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[2023] EWCA Crim 546
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/03089/A1



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 11th May 2023

B e f o r e:

LADY JUSTICE CARR DBE

MRS JUSTICE McGOWAN DBE

HIS HONOUR JUDGE BATE

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

LEWIS LLOYD YOUNG

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Mr N Cotter appeared on behalf of the Appellant

Miss B Mulvanny appeared on behalf of the Crown

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 the offences. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

Introduction

1. This is an appeal against sentence brought with limited leave.
2. On 29th September 2022, in the Crown Court at Salisbury, following his earlier guilty pleas, the appellant (now aged 29) was sentenced by Her Honour Judge Morris (the Recorder of Winchester), and following a variation hearing under section 385 of the Sentencing Act 2020, on 21st November 2022 as follows: on count 1 (Kidnapping), imprisonment for life; on count 2 (Having an article with a blade or point, contrary to section 139(1) of the Criminal Justice Act 1988), 12 months' imprisonment; on count 3 (Dangerous Driving, contrary to section 2 of the Road Traffic Act 1988), 14 months' imprisonment; on count 4 (Driving whilst Disqualified, contrary to section 103(1)(b) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1998), four months' imprisonment; on count 5 (Assault by Penetration, contrary to section 2 of the Sexual Offences Act 2003), ten years' imprisonment; and on count 6 (Rape, contrary to section 1(1) of the Sexual Offences Act 2003), imprisonment for life. On counts 1 and 6 the minimum term specified under section 323 of the Sentencing Act 2020 was 12 years (less time spent on remand). The sentences on counts 1 and 6 were ordered to run concurrently with each other, and the sentences on counts 2 to 5 concurrently with the sentence on count 1. The appellant was also disqualified from driving for life. A community order imposed in October 2021 for two offences of affray was revoked.
3. An application for leave to appeal against the imposition of a life sentence was refused by the single judge, and there is rightly no attempt to seek to renew such a challenge. The sole ground of appeal for which leave has been granted relates to the length of the 12 year minimum term specified under section 323 of the Sentencing Act 2020. It is said to be manifestly excessive.

The Facts

4. At approximately 7.20 pm on 12th April 2022, the appellant kidnapped a woman, whom we identify as "C", from an underground car park in Bournemouth. He had only a few weeks earlier been released from a psychiatric hospital. He had travelled that day by train from Southampton to Bournemouth, armed with a knife, with the specific intention of committing kidnap and rape. C had attended a work meeting in Bournemouth and had left her vehicle in a private, gated, underground car park. The appellant had entered the car park at an opportune moment and hidden behind some wooden pallets for around two hours before identifying C as his intended victim. As C got into her vehicle, the appellant approached and told her that he was armed with a knife. He was wearing a "Covid" face mask and holding a kitchen knife with a

serrated blade. C told him that he could take her handbag or indeed the car but he said "No". He forced C to move across into the front passenger seat and the appellant then drove the car away. He placed the knife between his legs; at all times it was sticking upwards.

5. C said that the appellant then drove like "an absolute maniac". He drove at speed, weaving in and out of cars and deliberately slowing down when he saw cameras. He took her Apple watch and her work and personal mobile telephones and threw them out of the window of the car. They travelled out of Bournemouth and towards the centre of Salisbury. C thought that he was looking for somewhere isolated. She tried to placate him but every time she spoke he would reach for his knife.
6. He eventually stopped the car in a dimly lit area of the village of Wilton, next to a power station. There he physically assaulted C in the car, strangling her to a point where it was difficult for her to breathe. She managed to grab his knife, but he bit her wrist in order to get it back. She pushed him from the vehicle, but he dragged her out with him. He told her that he wanted to look at something on her leg. He then ripped off her tights and pants and went on to digitally penetrate her vagina. C explains that she thought she would die if she did not do as he said. The appellant told her that she smelled "really clean" and that he had never had sex before. She said that she had AIDS in an attempt to deter him from further sexual assault, but he pushed her to the ground and then raped her vaginally until he ejaculated. He put his hand over her mouth when she tried to scream. C managed to run away and she sought help from the occupants of a nearby house who called the police. The appellant meanwhile made off in her vehicle.
7. In addition to the bite on her wrist, C had cuts on a finger, grazes and scrapes to her legs and a "really sore" neck, which made it difficult for her to swallow. She was stiff and sore all over.
8. The appellant was arrested shortly after 10 pm that evening, having been found in C's vehicle on the A303. Upon his arrest he claimed that a girl he killed years ago had "respawned" into C's body. This was a reference to the fact that the appellant had earlier in 2013 been the driver of a vehicle involved in a crash which caused the death of his then 16 year old girlfriend. He was convicted of causing death by dangerous driving for that incident and detained in custody for eight years.
9. The appellant made full admissions in his police interview. He said that the offences were pre-planned. He had intended to take somebody to an empty property and to keep them there for a number of days in order to have sex with them. He also told officers that he had been unsuccessful in an attempt to kidnap a woman some six months earlier as she had brandished a knife at him. He said that he had stopped taking his medication a week earlier. He had wanted to see how many people he could kidnap and he had identified a disused warehouse where he could keep them.
10. The appellant had 16 convictions for 44 offences spanning between February 2010 and September 2021. They included convictions for multiple driving offences, assault, battery and criminal damage. Of most relevance were his conviction for causing death by dangerous driving, to which we have already referred, and also causing serious injury to a 14 year old rear seat passenger in the course of the same incident.

11. The appellant failed to comply with the Probation Service for the preparation of a pre-sentence report, but there were two psychiatric reports from Dr Oliver White before the judge for sentencing purposes.
12. The appellant presented with a long-standing mental disorder. He has a diagnosis of emotional unstable personality disorder and antisocial personality disorder. His conditions are exacerbated by ADHD, other learning difficulties and unresolved post-traumatic stress disorder. He had had a very unhappy childhood, marred by bouts of violence directed at him by his father, and a considerable part of his formative years were spent in custody. As we have said, he was only just released from custody in 2021. Between April 2021 and March 2022 he had been sectioned under the Mental Health Act 1983 on no less than five occasions. Each time he was released back into the community without adequate support. Dr White commented on his desire to commit serious offences in order to receive a lengthy custodial sentence precisely because of his struggles to cope with the demands of life in the community upon release.
13. The judge also had before her a Victim Personal Statement, which we too have read in full. Consistent with C's wishes, we do not propose to refer to any of the detail in our judgment today. It suffices to say that the psychological impact of these events has been extremely severe and has affected all aspect of C's life, both personal and professional. They have also had a wider impact on her family and friends. In her own words, what happened to her was "the stuff of nightmares" and has been life-altering.
14. An updated Victim Personal Statement reveals that the appeal process has inevitably also been very difficult for C. There have been some improvements in her life since the sentence below was passed, but her life largely continues to be an ongoing endurance test. She has been told that the scar on her wrist, which is a source of considerable distress to her, is permanent. She has still not been able to return to her professional life.
15. We take this opportunity to commend C who showed extraordinary bravery and calm in what was a prolonged and terrifying ordeal involving abduction, violence and rape, and during the course of which she genuinely thought that she was going to die.

The Sentence

16. The judge first rehearsed the relevant facts and background. She then considered the circumstances surrounding the offence of kidnap, for which there was and is no Sentencing Council Guideline.
17. In terms of categorisation under the Sentencing Council Guideline for Sexual Offences, both the rape and assault by penetration fell within category 1A in each case. The starting point for each as a single offence following trial was one of 15 years' imprisonment, with a range of 13 to 19 years. The judge went on to conclude that, because of the factors previously outlined in relation to the kidnapping, it was necessary to go outside that range. The level of premeditation was significant. The appellant had gone to Bournemouth specifically with the aim of kidnapping and raping a woman. He took a knife with him and, even making allowance for his paranoid thought processes at the time, he knew what he was doing and was determined upon committing a series of offences of the gravest kind.

18. The judge recognised in terms the need to avoid double counting and to have regard to totality. She indicated that in her judgment the appropriate way in her judgment to reflect the offending was by reference to the rape and kidnapping offences, because they were the most serious and both carried the maximum of life imprisonment. She concluded that the seriousness of these offences justified the imposition of a sentence of imprisonment for life on counts 1 and 6. As already indicated, no challenge against that conclusion is pursued.
19. The judge then considered the minimum term. She stated that, if imposing a determinate sentence, she would have imposed a sentence of 27 years' imprisonment on counts 1 and 6. With full credit for guilty pleas, that was reduced to 18 years' imprisonment, two thirds of which was 12 years, which she fixed as the minimum term.

Grounds of Appeal

20. Mr Cotter, in measured terms, submits that the minimum term imposed was manifestly excessive. In short, the Sentencing Council Guideline for Sexual Offences is designed to provide consistency of sentence for even the most serious offending, and in its starting point and ranges already takes account of the features of abduction and detention. If both the offences of rape and kidnap merited going outside the guidelines, they did not merit a term of as long as 27 years. Although Mr Cotter recognises that no two cases are ever the same, he has referred us to *Attorney General's Reference No 78 of 2012 (R v K)* [2013] EWCA Crim 130, where a child was kidnapped, raped twice and kept for a significant period of time. A determinate sentence of 20 years in that case was imposed.
21. On behalf of the respondent, Miss Mulvanny emphasises that the Sentencing Council Guideline recognises that some offences of rape may be of such severity that sentences of 20 years and above may be appropriate. Here, given the multiplicity of aggravating features, the judge was fully entitled to go outside the range for category 1A offending. Once that is accepted, the total sentence is a matter of discretion for the judge, taking into account the overall offending and circumstances.

Discussion

22. As the single judge identified, no issue can properly be taken with the imposition of a life sentence. The question for us is whether the term of 27 years' imprisonment taken by the judge as a hypothetical determinate sentence for the offences of kidnapping and rape, resulting in a minimum term of 12 years' imprisonment, was manifestly excessive. In particular, we need to consider whether there was an element of impermissible double counting in reaching this figure.
23. As set out above, the judge treated the rape and kidnapping as the lead offences. We therefore turn to them first. The starting point for category 1A rape was 15 years' imprisonment, with an upper range of 19 years. There can be no doubt that the rape fell into category 1A because of the extreme nature of the abduction, the prolonged detention and violence used and threatened, and the extreme psychological harm caused. In terms of culpability, there was a significant degree of planning. There were then multiple aggravating features: the appellant's previous convictions; the fact that he was subject to a community order at the time; the ejaculation; and the use of a knife to frighten and injure. By way of mitigation, there was the complex picture of mental disorder.

24. There is no guideline for the offence of kidnap. Sentences for such offending will vary considerably depending on the facts. But the authorities make it clear that relevant factors include: the length of detention; the circumstances of detention; the extent of any violence used; the involvement of weapons; the effect on the victim and others; the extent of planning; and any particular vulnerability of the victim. As the judge identified here, there was a high degree of premeditation and planning: the appellant took a knife to the scene and used it; the incident lasted about two hours; C was kidnapped in what she thought was a secure area; the appellant had lain in wait for a lone and thus vulnerable female and had then driven in a dangerous manner to a secluded spot, no doubt aware of C's terror and the risks involved. When she tried to escape or fight back, he strangled her to the point where she could hardly breathe.
25. This analysis demonstrates the very clear and significant overlap between the relevant sentencing considerations on the rape and kidnapping offences. The abduction and detention were a central part of the sentencing considerations for the rape. As was the case in *R v K*, the rape had to be seen in the context of the kidnapping. Here the rape could have been treated as the lead offence alone, with the associated offences of kidnapping, dangerous driving and possession of a knife as the relevant aggravating context for sentencing purposes. There was then also the separate offence of assault by penetration, which itself carries a starting point of 15 years' custody. Totality meant that the final overall sentence had to reflect all these matters.
26. There can, in our judgment, be no doubt that the circumstances of and the offending additional to the rape entitled the judge to go outside the range for a category 1A offence – and very substantially so. The kidnapping was of the most extreme sort. It went way beyond what could be described as the inherent element of restraint in any rape. It involved planning and the use of a knife. It was accompanied by the dangerous driving and significant violence, including strangling.
27. At first blush, as a determinate sentence 27 years' imprisonment is a steep term. However, on analysis, and even taking full account of the appellant's mental health issues, we have reached the conclusion that it cannot be said to be manifestly excessive. As evidenced in her sentencing remarks, the judge was well aware of the need to avoid double counting. Mr Cotter, when directly asked by the court, could not point to any material error of approach in principle, or on the facts.
28. As the Sentencing Council Guideline for Sexual Offences states, offences of rape may be of such severity that sentences of 20 years and above may be appropriate. Taking into account the available mitigation, balanced against the nature and extent of the abduction – that is to say the violent kidnapping, involving the use of a knife – along with the dangerous driving and other aggravating factors, a term of well over 20 years for the offence of rape as the lead offence was justified. There was then the separate offence of assault by penetration to be taken into account against that background.

Conclusion

29. In short, a term of 27 years, resulting in a life sentence with a minimum term of 12 years (less time spent on remand), was not, in our judgment, manifestly excessive. The minimum term of 12 years (less time spent on remand) was just and proportionate to the overall offending.
30. Accordingly, for these reasons, we dismiss this appeal.

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

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