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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
Case No: 2023/01073/A5  
NCN: [2023] EWCA Crim 537



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 28<sup>th</sup> April 2023

**B e f o r e:**

**LORD JUSTICE SINGH**

**MR JUSTICE HOLGATE**

**MRS JUSTICE COLLINS RICE**

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**R E X**

**- v -**

**DESMOND ODUNLAMI**

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**Mr K S Dobe** appeared on behalf of the Appellant

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

Friday 28<sup>th</sup> April 2023

**LORD JUSTICE SINGH:** 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 this offence. 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.

2. On 23<sup>rd</sup> December 2022, following a trial in the Crown Court at Woolwich before Mr Recorder Kovats KC and a jury, the appellant was convicted of a sexual assault, contrary to section 3 of the Sexual Offences Act 2003. On 14<sup>th</sup> March 2023, he was sentenced by the Recorder to 12 months' imprisonment. He was acquitted on count 3 (assault by beating). He appeals against sentence with the leave of the single judge.

3. Shortly after midnight on 11<sup>th</sup> March 2022 the appellant sexually assaulted the complainant in a bar in Plumstead. He had tried to engage her in conversation a number of times over the course of the evening. She had made it clear that she did not want to have anything to do with him. He eventually grabbed the complainant and dragged her towards him. During the course of the altercation the appellant took out some American dollars and thrust them into the complainant's face. The Recorder described that as an attempt to humiliate her in public, implying that she was a prostitute or no better than one. She grabbed a champagne bottle and hit him over the head with it twice. Police attended and the appellant was taken for treatment at a nearby hospital before being taken into custody.

4. In a Victim Personal Statement the complainant described how the incident had affected her. She no longer wanted to go out. She feels unsafe and suffers from anxiety which requires medication. Her university work has been adversely affected.

5. The appellant was of previous good character. We have also taken into account his character references. The appellant had come to the UK from Nigeria in 2004, following a traumatic incident there. He has lived with his partner and her 6 year old daughter for four years.

6. The pre-sentence report states that the appellant continued to deny having committed any offence. He did not assault the complainant or grab at her. The author said that, despite being given several opportunities to reflect on his stance, he maintained his innocence, saying that it must have been a case of mistaken identity. According to the appellant, it had been dark at the time and he did not see who was dancing with the complainant or who had mistreated her. For these reasons the author of the pre-sentence report said he could not provide the court with a comprehensive offence analysis.

7. In the pre-sentence report the appellant was assessed as having a low risk of reconviction over the next two years and a low risk of serious recidivism. There is a medium likelihood of a further sexual or sexually motivated contact offence. He poses a medium but not imminent risk of sexual and emotional harm to adult females, particularly when socialising in places such as bars. Then the author said this:

"Should he complete specific sexual offending behaviour work, then this has the potential to reduce the risk of harm that he poses. His levels of denial however, and that he maintains this is case of mistaken identity, may present a barrier to any meaningful offending behaviour work undertaken with him."

Subject to that, the author said that the appellant should be considered for a community order with a rehabilitation activity requirement of 30 days and a sexual offender behaviour programme for 35 days. He is not entitled to work in the UK and therefore was not suitable for unpaid work. He receives £68 a week from the Home Office and support from his partner.

8. In his sentencing remarks the Recorder said that the offence fell within category 2B of the definitive guideline because the appellant's attempts to engage the complainant had been persistent throughout that evening in the bar, and there was the additional humiliation. The mitigating factors were the appellant's previous good character, the absence of any subsequent offending, and the character references. The Recorder was told that the appellant had made a claim for asylum in 2019 and that there was an outstanding application for leave to remain. He was referred to the National Referral Mechanism because of evidence that he had been trafficked to Ireland and then the UK. There had been a positive reasonable grounds decision under the National Referral Mechanism.

9. The Recorder said that the offence clearly crossed the custody threshold and that the shortest sentence that could be passed was one of 12 months' imprisonment. On the question of whether the sentence should be suspended, the Recorder referred to the offence as being out of character and a "one off", and to the appellant's responsibilities for his stepdaughter. On the other hand, he considered that the prospect of rehabilitation was not good; there was no remorse; and only immediate custody could properly reflect the punishment required in this case. Accordingly, he decided that he could not suspend the custodial sentence.

10. On behalf of the appellant, Mr Dobe submits that there is a strong presumption in favour of suspension in this case because the appellant is a primary carer for his stepdaughter; the

impact on dependents outweighs the aim of rehabilitation. He submits that because the appellant has no previous convictions and is (as he puts it) highly unlikely to re-offend, he requires very little rehabilitation and the imperative for rehabilitation is very low. He says that the issue for the Recorder appears to have been the lack of remorse, but that of itself would not preclude the suspension of a custodial sentence. Given the absence of previous convictions and the absence of further offending, he submits that the lack of remorse did not justify an immediate prison sentence.

### **Discussion**

11. We are grateful to Mr Dobe for his submissions. He makes no criticism of the Recorder's decision to treat the offence as falling within category 2B of the definitive guideline, or the length of the custodial term. The Recorder, who had conducted the trial, was well placed to assess the nature and seriousness of the offending.

12. On the issue of whether to suspend the sentence, the Recorder directed himself by reference to the criteria in the guideline "Imposition of Community and Custodial Sentences". In our judgment, he made no error of principle; nor did he omit any relevant factor from the balance. The weighing of those factors was a matter for him and something with which this court will not ordinarily interfere.

13. In the light of the careful assessment in the pre-sentence report, the Recorder was entitled to conclude that the prospects for rehabilitation were not good. The report explained why the appellant poses a medium risk to adult females of sexual and emotional harm, and the rehabilitation which is necessary. But the problem is the appellant's continuing denial of his offending, which may prevent any rehabilitation work with him from being meaningful. The absence of remorse was related to that issue and also to assessing the strength of the appellant's personal mitigation. The pre-sentence report shows that the appellant's partner

and stepdaughter are not his dependents in the normal sense. Rather, he is to some extent dependent upon his partner. The information before the court on the family circumstances was limited. It was not shown that the impact on the appellant's partner and stepdaughter would be significantly harmful.

14. In our judgment, the Recorder was entitled to reach the conclusion that appropriate punishment could only be achieved by immediate custody. Accordingly, for all these reasons, the appeal is dismissed.

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