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IN THE COURT OF APPEAL
CRIMINAL DIVISION
Case No: 2022/02926/B3
[2023] EWCA Crim 1269



Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 16th May 2023

B e f o r e:

VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE HOLGATE

MR JUSTICE BRIGHT

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Non-Counsel Application

J U D G M E N T

Tuesday 16th May 2023

LORD JUSTICE HOLROYDE: I shall ask Mr Justice Holgate to give the judgment of the court.

MR JUSTICE HOLGATE:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those provisions, 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. We will refer to the victim in this case as "A".

2. On 6th April 2022, following a trial in the Crown Court at Lewes, before Her Honour Judge Barnes and a jury, the applicant was convicted of 14 counts of rape, contrary to section 1 of the Sexual Offences Act 1956 (counts 1, 7 to 18 and 20), and 4 counts of indecent assault, contrary to section 14 of the 1956 Act (counts 2, 3, 4 and 5). On 5th September 2022, the applicant was sentenced by the trial judge, firstly, for the offences of rape to concurrent extended determinate sentences comprising a custodial term of 18 years and an extended licence period of four years; and secondly, for the offences of indecent assault, to concurrent determinate sentences of four years' imprisonment. The applicant now renews his application for leave to appeal against sentence following refusal by the single judge.

3. A was born in 1984. When she was aged 5 the applicant formed a relationship with her mother. They married and had three children, born in 1991, 1996 and 1998. A grew up believing the applicant to be her biological father.

4. Soon after this relationship began, the applicant started to rape A. He manipulated and controlled her life in order to be able to do so. The sexual exploitation extended over a period of 14 years and into her adulthood, until eventually she was able to escape from the applicant's influence.

5. The first rape occurred when A was aged 5 or 6. It happened in the applicant's lorry. He made A touch his penis and he then touched her vagina. He had vaginal sexual intercourse with her (count 1).

6. When A was aged between 10 and 12 she was sometimes with the applicant at home. He asked her to go upstairs to the bathroom as he had a present for her. He sat her on his lap and touched her around her breasts and her vagina (count 3). He then took her hand and rubbed it over his erect penis under his trousers (count 2). During the same period the applicant made A watch a pornographic video and then kissed her, using his tongue (count 4). He touched her all over, including her chest (count 5).

7. The applicant would take A with him to stay at his mother's house in Yorkshire. When they were alone, the applicant would make A get out of her bed and into his. He would touch her. If she was not compliant he would be forceful with her, and if she cried she would be punished. Count 7 related to the applicant raping A at this house when she was aged between 10 and 12. Count 8 related to him raping her there on another occasion when she was aged between 10 and 15.

8. When A was aged between 10 and 12, the applicant drove her to Pease Pottage Services in his car and raped her (count 9). There were at least nine further rapes at this location when A was aged between 10 and 17 (count 10). The applicant would drive her to a secluded spot and would have sexual intercourse with her and ejaculate in her mouth.

9. The applicant also owned a green camper van. It had curtains and a bed. When A was aged between 10 and 12, the applicant raped her three times in this vehicle (count 11), and on two further occasions when she was aged between 10 and 15 (count 12). On another occasion, when A was aged between 10 and 15, the applicant invited two other men into the camper van. He aided and abetted them to rape A (count 13).

10. When A was aged between 10 and 12, her mother worked nights, leaving the applicant to after A at home. The applicant would put her into his bed and make her masturbate him. He would then have full vaginal sexual intercourse with her. This happened on two occasions (counts 14 and 15).

11. The loft at the family home was converted into a small bedroom which A used. The applicant would come into the loft at night and have sexual intercourse with her. Count 16 related to a single occasion when A was aged between 12 and 15. Count 17 related to at least nine occasions when A was aged between 12 and 16.

12. When A was 16 she went to live with a friend and her family, and then moved into a hostel for a while. During this time the applicant could not continue to have sexual intercourse with her. However, when at the age of about 18 A moved into a flat of her own, the applicant would visit and still have sexual intercourse with her. A was resigned to what would happen. Count 18 concerned a single occasion when A was aged between 18 and 20. Count 20 related to at least two other occasions when A was aged between 20 and 22.

13. A went to the police in 2015. In May 2016 the applicant was arrested and interviewed. He denied all the offences.

14. We have read A's Victim Personal Statement. She describes the self-harming and the

serious emotional and psychological effects, including PTSD, which the applicant's offending has had over many years and still continues to have.

15. The applicant was aged 69 at sentence. He had four convictions for four offences between 1976 and 2009, but they were of no significance to sentencing for the index offences. We have read the detailed pre-sentence report prepared on the applicant. He continued to deny the offences. He said that A had fabricated the allegations against him. He accepted no responsibility at all and showed no remorse. The author of the report assessed the applicant as posing a high risk of serious harm to A and to children aged between 5 and 17.

17. In her sentencing remarks the judge applied the approach for historical offences set out in *R v H* [2012] 1 WLR 1416. She decided that the rapes fell into category 2 of the definitive guideline, having regard to the severe psychological harm caused. There were several culpability A factors: significant planning, grooming, the grossest abuse of trust and on one occasion the commission of the offence with others. The applicant had also made threats against A. Taken overall the applicant's conduct amounted to a campaign of rape.

18. The modern equivalent for several of the counts is the offence of rape of a child aged under 13. The judge explained why the applicant was to be treated as dangerous and why it was necessary to pass an extended determinate sentence.

23. The grounds of appeal contend, firstly, that the overall sentence passed was manifestly excessive because the custodial term of 18 years is greater than the upper end of the range for category 2A offences falling within section 5 of the Sexual Offences Act 2003, namely 17 years. It is said that the judge has wrongly moved all of the rape offences into category 1A. In addition, it is contended that no allowance was made for the significant delay between

arrest in 2016 and the eventual trial in 2022, the applicant's age and health conditions.

24. Secondly, it is argued that the judge was wrong to find the applicant dangerous. The only risk he had posed was to A. There was no risk to other members of the public and no sex offences had been committed after 2006.

25. The grounds of appeal make no criticism of the concurrent sentences passed for the offences of indecent assault.

Discussion

26. In refusing leave, the single judge gave the following reasons:

"Your offending was of the vilest character. You robbed your victim of her childhood and tainted her life. You have shown no remorse whatsoever. In cases of repeat offending, the court is fully entitled to move well above the category range for a single offence. The judge considered carefully the issue of dangerousness and his conclusion is not one which falls to be interfered with. Your sentence was fully merited and cannot be categorised as being manifestly excessive."

We agree.

27. The challenge to the custodial term of the extended sentence is misconceived. The aggravating features justified a sentence towards the top of the category 2A range for a single offence. The multiple rapes of a similar seriousness required the concurrent custodial term to be well above the category range before allowing for mitigation. The judge's decision to impose a term of 18 years made proper allowance for the applicant's mitigation, including his age, health and the delay which had occurred between 2016 and 2022. Consequently, the fact that the sentence of 18 years falls within the range for a single 1A offence is not objectionable. It is not arguable that the length of that term was manifestly excessive, or even excessive.

28. We also conclude that there is no arguable basis for challenging the judge's assessment that the applicant is dangerous. He was entitled to come to that conclusion on the basis of the offending in this case and the analysis of the author of the pre-sentence report.

29. The grounds of appeal do not challenge the judge's decision to impose an extended sentence, although it was submitted in the Crown Court that, in view of the applicant's age, a determinate sentence would be sufficient for the protection of the public. But the judge took the view that an extended sentence was necessary. She faced the very real problem of assessing at this stage when, if at all, the applicant will cease to be dangerous, not least because of his well entrenched attitudes towards the complainant and his offending. As the judge said, a younger man might well have received a sentence of life imprisonment. We conclude that it cannot be argued that the judge erred in imposing an extended sentence. The length of the custodial term she imposed amply took into account the applicant's age and mitigation. Indeed, in our judgment there could not have been any complaint if the term had been slightly longer.

31. For all these reasons the renewed application for leave to appeal against sentence is refused.

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