IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT DERBY
HIS HONOUR JUDGE HARBAGE KC 30DI0838920
CASE NO: 2024 01483 A5
NCN: [2024] EWCA Crim 1446

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 1 November 2024

Before:
LORD JUSTICE WARBY
MR JUSTICE GOOSE
HIS HONOUR JUDGE FLEWITT KC

REX
v
BEQ
(1992 Sexual Offences Act applies)

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)

MS LAURA PITMAN appeared on behalf of the Appellant

J U D G M E N T

MR JUSTICE GOOSE:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this appeal. Under those provisions, where a sexual offence has been committed against a person no matter relating to them shall during their lifetime be included in any publication that is likely to lead members of the public to identify them as the victim of the offence. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.

Introduction

2. The appellant, BEQ, is now aged 66. He pleaded guilty in the crown court at Derby to sexual offences against three complainants who, for the purposes of this appeal will be anonymised and identified respectively as C1, C2 and C3. They were each family members whose identification is prohibited.
3. The offences, in summary, were as follows.
    - In respect of C1, indecent assault, contrary to s.14(1) of the Sexual Offences Act 1956 (count 1), and indecency with a child, contrary to s.1(1) of the indecency with Children Act 1960 (count 2).
    - In respect of C2, an offence of indecent assault, contrary to s.14(1) of the Sexual Offences Act 1956 (count 3).
    - In respect of C3, an offence of causing or inciting a child under 13 to engage in sexual activity, contrary to s.8(1) of the Sexual Offences Act 2003 (count 4), and sexual assault of a child under 13, contrary to s.7(1) of the Sexual Offences Act 2003 (count 5).
4. The appellant provided a written basis of plea in which he accepted the offending but identified the age of C2 at the time of the offending as being 15. He accepted that the offences against C1 and C3 were whilst they were under 13.
5. On 21 March 2024 the appellant was sentenced by His Honour Judge Harbage KC to a determinate sentence of 4 years' imprisonment but with a consecutive extended sentence of 10 years, comprised of a 6 years' custodial term and an extended licence period of 4 years. The sentence was made up as follows.

- Count 1, 4 years' imprisonment
- Count 2, 1-year imprisonment, concurrently.
- Count 3, 4 years' imprisonment, to be served concurrently.
- Count 4, the extended sentence of 10 years' imprisonment, with 6 years in custody and a 4-year extension period, as already stated.
- Count 5, 3 years' imprisonment, to be served concurrently.

6. The judge ordered that the sentence of 4 years was to be served concurrently on counts 1, 2, 3 and 5, and were to be served before the extended sentence. In addition, the appellant was made the subject of a restraining order for an indefinite period, as well as a sexual harm prevention order, also imposed indefinitely. The appellant was ordered to be the subject of the notification requirements under Part 2 of the Sexual Offences Act 2003 and may be included in the relevant list by the Disclosure and Barring Service.
7. As a preliminary point we are grateful for the observation by the Registrar, asking us to correct the statutory surcharge order made by the judge. Given that the offences predated the victim surcharge provisions, no such order could be made. It was mentioned by the judge when sentencing, but has not been recorded. We confirm, therefore, that such an order was not made.

The offences

8. In December 2019 C1 (who was then an adult) reported to the police that the appellant (her father) had sexually abused her when she was aged between 4 and 11. Count 1 reflected at least four occasions when he touched her vagina and rubbed her clitoris. The appellant had also asked C1 to massage his back, and on several occasions, he made C1 hold his erect penis over clothing and to squeeze it (count 2).
9. C2 was also related to the appellant. When she was a teenager, the appellant began sending her text messages which became increasingly sexually explicit over time. On at least three occasions the appellant digitally penetrated C2's vagina when she was aged 15 (count 3).
10. C3 was another family member. On at least four occasions when she was aged between 5

and 12, the appellant made her touch his penis and masturbate him (count 4). When C3 was aged 8 years old, the appellant told her that he was going to do something to her, that it would not hurt, that he was doing it for his own peace of mind. The appellant then put his hand inside her pyjama bottoms and rubbed her clitoris. C3 asked him what he was doing and began to cry. He told her it was a test to see if she would move (count 5).

11. The offending by the appellant against the three separate complainants was over a number of years.

    - In respect of C1, count 1 occurred over the course of one year, between 26 July 1993 and 25 July 1994.
    - Count 2 occurred more than once, between 26 July 1993 and 30 September 1997.
    - The offending in relation to complainant C2 was when she was aged 15 and was on at least three occasions preceding 10 March 2003.
    - C3 was the subject of the appellant's offending from the age of 4 until she was 12, from 3 August 2004 until 2 August 2009.
    - Count 5 was when she was aged 8 years old, between 3 August 2007 and 2 August 2008.

    These offences occurred, therefore, over a period of 15 years against the three complainants in total.

Sentencing

12. The judge appropriately identified the current sentencing guidelines for offences under the Sexual Offences Act 2003 whilst dealing with the offending against C1 and C2. No criticism is made of the sentencing imposed for the offending against those two complainants, which the judge ordered to be served concurrently between themselves, because he was to impose a lengthy consecutive sentence for the offences against C3. The judge concluded that count 4, involving offending on at least four occasions over a 5-year period against C3 when she was aged 4 at the start, meant that the offences fell within category 2A of the guideline. His reasons were because culpability fell at the highest, due to the substantial breach of trust involved; in terms of harm, category 2 because the

offending was sustained over a long period against C3.

13. The judge heard submissions from the prosecution and on behalf of the appellant, who agreed that the appropriate category for sentencing count 4 was within 3A. The judge concluded that such a category did not truly reflect the long period of repeated offending against the complainant over a long period and found that this was a category 2A offence. The starting point for category 2A offences is 8 years' imprisonment, with a range of 5 to 10 years. The judge found the very young age of the complainant, when the offending started, to be a substantially aggravating factor of seriousness and allowed for mitigation on the basis that the appellant,t with significant previous convictions for offences of violence and dishonesty, had none for sexual offending. Also, he had shown some remorse, identified within the pre-sentence report). The aggravating and mitigating factors balanced each other, leaving the sentence of 8 years' imprisonment on count 4, which was discounted by 25 per cent to reflect the guilty pleas that had been entered. The custodial term was, therefore, 6 years.

14. The judge went on to consider whether the appellant was a *dangerous offender*. The pre-sentence report stated that the risk posed by the appellant had been assessed. The Offender Group Re-conviction Scale tool used by the National Probation Service assessed the likelihood of him again engaging in further general offending behaviour by the appellant as low, with re-conviction within 2 years. Also, according to the Risk of Serious RSR tool measure, he was assessed to be a low risk of committing a serious offence within 2 years. However, the pre-sentence report's assessment of the appellant's risk of re-conviction and risk of committing a serious offence was not in line with the other risk assessment tools. Taking into account the appellant's convictions, the report's author concluded that there was a medium risk of committing a serious offence within 2 years. That risk of serious harm was to female children under 18, including family members with whom he came into contact.

15. The judge took into account the contents of the pre-sentence report but also the

circumstances of the offences and stated as follows:

> "I have had to consider the question of dangerousness and for the reasons that I have already set out, I conclude that you are dangerous within the meaning of the Act: that is there is a significant risk of you committing further specified offences, and you present that risk, I am satisfied, because of all the information I have, in particular the fact that you have offended against three family members over an extended period of years with a gap in between. It seems that you take the opportunity to offend when the opportunity is there."

The Appellant's Grounds

16. On behalf of the appellant, Ms Pitman, for whose helpful submissions we are most grateful, does not seek to challenge the sentences imposed in respect of counts 1, 2, 3 and 5. The grounds of appeal for which leave were given focus, firstly, on the finding of dangerousness, and secondly, upon the determination of count 4 as falling within category 2A rather than 3A of the guideline. It is submitted on behalf of the appellant that the judge was wrong to find the appellant to be a dangerous offender.
17. Although it was an exercise of judicial discretion, it is submitted that the lengthy sentence of imprisonment, against a background of offending that ended in 2008, coupled with the appellant's expression of some remorse, should have caused the judge to step back and impose substantive sentencing only.
18. In respect of the second ground of appeal, it is argued that the judge was wrong to conclude that count 4 fell within category 2A of the guideline when the offending against C3 was intermittent (on at least four occasions over 5 years).

Discussion and conclusion

19. In assessing the dangerousness of the appellant, the judge was entitled to take into account all of the material available to the court. It is clear to us that the judge concluded that the appellant is a dangerous offender because of the circumstances of his offending against three separate and very young complainants over a 15-year period. Although the pre-sentence report did not conclude that he was assessed as a serious risk, using the

assessment tools available to the author of the report, the judge was entitled on the evidence to reach that conclusion on the material before him. We agree with that conclusion, that this appellant presents as a serious risk of further similar offending to young female children with whom he may come into close contact. Accordingly, we are not persuaded that the judge was wrong to reach the conclusion he did and to impose an Extended Sentence.

20. The sentence guideline for the offence of causing or inciting a child under 13 to engage in sexual activity contrary to s.8 of the 2003 Act, determines that the harm category 2 factor of *"sustained incident"* is within the medium category of harm. The reason for such a factor is obvious: that a longer period of offending against a complainant, or more often repeated over a shorter period, is a more serious creator of harm than a single and short incident. Accordingly, when identifying offending against C3 of at least four occasions over 5 years, the judge appropriately determined that it was a sustained incident or course of behaviour by the appellant against the complainant.

21. We are unable to agree with the submission made on behalf of the appellant that the judge fell into error in identifying that offence as falling within category 2A in the guideline. Further, had the judge not concluded that count 4 was a category 2A offence, but instead a category 3A offence under the guideline, that provided a range of up to 8 years, with a starting point of 5 years. Given the repeated offending over the 5-year period, it would have merited an 8-year sentence after taking into account both aggravating and mitigating factors. After plea discount, the same custodial term would have been appropriate (6 years).

22. Since the judge appropriately took into account factors of aggravating and mitigating circumstances to reach a sentence of 6 years after guilty plea, we are not persuaded that any error of principle arose: Equally we are not persuaded that the sentence imposed upon the appellant was excessive. Accordingly, we must dismiss this appeal.

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