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IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT ISLEWORTH
HER HONOUR JUDGE HOLT T20217209

CASE NO: 2023 01403 A3
[2024] EWCA Crim 1415

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 5 November 2024

Before:
LORD JUSTICE WILLIAM DAVIS
MRS JUSTICE STACEY
HIS HONOUR JUDGE SHAUN SMITH KC

REGINA
v
JOHN IVES

1992 Sexual Offences Act applies

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Lower Ground, 46 Chancery Lane, London WC2A 1JE
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MR CHARLES EVANS appeared on behalf of the Applicant
MR SCOTT BRADY appeared on behalf of the Crown

J U D G M E N T

MRS JUSTICE STACEY:

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 s.3 of the Act.
2. On 1 November 2022, in the Crown Court at Isleworth before Her Honour Judge Holt, the applicant was convicted by a jury of 31 historical sexual offences under the Sexual Offences Act 1956 committed over a period of 14 years from 1976-1999 against five complainants who were aged between 5 and 15 at the time that the offences were committed. There were 7 counts of indecency with a child, 10 counts of indecent assault of a female, 12 counts of indecent assault of a male and 2 counts of what was then called buggery.
3. Following the preparation of a pre-sentence report the matter came back before the same judge at the same court for sentence on 31 March 2023. The applicant was sentenced as follows:
 - For counts 1, 3, 12, 14, 15, 16 and 27, indecency with a child contrary to s.1(1) Indecency with Children Act 1960, 2 years' imprisonment on each count concurrent inter se.
 - On counts 2 and 4, indecent assault contrary to s.14(1) Sexual Offences Act 1956, a special custodial sentence under s.278 Sentencing Act 2020 of 5 years, comprising a custodial term of 4 years and an extended licence period of 1 year on each count concurrent inter se.
 - On counts 5 and 8, indecent assault, a term of 12-month term of imprisonment concurrent.
 - On counts 6 and 7, indecent assaults (as above), a term of 5 years' imprisonment concurrent.
 - On count 9, indecent assault (as above), 2 years' imprisonment concurrent.
 - Count 10, indecent assault (as above), 4 years' imprisonment concurrent.
 - Count 11, indecent assault (as above), 5 years' imprisonment concurrent.
 - Count 13, indecent assault (as above), 9 years' imprisonment concurrent.

- Count 17, indecent assault on a male person contrary to s.15(1) Sexual Offences Act 1956, a term of 9 years' imprisonment, concurrent.
- For counts 18, 19, 20, 21, 23, 24, 25 and 32, indecent assault on a male person (as above), a term of 4 years' imprisonment concurrent.
- For count 26, indecent assault on a male person (as above), a term of 6 years' imprisonment concurrent.
- For counts 28 and 29, buggery contrary to s.12(1) Sexual Offences Act 1956, a term of 13 years' imprisonment on each count concurrent inter se but ordered to run consecutively to the other counts on the indictment.
- Count 30, indecent assault on a male person (as above), a term of 12 months' imprisonment concurrent.
- Finally, count 31, indecent assault on a male person (as above), a special custodial sentence under s.278 Sentencing Act 2020 of 10 years, comprising a custodial term of 9 years and an extended licence period of 1 year.

He therefore received a total sentence of 22 years' imprisonment made up of concurrent sentences of which the longest was 9 years for all counts other than counts 28 and 29. For counts 28 and 29, the 13-year sentences imposed were consecutive to the other counts but concurrent to each other. The court imposed a special custodial sentence under s.278 Sentencing Act 2020 of a further period of 1 year's further licence for counts 2, 4 and 31, to run concurrently to each other.

Appeal

4. The applicant seeks leave to appeal on the single ground that the judge failed to have sufficient regard to totality resulting in a manifestly excessive sentence.
5. When receiving the sentences imposed, the Registrar of the Court of Appeal identified various apparently unlawful elements of the imposition of the special custodial sentence which she has referred to the full court for consideration and granted a representation order. Both parties have provided further helpful representations and we are grateful to Mr Evans and Mr Brady today for their assistance. We grant leave on the matter referred by the Registrar.

The Facts

6. In detailed and careful sentencing remarks the judge went through each count and described the appellant's long period of sexual abuse of young children (whom we shall refer to as Complainants 1, 2, 3, 4 and 5). The complainants were of both sexes and he had a connection to the complainants either as an extended family member or via his relationship with the mother of a complainant or in the case of C4, as the friend of C3 who was the son of his partner. Throughout the trial the appellant had shown no remorse and no empathy - a feature that had also been noted by the author of the pre-sentence report. All the complainants were accused of lying by the appellant. The judge described the offending as a campaign of sexual abuse and noted that the appellant had had a relationship of trust in relation to three of the complainants. He was described as a highly manipulative and devious man who had a pattern of befriending vulnerable women with problems, such as alcoholism, and then preying on their children sexually. The complainants were groomed and the indecent assaults became progressively more serious and the behaviour escalated. Many of the counts of indecent assault were of multiple incidents - the indecent assaults in counts 3, 4, 6 and 9 (against C1 and C2) each took place on at least 10 occasions; count 26, which consisted of the appellant sucking the 9 or 10-year-old's C4's penis and oral penetration by the appellant of C4 and the appellant then ejaculating onto C4, occurred at least 5 times.
7. Some counts involved the deliberate performance of degrading sex acts on the mother of a complainant in front of her son: for example count 15, when the appellant pulled C3 (then aged between 7-11) out of his bed to watch the appellant masturbating over the complainant's mother's vagina to the point of ejaculation and then telling C3 to get a tissue to wipe the ejaculate off his mother's pubic region.
8. On another occasion (count 20) when C3 was ill in bed and the appellant had not allowed him to go to the doctor, the appellant then gave him a biscuit laced with cannabis and attempted oral penetration at a time when C3 had difficulty breathing because of his illness and then ejaculated onto him.

9. The most serious offences of anal rape, or buggery as it was then called, were committed against C4 (then aged 9-10) who was C3's friend. The appellant made him lie on the floor with his feet raised with knees to head level and penetrated his anus causing him great pain on 2 occasions.
10. All 5 complainants movingly describe the extent of the mental anguish and deep psychological damage caused by the offending over a lengthy period of time against each of them, the drug and alcohol issues they attribute to the abuse, their low self-esteem, self-harm and difficulties in later life. They each describe their lives as ruined.
11. The offences were of serious and grave concern. There was predatory behaviour over a number of years by the appellant exploiting others' vulnerabilities repeatedly to fulfil his sexual desires.
12. The pre-sentence report found that the appellant poses a high risk of serious harm towards members of the public, namely children, known and unknown to him, due to his predatory sexual and threatening past behaviour.
13. The appellant's antecedents consist of 18 previous convictions for 27 offences starting in 1974 and ending in 2011. There are 2 relevant convictions. In 1981 - which was contemporaneous with this offending - he was convicted of inciting a boy to commit an act of gross indecency. He received a sentence of 9 months suspended for 2 years after a guilty plea that he now disowns. In July 2011 he was convicted of assaulting an 8-year-old girl by digital penetration for which he received a 4-year sentence.
14. The appellant is now aged 65 and the offences were committed when he was an adult between the ages of 18-32.
15. The judge took into account the appellant's poor physical health - his asthma, obesity, diabetes, Charcot arthropathy which causes him difficulty walking, pain and mobility issues. There was a psychological report by Dr Beigi which recorded that the appellant has depression generated anxiety disorder and social anxiety disorder. He had lost a child many years ago and had suffered trauma following an accident. He has also recently lost his disabled brother, for whom he cared, who had died between trial and sentence.

16. The judge took note of the fact that his physical ailments and psychological problems would make it harder for him in custody and that there had been a delay in the matter being brought to trial and also sentence. However, that had to be set against the seriousness of the offending and the judge found that the appellant had a total awareness of what he was saying and had appeared very quick to pick up on detail.
17. The judge concluded that it was not necessary to pass an extended sentence as the minimum determinate sentence commensurate with the seriousness of the offences together with the licence period he must receive as an offender of particular concern would be sufficient to manage the risk he poses.
18. The judge noted the increase in maximum penalty for offences of indecent assault since the time of the commission of these offences from 5 to 10 years and that the oral rapes that were then classified as indecent assaults would now be classified as rape with the maximum penalty of a life sentence. She would apply the current guidelines with measured reference assessing the appellant's culpability and the harm caused.
19. She was mindful of totality and noted that the overall sentence would be less than if she was dealing with each of the matters separately. Each victim would ideally deserve a consecutive sentence and if she had been dealing with a single victim on a single count the individual sentences would have been significantly greater.

Conclusions and analysis

Totality

20. These were shocking offences committed against 5 child complainants from the age of 5-15 over many, many years, which occurred on multiple occasions and which have had profound, long-lasting effects and caused immeasurable damage to each of them.
21. As the judge noted, if each offence had come to the court as an individual offence, the sum of each part and the total sentence would have been far in excess of the 22-year total appropriate custodial term. There were many aggravating features as identified by the judge and she gave what credit she could for the minimal mitigation including his health

conditions. The judge was best placed to assess the full extent of both harm and culpability as the trial judge. She correctly applied the totality principle to pass a total sentence which reflected all the offending behaviour which was just and proportionate.

22. It is not reasonably arguable that the sentence is manifestly excessive and leave to appeal on that ground is refused.

Unlawful Sentence

23. We turn next to unlawful sentences. It is accepted that the trial judge was not well served by counsel at the sentencing hearing and as a consequence she fell into error in some respects in applying s.278 Sentencing Code, which requires the imposition of a special custodial sentence for certain offenders of particular concern.

24. It is common ground that the judge passed an unlawful sentence when imposing a special custodial sentence on count 31.

25. We grant leave and allow the appellant to amend his grounds of appeal to challenge that aspect of the sentence. The judge was not required or permitted to pass a special custodial sentence for count 31 since the complainant was not under 13 years old at the time of the commission of that offence. A special custodial sentence for counts 2 and 4 was required since the indecent assaults consisted of oral rape of a child under 13 and there will be no alteration to the sentence for those counts.

26. On a proper reading of the legislation however, the judge was required to pass a special custodial sentence on counts 17, 26, 28 and 29, which have the modern equivalent of rape or attempted rape of a child under 13 (see s.278(1) and Sched 13 paras [10]-[12] Sentencing Act 2020).

27. We therefore quash the determinate sentence in count 17 of 9 years, and we replace it with a sentence under s.278(2) of an appropriate custodial term of 9 years and a further 1-year licence to be served concurrently to the sentences for all other counts.

28. We do likewise for count 26: we quash the determinate sentence of 6 years and replace it with a special custodial sentence under s.278(2), with an appropriate custodial term of

6 years and a 1-year further licence period to be served concurrently to the other sentences.

29. The matter is a little different with regards to counts 28 and 29. We have had regard to s.11(3) Criminal Appeal Act 1968 that we must not deal with an appellant more severely on appeal than he was dealt with by the court below. The s.11(3) cap applies to the imposition of a further period of 1-year licence for an offender of particular concern (see *R v Thompson* [2018] EWCA Crim 639 at paras [16] and [17]).
30. If we were merely to quash the sentences for counts 28 and 29 and substitute a lawful sentence by the imposition of a special custodial sentence under s.278(2) comprising a term of 13 custodial years and a further 1-year licence to be served consecutively to the sentences for counts 1-21, 23-27 and 30-32 and concurrently to each other, we would offend the principle in s.11(3) by extending the licence period by a further 12 months by dint of the consecutive special custodial sentence imposed for counts 17 and 26.
31. We therefore quash the sentences for counts 28 and 29 and substitute with an appropriate custodial term of 22 years and a further 1-year licence period to be served concurrently to the sentences for all the other offences.
32. In this way we have constructed the sentence so that counts 28 and 29 are treated as the lead offences and the overall sentence of 22 years' imprisonment and 1 year further licence is not more severe than that imposed by the judge below.
33. We wish to emphasise that in so doing we are not in any way minimising the appellant's culpability in relation to all the other complainants nor the terrible extent of the harm that this appellant has caused to each of them. It is merely a mechanism to ensure that the total sentence that the appellant receives is just and proportionate in accordance with the totality principle.
34. The total sentence therefore remains at 22 years with 1-year additional licence.
35. Finally we note that since the earliest date of offending was in 1976, the surcharge provisions do not apply to this case, and no victim surcharge is payable. We clarify and confirm that no victim surcharge order was made notwithstanding the judge's observations in the sentencing remarks.

36. To that extent the appeal is allowed which we summarise as follows:

- The sentence in count 31 is quashed and replaced with a concurrent determinate sentence of 9 years.
- The sentence in count 17 is quashed and replaced with a concurrent special custodial sentence comprising an appropriate custodial term of 9 years and a further 1-year licence period.
- The sentence in count 26 is quashed and replaced with a concurrent special custodial sentence comprising an appropriate custodial term of 6 years and a further 1-year licence period.
- The sentence in count 28 is quashed and replaced with a concurrent special custodial sentence comprising an appropriate custodial term of 22 years and a further 1-year licence period.
- Likewise the sentence in count 29 is quashed and replaced with a special custodial sentence comprising an appropriate custodial term of 22 years and a further 1-year licence period to be served concurrently to the sentence for count 28 and all other offences.

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

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