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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT TRURO

SAINI J T20220143

CASE NO 202302720/B5

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 13 September 2024

Before:

LORD JUSTICE SINGH
MRS JUSTICE MAY DBE
MR JUSTICE GRIFFITHS

REX
V
TERENCE MAURICE BURKE

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

MR D PERRY appeared on behalf of the Applicant

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

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 that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. This judgment will be anonymised accordingly.

Introduction

2. This is a renewed application for leave to appeal against sentence. On 12 July 2023 in the Crown Court at Truro the applicant was convicted of 16 sexual offences. On 13 July 2023 the applicant was sentenced by Saini J in the following manner. In relation to the offences against child A, there was a total sentence imposed of eight years' imprisonment. That related to counts 1 to 9 on the indictment. Count 9 was made the lead offence for this purpose and the other sentences were made concurrent. Counts 10 to 16 related to the offences against child B. Count 11 was made the lead offence. A sentence of 10 years' imprisonment was imposed on that, to be consecutive to the earlier sentences but concurrent with all the other sentences in relation to the offences against child B.
3. Count 9, which concerned child A, was an offence of indecency with a child, contrary to section 1(1) of the Indecency with Children Act 1960. That Act was amended with effect from a date in 2001 to increase the relevant age of a victim from 14 years to 16 years before there could be criminal liability.
4. Count 11, which related to child B, was an offence of sexual activity with a child, contrary to section 9(1) of the Sexual Offences Act 2003.

5. The total sentence imposed by the judge therefore was one of 18 years' imprisonment. Other appropriate orders were made, including notification and safeguarding provisions.
6. We should note one matter which does not affect the grounds of appeal but nevertheless is important. When sentencing the applicant, the judge stated that he would serve two-thirds of the custodial term before being released on licence. As has become apparent that was in fact incorrect because of the relevant legislation which applies. The normal principle that the applicant would be released at the halfway point is the one that is applicable.

The facts

7. The applicant was at the relevant time in his mid-fifties. He was the head of history and the safeguarding lead at Falmouth Secondary School. He had started working at the school in the 1970s. Between 2000 and 2005 the applicant committed a number of sexual offences against two vulnerable female students under his care. He exploited their vulnerabilities for his own sexual gratification over extended periods of time. Both girls were made to feel "special" and believed that they were in secret relationships with him. The offending against both included kissing, digital penetration of the vagina, full sexual intercourse, touching the applicant's penis and oral sex. The applicant's offending was a gross abuse of his position. He groomed both girls with gifts and attention at a time of personal difficulty for them.
8. Counts 1 to 9 reflected the offences committed against child A when she was 15. Counts 10 to 16, the offences against child B, occurred when she was 15 or 16. At the trial there was also evidence from a child C, a third female pupil who had reported the applicant's inappropriate conduct. This showed that the applicant was an experienced groomer of young girls. Although no criminal offences were committed against child C, it was as a

result of his behaviour towards her that the applicant resigned from the school.

9. The sexual activity with child A began when she was 15 and escalated to full penetrative sex once she turned 16. The acts took place in the applicant's car, in hotels and in his home when his wife was away. He continued to have a "relationship" with child A for four years after she turned 16. This was not unlawful at that time and did not form any part of the criminal case.

10. Child B was 15 when the offending began. When she was 15 the applicant had full penetrative and oral sex with her. This continued into her 16th year when she was in year 11. The oral sex included the applicant ejaculating into her mouth following unprotected vaginal sex. Child B had been bullied at school and had initially gone to the applicant for help. He had sex with her in his car, in hotels and in his family home.

11. The applicant at the date of sentence was aged 75 and had no previous convictions. The sentencing judge had, as does this court, victim personal statements from both child A and child B. He did not require a pre-sentence report. We confirm that no such report is now necessary.

The sentencing remarks

12. In his sentencing remarks the judge said that he had to sentence the applicant for 16 offences against child A and child B which covered a full range of sexual activity. The judge had express regard to the principle of totality at page 3H to page 4A. He observed that given the applicant's role as the safeguarding lead at the school, it was hard to think of a more serious breach of trust. We agree.

13. The judge said that the offending against each child had to be marked by consecutive sentences but with proportionality and totality in mind. In structuring his sentences he adopted a lead offence for each of child A and child B and then passed concurrent

sentences in respect of the other offending concerning those children. For child A the judge treated count 9 as the lead offence. This was a multiple incident count. Under the modern guideline this would be a Category 1A offence. The starting point for a single offence under the modern equivalent is five years with a range of four to 10 years. Having regard to the maximum for the actual historical offence committed (which was then 10 years) the judge adopted a lower starting point of four years, but given that this was a multiple offending count he increased that to six years. Having regard to aggravating features, that is the other offences committed against child A, the judge increased this to eight years' custody.

14. As to mitigation, the judge said there was little to be said on the applicant's behalf. He had no previous convictions but in the context of these offences this could not be given any significant weight. The judge accepted that the applicant is now an older man with some health difficulties, including a prostate cancer diagnosis. The judge also had regard to the effect of the sentence on the applicant's wife, children and grandchildren. However, none of these factors persuaded the judge to come down in any way.

15. In the case of child B the judge took count 11 as the lead count. This was a multiple incident count of penetrative vaginal sex with a child of 15. Under the modern guideline this also would be a Category 1A offence. The starting point would be five years with a range of four to 10 years. Since this was a multiple offence count the judge increased that to 10 years. Having regard to aggravating features, in other words the other offences against child B but also bearing in mind totality and proportionality, the judge arrived at a sentence of 10 years' custody. Again, the judge said there was little to be said on the applicant's behalf by way of mitigation. Accordingly, that resulted in a total period of imprisonment of 18 years.

The grounds of appeal

16. On behalf of the applicant, Mr Perry in well-structured written and oral submissions advances a single compendious ground of appeal, namely that the sentence was manifestly excessive. He develops that compendious ground of appeal by making some more specific criticisms of the approach adopted by the sentencing judge. Mr Perry accepts that the offences would fall into Category 1A by reference to the modern guideline, that is expressly so in the case of child B and by that analogy is so in the case of child A.

17. In relation to child A, Mr Perry contends that only a small reduction in the starting point from five years to four years was made before the judge increased the sentence. He submits that that is arguably too small a reduction in the context of an offence where the maximum sentence at that time was 10 years, whereas the modern equivalent offence has a maximum sentence of 14 years.

18. Mr Perry further contends that there was then too great an increase up to eight years. He submits that this appears to have been done not only because of the number of offences against child A but also the range of the relevant activity. He asks rhetorically the question whether the other sexual activity can be sufficient to justify such a large increase in the sentence.

19. In relation to child B, Mr Perry also contends that insufficient regard was had to the fact that she turned 16 during the offending period. This had the consequence that the starting point would change from five years to 18 months and would constitute a "cliff edge" which could and should have been avoided by taking a starting point somewhere lower than the indicative one of five years. This is because in the offending which took place after child B was 16, previously, before the 2003 Act came into force, there would not

have been criminal liability. There would and was now criminal liability because of the position which the applicant held.

20. Next, Mr Perry submits that the judge fell into error by simply adding what were already high sentences (eight years and 10 years) together without, he submits, in reality making any real adjustment for totality. As he has put it at the hearing before us this morning, he submits that the individual sentences of eight years and 10 years respectively could not be said to have been "tempered" by any consideration of totality. Against that background he submits that it was important for the sentencing judge to step back and ask whether the total of 18 years could be justified as being proportionate for the overall offending in this case.

21. When one stands back from the sentences, Mr Perry submits that the sentence of 18 years can be compared with much more serious cases, for example the sort of sentence which might be imposed for rape of a child under 13 in the very highest category by reference to the modern sentencing guideline. Realistically, and fairly, Mr Perry accepts that that of course applies to a single offence.

22. Mr Perry also submits that the sentence of 18 years in total is only two years short of the indicative sentence of 20 years or even longer which the guideline envisages for what it calls "campaigns of rape". Accordingly, Mr Perry submits that at the end of the day the total sentence passed in this case was simply too high. It was, at least arguably, he submits, manifestly excessive.

23. Like the single judge we are impressed by the quality of the submissions which have been advanced by Mr Perry but also like the single judge we are not persuaded that the grounds of appeal are arguable. At the end of the day, the judge passed sentences which he was entitled to pass, although the total sentence of 18 years could be regarded as

severe, particularly in the case of a man of this age and with his health issues. So far as age is concerned, the applicant at least has been able to spend the prime of his life in the community untroubled by what he had done to these children.

24. There can be no proper complaint in principle that there were consecutive sentences imposed as there were two victims. There were numerous counts in relation to each of the victims. Those sentences were rightly made concurrent in relation to each victim but had to reflect the overall gravity of the applicant's offending. In our view that was done by this judge. Most importantly, the applicant was guilty of a gross breach of trust, not only because he was a senior teacher at the school but because he held the role of safeguarding lead at the children's school. He was the very person to whom they were entitled to turn in their difficult circumstances and whom they should have been able to trust and rely upon for advice and help. Rather than doing that he exploited his position to abuse them.

25. The judge expressly had regard to the principle of totality. Furthermore, we must bear in mind that the judge conducted the trial and was much better placed therefore than this court can be in order to arrive at the relevant assessments when it came to sentence.

26. Ultimately we have reached the conclusion that the sentence in this case was neither wrong in principle nor manifestly excessive. Accordingly this renewed application for leave to appeal is refused.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk