Neutral Citation No: **[2024] EWCA Crim 1215**

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT WORCESTER
(HIS HONOUR JUDGE JACKSON) [T20200192]

Case No 2023/03857/A3

Tuesday 8 October 2024

B e f o r e:

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE MARTIN SPENCER

MRS JUSTICE CUTTS DBE

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Computer Aided Transcription 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 I Bolt appeared on behalf of the Applicant

J U D G M E N T

Tuesday 8 October 2024

LORD JUSTICE HOLROYDE: I shall ask Mr Justice Martin Spencer to give the judgment of the court.

MR JUSTICE MARTIN SPENCER:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this matter whereby, where an allegation has been made that 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. By this application, the applicant renews his application for leave to appeal against sentence, leave having been refused by the single judge.

3. On 6 October 2023, following a trial in the Crown Court at Worcester before His Honour Judge Martin Jackson and a jury, the applicant was convicted of one offence of causing a child to engage in sexual activity and two offences of indecent assault, all offences contrary to the Sexual Offences Act 1956, having been committed before the Sexual Offences Act 2003 came into force.

4. On 13 October 2023, he was sentenced by the trial judge to a total of 11 years' imprisonment, together with a one year extended licence period, pursuant to section 278 of the Sentencing Act 2020.

5. The background to these offences is as follows. In 1994 the applicant started a

relationship with the complainant's mother and, not long after the relationship started, he moved into the home she shared with her daughter (the complainant) and the complainant's grandmother. The applicant would have the care of the complainant on Saturday mornings whilst her mother was working. On a number of occasions he sexually assaulted the complainant.

6. The offences occurred in the bedroom that the applicant shared with the complainant's mother. The applicant was in his 30s at the time and the complainant was aged under 10. The sentencing judge said that there were a number of occasions when the applicant sexually assaulted the complainant and therefore he took account of the fact that he was dealing with a course of conduct. He was also satisfied that there was grooming because, as he put it, why otherwise would the complainant have been going into that bedroom on a Saturday morning when the applicant was still there.

7. The applicant was convicted of three charges after trial: counts 1, 13 and 14 on the indictment. Count 1 related to an incident where the complainant recalled the applicant opening up her hand and placing her young hand, a child's hand, as she described it in her evidence, on his penis. Count 13, the most serious allegation, related to the applicant penetrating the complainant's vagina with his fingers whilst she was stood over him when he was lying in bed. Count 14 related to an incident where the applicant placed his penis on the complainant's face, near to her mouth, whilst her face was at the level of his groin.

8. The complainant had told her cousin what was happening and her cousin had then told the complainant's mother, but nothing was done and the abuse continued. The complainant believed that she was about 5 years old when she complained to her cousin. The applicant's stay in the household came to an end after about ten years in the relationship, and he left.

9. Matters were reported following a chance meeting between the complainant and the applicant on 15 June 2018. The complainant saw the applicant whilst he was at work and she confronted him. The complainant's partner was also present, and both of them recalled the applicant admitting or apologising for what he had done. The complainant then contacted the police.

10. Sentencing the applicant, the learned judge considered the sentencing guidelines and found culpability to be at the highest level because there was an abuse of trust. The complainant had been a child in the applicant's care. He also considered that there was grooming because there "must have been some element of enticing her in". Harm was in category 2, there having been severe psychological harm on the basis that, as the learned judge said:

> "[The complainant], well into adulthood, well into their professional life, is still experiencing flashbacks from the impact of what you did to them, still waking at night thinking that there is a man standing over their bed, someone who works in a demanding professional environment and yet who sees a name like yours on a list and feels fear. I also note what she said in her evidence about the reasons for undertaking counselling during her medical training, namely that she wanted to be able to deal with patients who may have experienced the same sort of thing that she had, abuse as a child, and to be able to deal with it professionally, and not perhaps have the trauma re-ignited for herself. So that indicates to me that this is a case where the harm has been enduring, and I am satisfied that it is severe and it is still ongoing."

11. For the most serious offence (count 13), the learned judge imposed a sentence of eight years (with an extended licence period of one year); and for the other two offences, a sentence of three years' imprisonment on each, concurrent with each other (to reflect totality), but consecutive to the sentence on count 13, making a total of 11 years' custody.

12. In markedly lucid and realistic submissions on behalf of the applicant, both in writing and orally before us, Mr Bolt, whilst considering that the learned judge fell into error in finding that there had had been grooming behaviour, accepted that this would not, alone, amount to an arguable ground of appeal. At best, removal of this element would, he says, result in a small reduction in the initial starting point, and the lack of that reduction would be insufficient alone to create a sentence which is manifestly excessive. He also concedes that the learned judge was best placed to make a finding that the complainant had suffered severe psychological harm.

13. However, Mr Bolt submits that the learned judge failed to make a reduction to the sentence to reflect the unacceptable delay that had occurred and that this, combined with the erroneous finding of grooming, has, he submits, resulted in a sentence which is manifestly excessive. He relies on the "unexplained and extremely lengthy delay in the investigation of this case and the delay caused by the failure to remedy the loss of trial capacity by a local recovery scheme involving the allegation of additional resources" as having resulted in a delay which was unacceptable and specifically justifying a reduction in sentence which the learned judge did not do. He points to a period of 11 months prior to the pandemic when nothing appears to have been done, and to the 17 month window in which the investigation could have been concluded before the pandemic occurred. Whilst he acknowledges that post-pandemic the delay is more difficult to assess, he refers to a loss of 40 per cent of courtroom capacity at the relevant court centre, resulting in adjournments being longer than they would otherwise have been, creating a situation which is akin to that considered by the Court of Appeal in *R v Aire Ali* [2023] EWCA Crim 232, where it was held that the impact of a very high prison population could properly be considered in relation to the length of a custodial sentence.

14. In refusing leave to appeal, the single judge said:

"1. I have refused permission, and thus the application for legal assistance, because I do not consider the grounds of appeal reasonably arguable.

2. The complainant's evidence entitled the judge to conclude that there was an element of grooming in your behaviour: see the judge's observations at 2E-F and 4A-B of the transcript of the sentencing remarks. In any event, as your grounds acknowledge at [10], the unchallenged finding of a breach of trust case rendered this a case of category A culpability in any event. On that basis, removal of the grooming element would only result in a 'small' reduction from the initial starting point, that would be insufficient to render the sentence manifestly excessive.

3. I accept that there was a lengthy delay in bringing your case to trial. However:

(a) Delay can be, but does not have to be, a factor in sentencing: see *R v Beattie-Milligan* [2019] EWCA Crim 2367 at [22], where it was said that unjustifiable delay 'may' be something a court chooses to take into account.

(b) The judge was aware of the chronology, noting at 3E of the remarks that the abuse she suffered as a child had been 're-ignited' for the complainant by a chance meeting with you in 2018 and that sentencing was taking place in 2023.

(c) The delay had also specifically impacted on the complainant: at page 4 of her Victim Personal Statement, she explained the embarrassment this had caused in her professional life as she had had to tell three different employers what was happening in respect of the court proceedings.

4. Overall, these were very serious offences in relation to which the judge made a carefully calibrated sentencing decision, applying the relevant guidelines. In light of this, and the other factors noted in the preceding paragraph, I am not persuaded that it is arguable that the judge's failure to explicitly reference the delay rendered the sentence manifestly excessive."

15. Despite Mr Bolt's most able submissions, we agree with the single judge. We do not consider that the case of *Ali* assists the applicant, applying, as it did, to the problem of overcrowded prisons in the context of the Covid-19 pandemic. In *Beattie-Milligan* the court,

whilst noting the fact that unjustifiable delay causes injustice to both sides, made it clear that where unjustifiable delay imposes extra strain on a defendant, it may be justifiable for a court to take this into account, but does not impose any kind of obligation on the court to do so. In *R v Timpson* [2019] EWCA Crim 1785, the court noted that, whilst a person is not to be penalised for contesting the case, nor is he entitled to a benefit for that reason and it cannot be said that a delay before trial has nothing to do with someone who pleads not guilty:

> "A trial is only necessary because he contested the case. In those circumstances, we consider that the delay would have to be wholly out of the ordinary for any reduction at all to be applied."

16. In our judgment, it is not reasonably arguable that the failure of the learned judge to make any specific reference to the delay or to make a specific reduction to take account of the delay has resulted in a sentence which is manifestly excessive. We take note of the fact that the delay of which complaint was principally made was in the period before charge and, although it did take the prosecuting authorities some significant time to make a charging decision, that is part of the unfortunate process which busy prosecuting authorities have to go through. We do not consider that the delay in this case was such as to take the case out of what is the usual situation.

17. We step back and consider the sentence imposed in the overall context of the applicant's offending. Having done so, we do not consider that it is reasonably arguable that the sentence imposed was manifestly excessive.

18. The renewed application is accordingly 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