

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

NCN: [2023] EWCA Crim 1081



No. 202300536 A2

Royal Courts of Justice

Friday, 8 September 2023

Before:

LORD JUSTICE POPPLEWELL

MR JUSTICE LAVENDER

MR JUSTICE BRYAN

REGINA

V

FRANK RONALD AGATE

**REPORTING RESTRICTIONS APPLY:
THE SEXUAL OFFENCES (AMENDMENT) ACT 1992**

Computer-aided Transcript prepared from the Stenographic Notes of
Opus 2 International Ltd.
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

J U D G M E N T

MR JUSTICE LAVENDER:

- 1 The provisions of the Sexual Offences (Amendment) Act 1992 apply in this case. No matter relating to any of the victims of the applicant's sexual offences shall, during their lifetime, be included in any publication if it is likely to lead members of the public to identify them as the victim of any of those offences.
- 2 The applicant renews his application for permission to appeal against the sentences imposed on him on 27 May 2021 in the Crown Court at Kingston-upon-Thames by HHJ Barklem, namely an extended sentence of 13 years, consisting of a custodial term of ten years and an extended licence period of three years, for one count of attempted rape and three concurrent extended sentences of seven years, each consisting of a custodial term of four years and an extended licence period of three years, for three offences of committing an offence, namely false imprisonment, with intent to commit a sexual offence, contrary to section 62 of the Sexual Offences Act 2003.
- 3 The appellant was convicted of these offences by a jury on 8 March 2021. On three separate nights in 2019 the applicant masqueraded as a minicab driver in order to lure an inebriated young woman into his car with the intention of committing a sexual offence against her. On one of those occasions, he attempted to rape the young woman. If more details are required, they can be found in the judgment of this court dismissing the applicant's renewed application for permission to appeal against conviction: [2022] EWCA Crim 995.
- 4 The applicant had been convicted in 1979 on one count of rape and two counts of burglary with intent to commit rape. He was also convicted of indecent exposure in 1986.
- 5 A pre-sentence report was requested on the issue of dangerousness. The report also mentioned the possibility of a suspended sentence order with various requirements, but that was clearly inappropriate in a case such as this. The applicant's own counsel recognised that the rape which was attempted fell within category 2A in the offence-specific sentencing guideline, with a starting point of 10 years' imprisonment and a range from 9 to 13 years. Some reduction was appropriate because this was an attempted rape, but, as the judge rightly recognised, not much, given how far the attempt had progressed and the steps which the young woman had to take to escape from the applicant.
- 6 The judge reduced the sentence for the attempted rape by one year to nine years by reason of the fact that it was an attempt. The custodial term of the sentence which he imposed was only 10 years, which was arguably lenient, even having regard to the mitigating factors, in light of the fact that the applicant was being sentenced for serious offences committed against three women on three separate occasions and the applicant's offences were significantly aggravated by his previous sexual offending.
- 7 The principal mitigating factor relied on was the applicant's ill health. He was 63 when sentenced and suffered from Parkinson's disease, type 2 diabetes and back pain. Extensive medical notes were placed before the court. The judge made clear in his sentencing remarks that he was aware of the defendant's medical condition.
- 8 The proposed grounds of appeal were drafted by the applicant himself. Even making allowance for that fact, the first proposed ground of appeal, namely that the pre-sentence report referred to the possibility of a suspended sentence, is totally without merit. It is preposterous to suggest that the applicant should have been given a suspended sentence.
- 9 The second ground of appeal relies on the applicant's health conditions, which it is said have got worse since he was sentenced. It is said, although there is no medical evidence to

support this, that, in addition to the conditions relied on at the sentencing hearing, he may have bowel cancer, he has kidney failure and his back pain means that he now uses a wheelchair. As to this ground of appeal, the single judge said as follows:

"I have read the sentencing remarks of HHJ Barklem with care and note that he was aware of your Parkinson's disease, diabetes and back injury. Your medical notes were put before the judge who noted that your ill health did not prevent you working as a taxi driver. I see no reasonably arguable grounds of appeal against the sentences imposed on you and so refuse leave.

As for the medical issues you are currently facing, I understand that they must be causing you hardship. However, the prison estate has facilities to treat and care for ill prisoners. I have seen no medical evidence that you are close to the end of your life. If that was the case, it is something you need to bring to the attention of the Secretary of State rather than the Court of Appeal. Prisoners who are near the end of their lives may be allowed release in order to die in the community."

- 10 We have considered the merits of the proposed appeal for ourselves, but we have concluded that the single judge was right to refuse leave to appeal for the reasons which she gave. Indeed, the proposed appeal is so totally without merit that we are driven to the conclusion that we should make, and we do make, an order under section 29(1) of the Criminal Appeal Act 1968 that 28 days of the time during which the applicant has been in custody pending the determination of his appeal shall not be reckoned as part of the term of the sentences which he is currently serving.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital*

This transcript is subject to the Judge's approval.