[2023] EWCA Crim 540

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202203609/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 3 May 2023

Before:

LADY JUSTICE CARR DBE
MRS JUSTICE McGOWAN DBE
THE RECORDER OF SOUTHWARK
HER HONOUR JUDGE KARU
(Sitting as a Judge of the CACD)

REX
V
ABBAS ABBASS

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MR D TAYLOR 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. 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 that 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 an extended determinate sentence of 18 years' imprisonment with a six year licence period imposed on the applicant pursuant to section 270 of the Sentencing Act 2020 by His Honour Judge Bishop in the Crown Court at Cambridge on 16 November 2022.

2. The applicant was convicted on 2 August 2022 following trial of two offences of rape, contrary to section 1(1) of the Sexual Offences Act 2003 (counts 1 and 2) and one offence of assault by penetration, contrary to section 2 of the Sexual Offences Act 2003 (count 3).

3. He was 40 years old at the time of sentence and of previous good character. The gravamen of his application is that the custodial term of 18 years was manifestly excessive. Further, the judge was wrong to find him dangerous for the purpose of section 280 of the Sentencing Act 2020 and in any event an extended sentence, certainly not one of six years in length, was not necessary for the protection of the public. We consider the appeal to be properly arguable and grant leave accordingly.

The facts

4. On 17 December 2021 the victim, C, was in the Red Room Nightclub in Peterborough City Centre with a friend. She drank some alcohol but felt fine and in control. Shortly before she left, she was approached by a stranger who poured her some champagne, which she drank. Soon afterwards she left and walked to another club, The Met Lounge, a few minutes away, still feeling fine. The appellant was inside the club and there he saw her. When she left the club he was captured on CCTV hanging around outside. She walked on, the appellant initially waiting behind, but watching her. He then followed a short distance behind her and eventually caught up with her. They were alone at this stage. He immediately put his arm around her and started speaking to her, asking her where she was going, whether she needed a taxi and whether she was single. C stated

that she was fine. The appellant repeatedly asked her personal questions which she declined to answer. It was the prosecution case that these questions formed part of the significant level of planning involved on his part: knowledge of her personal circumstances would support his later account of consent.

5. The appellant then tried to kiss C. She pushed him off and asked him to go away. She believed that he had done so and carried on walking. By this time she began to feel very strange and unwell, not in control at all. She walked underneath a railway bridge. As captured on CCTV, the appellant was following her. When she looked back and saw him she turned and quickened her pace. He pursued her into a children's play area where she had sat down feeling dizzy and out of control. He raped her vaginally twice. He lay her on the ground, unzipped her jeans, pulled them down and forcefully inserted his penis into her. She could do nothing to stop him. When he had finished, he pulled her jeans back up. A short time later he put her in a different position, pulled her jeans down and raped her again. This second incident lasted considerably longer. The appellant wiped C's vagina afterwards. He then put her in a taxi and together they returned to his flat. C vomited during the journey. Once home, the appellant put C into his bed where she passed out.

6. The next morning C awoke in the same bed as the appellant. Frightened, she pretended to be asleep. He started to kiss and touch her and then he digitally penetrated her vagina. C eventually got out of the bed and asked for her clothes and telephone back. The appellant had hidden these on top of his wardrobe. He returned her belongings and then thanked her, telling her that "Other girls had always screamed and kicked off". C left the room and telephoned her partner who took C immediately to the police station. The appellant was arrested at his home address later that same day.

7. A victim personal statement from C reveals, amongst other things, that as a result of these attacks she attempted to take her own life by hanging. She felt low self-esteem and heightened anxiety, for example unable to walk outside at night-time by herself. She withdrew from her studies, through which she had been hoping to become a building surveyor. She described her future as bleak with no goals, feeling empty and confused with intense self-hatred.

<u>The sentence</u>

8. The judge rehearsed the facts. He was sure on the evidence that ejaculation took place in the second rape. Addressing the Sentencing Council Guideline for Sexual Offences he placed harm for the rapes in Category 2, with severe psychological harm being plainly present. This was also, he stated, a sustained incident. He placed culpability in Category A, on the basis that there had been a significant degree of planning, including what he described as "slow stalking". In terms of aggravation, he said that there was targeting of a particularly vulnerable woman alone in public at night-time and ejaculation in the

second rape. In terms of mitigation, the judge took into account the appellant's previous good character and difficulties and experiences in his earlier life in Sudan and Libya before coming to this country as a refugee in 2018.

9. The judge explained that he would be passing concurrent sentences for all three offences. For a single rape he would have passed a sentence of 12 years' imprisonment after trial. Taking into account all three offences he passed a sentence of 18 years' imprisonment concurrent for each rape and 10 years' imprisonment concurrent for the assault by penetration.

10. The judge was also satisfied that the dangerousness criteria were met and concluded that it was necessary for the protection of the public to pass an extended sentence of six years.

Grounds of appeal

11. Mr Taylor, who appears before us pro bono, submits first that the sentence of 18 years' imprisonment was manifestly excessive. Whilst issue is taken with the suggestion that this was a sustained incident, it is accepted that the judge was entitled to conclude that, collectively, the offending fell within Category 2A. It is also accepted that the presence of aggravating features entitled the judge to increase the sentence from 10 to 12 years. But an increase to 18 years' imprisonment, says Mr Taylor, was disproportionate, and in breach of the principle of totality.

12. Secondly, and separately, it is submitted that the judge erred in finding the appellant to be dangerous. Mr Taylor rightly accepts that, pursuant to section 229(2) of the Sentencing Act 2020, the judge was entitled to take into account all the material before him for sentencing purposes. However, the author of the pre-sentence report had not stated in terms that the dangerousness criteria were met, the appellant was recorded as showing no offence-supporting beliefs and posing a low risk of serious re-offending within two years. There was no pattern of offending, it is suggested.

13. It is also submitted that the judge was entirely wrong to have been influenced in any way by the appellant's remarks, as reported by C, that when leaving his accommodation he had said that other girls had screamed and kicked off in such circumstances. It was originally suggested by Mr Taylor that no evidence to this effect had ever been given by C, or tested. When challenged by the court on this, it transpired in fact that C did give evidence to this effect before the jury and the judge, and further that the evidence had been challenged in cross-examination. Mr Taylor therefore recalibrated his submission to the effect that the judge placed undue weight on these remarks for sentencing purposes.

14. Thirdly, it is said that, even if the judge was correct in his finding of dangerousness, the risk could have been addressed adequately by a standard determinate sentence, given that the appellant would serve two-thirds of any such sentence. It is said there was no adequate justification for a conclusion that the future risk was so high that an extended sentence, and certainly not one of six years' length, was necessary.

Discussion

15. Whilst we do not agree with the judge's description of the appellant's behaviour as involving "stalking", we have no hesitation in agreeing that the rape offences fell into Category 2A as identified in the Sentencing Council Guideline for Sexual Offences. So much is accepted for the appellant. C suffered severe psychological harm and the offending took place over a sustained period. There was a significant degree of planning on the appellant's part, given, amongst other things, the appellant's earlier questioning of C about her personal circumstances.

16. For a single offence of Category 2A rape following trial the starting point is 10 years' imprisonment with a range of nine to 13 years. There is no criticism of the judge's view that a custodial term of 12 years for a single rape here would have been appropriate. The second rape involved ejaculation, C was specifically targeted as a particularly vulnerable victim and the rapes took place in public at night. Nor can there be any criticism of his decision to pass concurrent sentences on all three offences taking the rapes as the lead offences.

17. We have then considered carefully whether a custodial term of 18 years was so outside the range of permissible sentence for all three offences taken together as to be manifestly excessive.

18. We have concluded that it was not. As Mr Taylor himself emphasises, these were separate offences. The assault by penetration alone merited a sentence of 10 years' imprisonment. There were sinister features beyond the planning, specific targeting and determined pursuit of C who was extremely vulnerable, such as the hiding of C's clothes and telephone on the top of his wardrobe to prevent her from leaving. Whilst the increase to at custodial term of 18 years was steep, it was in our judgment not so disproportionate to the offending as a whole as to be manifestly excessive.

19. As for dangerousness, this was something that the judge was very well placed to assess following trial and taking account of all of the evidence. He did so in meticulous fashion, first identifying why the appellant posed a significant risk of committing further specified offences and thereby causing serious harm to members of the public, namely lone adult females. In this context he was entitled to take into account the professional opinion of the probation officer, who was clearly addressing the relevant dangerousness criteria, that

such risk existed. The purely actuarial risk assessment that the risk for further offending for a sexually motivated contact offence was only medium or that the risk of general re-offending within two years was only low did not stand in the way of such a conclusion. We note also that the appellant had continued to maintain his innocence.

20. The judge was also, as is accepted, fully entitled to take into account the nature and the circumstances of the offending itself. As for the comments of the appellant to C, to the effect that, unlike other women in her position she had not screamed and kicked off, the judge was clearly in a position to gauge the credibility of this evidence and to take it into account appropriately. The appellant chose not to give evidence directly challenging it. However, and in any event, a finding of dangerousness would have been justified without taking account of these particular remarks.

21. The judge then separately considered whether an extended sentence was necessary for the protection of the public and, if so, what length of extended licence period was necessary to achieve this object. We see nothing wrong with his decision that an extended sentence was necessary as a matter of principle and that a period of six years' licence was required to achieve the object of public protection.

Conclusion

22. These were, as the judge remarked, three very serious sexual offences which have had devastating consequences for the victim. The extended determinate sentence of 18 years' imprisonment with a licence period of six years was severe but not, in our judgment, either manifestly excessive or wrong in principle. For these reasons, the appeal will be dismissed.

23. There is, however, one technical clarification to be made. The judge intended to impose an extended sentence on each count of rape and only a standard determinate sentence on the count of assault by penetration. This may not have been accurately reflected in his sentencing remarks which referred only to a global extension period. For the avoidance of any doubt, the sentence on each of counts 1 and 2 should be recorded as a custodial term of 18 years with an extended licence period of six years. The sentence on count 3 should be recorded as a standard custodial term of 10 years. As before, all sentences will run concurrently with each other and all other elements of the sentence are unaffected.

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

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