant was of good character at the age of 45, and there was nothing on any of the electronic devices seized when he was arrested to suggest a sexual interest in children.

7. On count 1, therefore, the issue for the jury was whether the applicant intended to carry out sexual activity with Lizzie. On count 2 the issue was whether his communications with her were for his sexual gratification.

**The conviction application**

8. The sole ground advanced in support of the application for leave to appeal against conviction is that the applicant's trial was unfair by reason of the judge's ruling that the evidence of a consultant forensic psychiatrist, Dr Ho, should not be admitted. The evidence which the applicant wished to adduce from Dr Ho was contained in a report which had been served on the Crown. Dr Ho's report recorded that, based on the available information (which largely came from the applicant himself through a remote interview with him) he presented with

features of adjustment disorder. Dr Ho explained that the disorder is characterised by subjective states of distress and emotional disturbance, usually interfering with social functioning and performance arising in a period of adaption to a significant life-change or stressful event. Manifestations vary, including depressed mood, anxiety or worry or a mixture of those features; and a feeling of inability to cope, plan ahead or continue in the present situation, as well as a degree of disability in the performance of daily routine.

9. Dr Ho gave his opinion that, at the time of the offending, the applicant was experiencing significant mental and emotional stress due to the severing of his long term relationship with his wife. Dr Ho's conclusion at paragraph 10.13 of his report was in the following terms:

> "It is therefore believable that the significant stress and depression experienced resulted in an adjustment disorder in [the applicant] contributing to him behaving in a manner where he was unlikely to consider fully the consequences of his actions. Whether this resulted in a lack of intent is a matter for the jury."

10. Mr Tettey, who represented the applicant at trial as before us, submitted to the judge that the explanation of an adjustment disorder would help the jury to understand whether it had contributed to the applicant acting in a way in which he would not otherwise have acted, such that he was unlikely to have considered fully the consequences of his actions. It was relevant, he submitted, when considering whether the applicant intended to identify and catch a child sex offender, as he contended, or abuse the child himself, as the prosecution contended. He relied on the decision of this court in *R v Huckerby & Power* [2004] EWCA Crim 3251. In that case the defendant was the driver of a Securicor van which was subjected to a robbery and a significant part of the circumstantial evidence against him was that he had failed to trigger a tracking device when the robbery occurred. Evidence that he was suffering from post-traumatic stress disorder was treated as relevant to the reason for his failure to trigger the tracking device.

11. The judge ruled that he was sure that the jury would have understood the applicant's evidence without the need to hear expert evidence. Dr Ho had correctly stated that the issue of intent was a matter for the jury. As to whether the applicant had not fully considered the consequences of his actions due to an adjustment disorder, that was a matter for mitigation. The evidence was not relevant to the issue of intent and was therefore inadmissible. The case of *R v Power & Huckerby* was a very different case, the judge said, on its facts. The judge went on that, even if he were wrong and the evidence were of tangential relevance, the evidence could distract the jury into considering whether he had or did not have an adjustment disorder.

12. Mr Tettey has made essentially the same submissions to us as he made to the judge at trial. He argues that an adjustment disorder was a condition that required explanation to the jury, as it was the type of issue with which the jury were unlikely to be familiar and one that the applicant would not be able to explain. He accepted that the evidence was not exculpatory evidence and that the central issue of intention was still one which would be for the jury but, he submitted, the evidence was important explanatory evidence which would enable the jury to understand the state of mind of the applicant.

13. In refusing an extension of time the single judge said the following:

> "The issue before the jury was therefore whether they could be sure you had the requisite intent in relation to the two offences with which you were charged. Dr Ho was clear in his report that you suffered no acute psychotic episode at the time of the offences. Having only seen the initial disclosure of the prosecution case and your account, he opined that it was 'believable' that the personal stress you were experiencing at the time led to an adjustment disorder 'contributing to [you] behaving in a manner where [you] were unlikely to consider fully the consequences of [your] actions. Whether this resulted in a lack of intent was a matter for the jury.' The judge was right in those circumstances to conclude that Dr Ho could not assist the jury with the question of intent which was, as Dr Ho identified, a matter for them. The judge was right to distinguish the case of *R v Huckerby & Power* [2004] EWCA Crim 3251 which was decided on very different facts. If the jury were sure that you had the requisite intent at the time of your

> discussions with Becky, then it was immaterial that you behaved in that way because you had not considered the consequences of your actions. That is something which would go to mitigation rather than intent. You gave evidence that it did not occur to you to do certain things such as ask Lizzie for a photo of Becky because of the stress you were under at the time and that your life was subsequently chaotic. As the judge said, the jury would understand the point without the need for psychiatric evidence. In any event, there is a question over whether Dr Ho's opinion was significantly clear given that he did not say, even on the balance of probabilities, that she was suffering from such a disorder. There is no merit in the grounds you advance. You rightly criticise no other aspects of your trial. Your conviction is not arguably unsafe. Leave to appeal conviction is accordingly refused. No extension of time is granted as it would serve no useful purpose."

14. We entirely agree with those remarks of the single judge and cannot improve upon them. Accordingly, we refuse the application in relation to conviction.

**Sentence**

15. The judge decided that a pre-sentence report was not necessary. In his sentencing remarks he summarised the offending as involving a period of about two months, during which the applicant developed a relationship with Becky, whom he ascertained was prepared to allow men to rape her 12 year old daughter. He had sent messages to encourage her to allow him to rape her vaginally, anally and to the mouth. He had spoken about the size of his penis and how he might hurt her and about contraception. He had also spoken about how Becky might sexually touch Lizzie before making her crawl to him for oral sex. The applicant had communicated with Lizzie asking what her mum did and if her mum had explained what he would do to her and whether it excited her. He had clearly believed that Becky was passing on to Lizzie his explicit messages to Becky, and clearly believed that Lizzie was already aware of what he had said in that respect.

16. It had been, the judge said, a prolonged and determined attempt to have penetrative sexual activity with a 12 year old girl in the presence of her mother. The judge referred to the

report from Dr Ho and gave a fair summary of its contents. He said that having seen the applicant giving evidence, he concluded that the applicant was an intelligent, determined person with a "deep seated sexual attraction to children" and he rejected the notion that the applicant's actions had been as a consequence of an adjustment disorder. He had acted quite deliberately and there had been planning and cunning. It had been for his own sexual purpose. The judge found that the applicant was dangerous within the statutory meaning of the term, but exercised his discretion not to impose an extended sentence on the grounds that a determinate sentence and Sexual Harm Prevention Order would be sufficient to protect the public.

17. The judge had regard to the cases of *R v Privett* [2020] EWCA Crim 557; [2020] 2 Cr App R (S) 45; *R v Reed & Ors* [2021] EWCA Crim 572; [2021] 1 WLR 5429; and *R v Murphy* [2021] EWCA Crim 794. He applied the approach in those cases to the Sentencing Council Guidelines in respect of section 14 and section 9 of the Sexual Offences Act 2003. The section 9 offences, if committed, would have been in Category 1A of the section 9 Guideline, which has a starting point of 5 years' custody with a range of 4 to 10 years. There was meticulous planning and targeting of a particularly vulnerable 12 year old girl, who had already been abused by her mother, on what the applicant had been told. There was a significant disparity in age. Had Lizzie been a real child, the nature of the acts intended, and the discussion of the harm which would have been caused to Lizzie, would have resulted in a sentence after a trial of 7½ years before considering mitigation. The judge reduced this to 6 years to reflect the fact that the section 9 offences were not committed because there was no real child, and that therefore that element of harm was reduced. He reduced this further by 6 months to reflect the mitigation, which he identified as being the applicant's previous good character, lack of previous convictions and some delay. He said that the applicant had shown no remorse.

18. On count 2 he imposed a concurrent sentence taking into account principles of totality

and referring to the Covid-related effect on prison conditions which had been referred to in *R v Manning* [2020] EWCA Crim 592.

19. Mr Tettey's submission is that the sentence was manifestly excessive. There were four strands to his argument. First he submitted that the judge should have obtained a pre-sentence report in light, in particular, of the fact that the applicant had no previous convictions and that there was no other evidence of a sexual interest in children. Secondly, he submitted the judge erred on the weight of the evidence in concluding that the applicant had a deep seated sexual interest in children. Thirdly, he submitted that the starting point which the judge took was too high and that the judge had failed to take sufficient account of the fact that there was no real child involved and that the applicant had withdrawn from a meeting. Fourthly, he submitted that the length of the Sexual Harm Prevention Order was too long, especially in light of the fact that the notification requirements were by statute required to last a lifetime.

20. We can detect no merit in any of these points and again cannot improve on the comments of the single judge. She said this:

> "You were convicted of serious offences for which a lengthy sentence of imprisonment was inevitable. The judge had presided over your trial at which you had given evidence. He was in the best possible position to determine on the evidence he heard that you are an intelligent and determined person with a deep-seated sexual attraction to children. The judge was also well-placed to assess and reject the contention that the adjustment disorder from which you may have suffered at the time played no part in this well-planned and lengthy offending, which was for your own sexual purposes. In those circumstances the judge was entitled in his discretion not to order a pre-sentence report on you as it would have served no useful purpose. The judge was mindful of the guidance given in *R v Privett* on how to sentence in cases of this type where there is no actual victim. As you can see, the judge correctly placed the offending in Category 1A of the relevant Sentencing Council Guideline. This has a starting point of 5 years with a range of 4 to 10 years' imprisonment. He was also sentencing you for attempting sexual communication with a child. The judge's approach in ordering the sentence on that matter to run concurrently, whilst reflecting the offending in the sentence on

> count 1, was entirely appropriate and necessarily involved an uplift from the starting point. The judge was also entirely justified on the facts of this case in concluding that, had Lizzie been a real 12 year old child, the nature of the intended acts and the duration of the contact warranted a substantial upward adjustment from the starting point. He reduced the notional sentence by 18 months to reflect the fact there was no real victim and then by a further six months to reflect your personal mitigation. The resulting sentence is not arguably manifestly excessive. The judge determined that you are a dangerous offender and represent a danger of serious harm to children. He drew back from passing an extended sentence on the basis that this was your first offending of this kind. In the light of that he was imposing a sentence of some length and regarded the fact that there was to be a sexual harm prevention order as providing sufficient protection for the public. It is unarguable on the facts of this case that a Sexual Harm Prevention Order should not have been imposed for an indefinite length."

21. For these reasons an appeal against sentence has no real prospect of success and we refuse the application for the necessary extension of time, which would serve no useful purpose.

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

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