

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.
Neutral Citation No, [2024] EWCA Crim 1147**



IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT ISLEWORTH

HHJ NICHOLAS WOOD T20220489/490/491

CASE NO 202303814/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 17 September 2024

Before:
LORD JUSTICE DINGEMANS

MR JUSTICE LINDEN

MRS JUSTICE HEATHER WILLIAMS

REX
V
JON NEWMAN

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR J MANNING appeared on behalf of the Appellant.

J U D G M E N T
(Draft Approved)

LORD JUSTICE DINGEMANS:

Introduction

1. This is a hearing of an appeal against sentence brought with leave of the single judge which raises an issue about totality.
2. The appellant is a 60-year-old man who, as appears from his previous convictions and these convictions, downloads and views illegal pornography including indecent photographs of children showing penetrative sexual activity, other sexual activity and naked genitalia, and extreme pornography involving penetrative activities involving animals.
3. The appellant had before these convictions seven convictions for 27 offences. They included offences for distributing indecent photographs or pseudo photographs of children, for which he received 12 months' imprisonment in the Crown Court at Snaresbrook on 8 January 1999 and offences of making indecent photographs or pseudo photographs of children, for which he received 3 years' imprisonment in the Crown Court at Southwark on 7 October 2010.
4. As a result of the previous offending, the appellant was made the subject of notification requirements, which he breached, and for which he was conditionally discharged by Stratford Magistrates' Court in 2006 and fined by East London Magistrates' Court in 2020. A Sexual Offence Prevention Order (SOPO) was imposed in 2010 and varied in October 2018. The appellant's SOPO, which was originally imposed in 2010 and varied, contained a number of prohibitions. These included prohibitions from using any

Internet-enabled device unless he had notified his Public Protection Unit, installing and/or using on any Internet-enabled device any browser, software designed to give access to the dark web or designed to anonymise the identity of the user and/or using on any Internet-enabled device evidence elimination software. The appellant was being managed by specialist officers from the Jigsaw Team.

5. In relation to the offences which are the subject of this appeal, the appellant was sentenced to a total of 7 years 8 months' imprisonment on 6 October 2023, in the Crown Court at Isleworth, in respect of two indictments which were amended into one joint indictment and a separate committal for sentence. In respect of the indictment, the appellant pleaded guilty at a time when he was entitled to 25 per cent credit for plea and he was sentenced to 21 months' imprisonment for possession of indecent photographs of children on count 1 and 30 months' imprisonment consecutive for breach of the SOPO which was count 9, with concurrent sentences for possession of indecent photographs and another breach of a SOPO. This was a total of 4 years 3 months' imprisonment for the amended joint indictment.

6. In respect of the committal for sentence, the appellant pleaded guilty at a time when he was entitled to 33 per cent credit and he was sentenced to 8 months' imprisonment for possession of indecent photographs of children (count 1) and 33 months' imprisonment consecutive for breach of a SOPO (count 2). This was a total of 3 years 5 months' imprisonment for the committal for sentence. Concurrent sentences were imposed for other possession of indecent photographs and six further breaches of the SOPO. The sentence of 3 years 5 months on the committal for sentence was consecutive to the

sentence for 4 years 3 months on the joinder indictment, giving the overall sentence of 7 years 8 months. When sentencing, the judge said: “I... have in mind totality in this case and I have made deductions in order to come to a sentence that I consider proportionate and appropriate.”

The Factual Background

7. Following the imposition of the varied SOPO in October 2018, officers from the Jigsaw Team attended the appellant’s home address in December 2018. The appellant was asked if he had any Internet-enabled devices which he needed to register; he told officers he had none. During the visit, officers spotted a PlayStation 2. The appellant said he did not play on it much. A working Wi-Fi router was also pointed out but he said he did not use it and it had just come with his TV package. He claimed that his use of Internet took place purely at work and sometimes in local Internet cafes. When asked what mobile phones he owned, he said he had only a simple non-Internet phone. No other devices were disclosed. Following that visit, officers conducted various searches and discovered that the appellant had a loan agreement for the purchase of a Tesco mobile.

8. A laptop, hard drive and Fujitsu desktop computer seized from the appellant’s address were sent to laboratory for analysis. 315 indecent images were found, 42 category A still images, 114 category B still images and 148 category C images. On the hard drive there were two category B still images, two category C still images and one category C moving image. On the desktop, there were two category A still images, three category B images and one category C still image. A number of the children depicted in the images were described as being “particularly young”. One child depicted in a category A penetrative

image was either a baby or a small toddler, and the children were aged from 4 to 5 years of age to 10 to 12 years of age, with the majority of the children being at the lower end of that range.

9. It was found that the appellant had installed or used browser software designed to give access to the dark web and to anonymise the identity of the user. Evidence was also found of anti-forensic software on the appellant's devices. The laptops had applications installed on it which had the ability to delete Internet history and temporary files.
10. On 14 October 2020, the appellant was interviewed again. He declined legal advice and made no comment.
11. Officers had also attended his premises when property was seized. The appellant told the officers that he had disclosed, back in March, that he had these devices by letter. No letter was found. The appellant was also interviewed under caution on 5 February 2020 without a solicitor being present. He admitted possession of devices and claimed that the terms of his SOPO did not require anything more.
12. On 16 December 2020, officers attended his address again. They asked to see the Smart phone and he handed it over. It was evident that he had been accessing and downloading videos of extreme pornography. Officers seized the device. The phone was examined and found to contain two images of extreme pornography involving penetrative sex with dogs. On 7 April 2020, the appellant voluntarily attended a police station and was interviewed under caution. He made no comment.

13. Following information that he had uploaded an indecent image of a child to the Internet in August 2022, arrangements were made to arrest him on suspicion of distribution of indecent images and that arrest took place on 13 September 2022 at Heathrow when he had arrived back from Malta. He was arrested and cautioned and made no reply. Searches were carried out. A large number of electronic devices were located at his home, including Smart phones, tablets, laptops and desktop computers. He had not notified the police of any of these. A Hudl tablet computer was forensically examined and found on it were email and YouTube accounts in his name also the elimination software, The Google Chrome history on the tablet revealed a large number of Internet history between June and September 2022, showing that the device had been used to access the Internet frequently for almost 3 months before its discovery.

14. An initial triage of an Azus laptop revealed child abuse material on the device which included category A images and elimination software. The initial triage identified three still category A images which were located in a photograph gallery under the username “Jon”. Full investigation was carried out and 662 images were found, 239 still category A images, nine moving category A images, 220 still category B images and 194 still category C images. The children depicted in the images were particularly young, with their ages ranging from 3 to 5 to 7 to 11 years but the majority of the children being at the lower end of that range. The appellant was interviewed and made no comment.

The Grounds of Appeal

15. Mr Manning, to whom we were grateful for his helpful written and oral submissions,

accepted that, taken individually, the sentences imposed by the judge were appropriate but he submitted that the structure of the sentences led to an overall sentence which was simply too long and insufficient regard had been had to totality. Further, the sentence was wrong in principle because the judge ordered the sentences for the two sets of breaches of the SOPO to be consecutive to each other when in fact they should have been concurrent.

Totality Guideline

16. The Sentencing Council Guideline on Totality reminds sentencers that when sentencing for more than one offence, the overriding principle of totality is that the overall sentence should reflect all of the offending behaviour with reference to overall harm and culpability together with the aggravating and mitigating factors relating to the offences and those personal to the offender and be just and proportionate. There is no inflexible rule about how sentences may be structured, whether consecutive to each other or concurrent, so long as the sentence is just and proportionate to the offending as a whole.

17. As the factual background shows, the appellant committed numerous offences of possessing indecent photographs of children and breaching SOPOs. The viewing of these indecent images perpetuates the abuse of children to produce the images. The failure to comply with the terms of a SOPO is separate and distinct offending because it shows a disregard for orders made of the court, which are made for the protection of the public in general and the children shown in the images in particular. We therefore consider that the judge was right to structure the sentence to recognise that the possession of indecent photographs was separate criminality from the breaches of the SOPOs. We also consider

that the judge was entitled to sentence the offences committed before July 2019 consecutively to those committed after 2019, which were aggravated by the facts that he was under investigation and was using software designed to hide his activities so long as the overall sentences remained proportionate.

18. We do however find that the overall sentence of 7 years 8 months was, in the particular circumstances of this case, too long to be proportionate to the offending carried out by the appellant. It is only fair to the judge to record the fact that there were so many offences meant that this was a very difficult sentencing exercise.

19. Given that it is common ground that the individual sentences were appropriate, we consider that the least worst way of achieving proportionality for the overall sentence, is to leave the individual sentences as they are, apart from one, but to make count 1 of the committal for sentence concurrent, which reduces the overall sentence to 7 years and reduce the sentence on count 2 of the committal for sentence to 30 months from 33 months. This means that the overall sentence now becomes one of 6 years 9 months and not 7 years 8 months. To that extent the appeal is allowed.

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

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk