IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT LIVERPOOL

HER HONOUR JUDGE PIERPOINT 05B10151223

CASE NO 202402830/A1

[2024] EWCA Crim 1285

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday, 24 September 2024

Before:

LADY JUSTICE WHIPPLE DBE
MR JUSTICE DOVE
MR JUSTICE LAVENDER

REX
V
LUCY WILDING

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 S NOLAN (SOLICITOR ADVOCATE) appeared on behalf of the Appellant

---

J U D G M E N T

LADY JUSTICE WHIPPLE:

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 it is waived or lifted in accordance with section 3 of the Act.

Introduction

1. On 29 July 2024 the appellant was sentenced by Her Honour Judge Katherine Pierpoint at Liverpool Crown Court to concurrent terms of 18 months in custody for two counts of sexual activity with a child and two counts of causing or inciting a child to engage in sexual activity. The usual consequential orders were made and no issues arise in relation to them.
2. The appellant had entered guilty pleas at the pre-trial and preparation on the basis that the activity was consensual. Those pleas were acceptable to the Crown. Other counts to which she pleaded not guilty were left to lie on the file.
3. The appellant appeals against sentence with the leave of the single judge.

The facts

4. The complainant was 13 years old when she first met the appellant who was then 18 years old. They met in Liverpool City Centre in the spring of 2023 and exchanged contact details. They began communicating over Snapchat and meeting up. It was the Crown's case that the appellant knew the age of the complainant. The appellant would

tell others that the complainant was 17 years of age and it was the Crown's case that the appellant did this to avoid getting into trouble.

5. From around early May 2023 when the complainant had just turned 14 and the appellant was just 19 (her date of birth being 16 April 2004), the complainant began to stay at the appellant's address, where she slept in the appellant's bed with the appellant next to her. On 2 August 2023 the appellant sent a video to the complainant asking to be her girlfriend. The relationship went on until the end of August and lasted in total around four months.
6. The offences occurred when the complainant stayed overnight with the appellant. The appellant penetrated the complainant's vagina with her fingers on at least 20 occasions (counts 1 and 2) and caused or incited the complainant to penetrate the appellant's vagina with the complainant's fingers on at least four occasions (counts 3 and 4).
7. The complainant told the interviewing officer that she had not been aware that it had been illegal to engage in sexual activity until she had been told so by her sister. That caused the complainant to worry about whether she would be removed from her mother's care. The complainant also began to worry about what her mother would think of her relationship with the appellant. The complainant was so worried that on one occasion she had a panic attack at the appellant's home.
8. The complainant's mother had been told about the relationship by the complainant's sister and had tried to put a stop to it, but the appellant continued to contact the complainant using fake social media accounts. That was when the complainant's mother made a complaint to the police.
9. The appellant was arrested on 7 September 2023 and in interview initially answered no comment to questions asked. In a subsequent interview the appellant accepted that she

had begun a sexual relationship with the complainant but said that she thought that the complainant had been 16 years of age at the time. The appellant's mobile phone was seized and a message was found in which the appellant acknowledged the relationship was wrong, whilst reassuring the complainant's mother that she would wait until the complainant was 16 years of age.

Sentence

10. The appellant was aged 20 at sentence. The judge had before her a pre-sentence report. Amongst other things that report noted that the appellant had been assessed by various tools as being at low risk of offending but the author disagreed with that assessment on the basis of the appellant's harmful behaviour as demonstrated by the index offences; the author considered the appellant to pose a high risk of re-offending and a high risk of serious harm to children.
11. The judge noted the appellant's young age and her lack of maturity. She noted her lack of previous offending. She said that the appellant had a strong work ethic and noted her supportive family. She said that but for this offending the appellant had a positive future ahead of her. The judge noted the appellant's mental health issues and that she suffered from anxiety and depression. She noted the view in the pre-sentence report that she was at high risk of reconviction and posed a high risk of serious harm to children.
12. The judge concluded that the offences fell in the highest category for harm given that they involved penetration. They fell in Culpability B because there were no Category A factors. The starting point was a year's imprisonment in a range from a high level community order to two years' imprisonment.
13. The judge turned to the aggravating features. First, she noted that the behaviour was

repeated over a four month period. Secondly, she noted that the appellant had failed to respond to warnings about the inappropriate nature of the relationship - that was a reference to the mother's intervention and request that the relationship should stop, which request had been ignored by the appellant.

14. As mitigation there was the appellant's young age, her lack of maturity and her lack of previous offending.

15. The judge said that the notional sentence after trial would have been two years. With a discount for guilty plea that reduced it to 18 months. The judge said that this offending was so serious that only an immediate custodial sentence could be justified. She referred to the Imposition Guideline, recording her view, in agreement with the pre-sentence report, that the appellant presented a risk to the public.

Grounds of appeal

16. Mr Nolan does not take issue with the length of the sentence. His grounds of appeal, supplemented by oral submissions, complain that the judge could and ought to have given fuller consideration to a suspended sentence and in not doing so the judge failed to give sufficient weight to the appellant's age, positive good character, employment, remorse, relative immaturity and the modest age-gap of only five years between the appellant and the complainant. Further, he submits that the judge failed to give adequate consideration to the prospect of rehabilitation and placed too great an emphasis on the potential risk of re-offending.

Discussion

17. The single judge noted that this was a difficult case and that the sentencing judge had

been careful in her approach. We agree with both observations. The sentencing judge recognised the considerable amount of mitigation in this case but she concluded that the appellant was at high risk of re-offending and because of that posed a risk to the public. Those factors were highly material to the judge's decision not to suspend.

18. We are not persuaded that there is any good reason to interfere with the judge's conclusion. The judge plainly had the Imposition Guideline in mind and balanced the various factors present in this case appropriately and carefully. In the end she thought the offending was so serious that only an immediate custodial sentence was appropriate. That conclusion, which amounted to a refusal to exercise discretion to suspend in the appellant's favour, was properly open to her.

19. This was serious offending, aggravated by the features that the judge identified. Those features were repeated occurrence and, very significantly, the appellant's failure to stop the relationship even when she had been warned to do so by the complainant's mother. It was reasonable to infer from these behaviours that there was a risk to the public posed by the appellant.

20. Mr Nolan suggests that the judge wrongly failed to consider the prospect of rehabilitation. The prospect of rehabilitation is connected with the perceived risk of reoffending which the judge found to be high. The judge did not address rehabilitation in terms, but it is clear from her remarks that she thought that prospects of rehabilitation were outweighed by the seriousness of the offending.

21. Therefore, and despite Mr Nolan's able submissions, we are not persuaded that the sentence passed was wrong in principle or was manifestly excessive.

22. The Criminal Appeal Office draw to our attention a technical defect in the pronouncement of sentence. The judge imposed terms of imprisonment. The judge

should have imposed a terms of detention in a young offender institution given the appellant's age. We therefore correct that aspect of the sentence and allow the appeal to that modest extent only. The concurrent custodial terms of 18 months on all four counts, to be served immediately by detention in a young offender institution, remain unaltered.

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