Case No. 202403814 A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Neutral Citation: [2024] EWCA Crim 1652

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 18 December 2024

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE CAVANAGH
HIS HONOUR JUDGE DEAN KC
(Recorder of Manchester)

REX
v
MORGAN THOMAS

REPORTING RESTRICTIONS:
THE PROVISIONS OF THE SEXUAL OFFENCES (AMENDMENT) ACT 1992 APPLY

REFERENCE BY THE ATTORNEY GENERAL
UNDER SECTION 36 OF THE CRIMINAL JUSTICE ACT 1988

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MR M TANNEY appeared on behalf of the Applicant.
MS A HUSBANDS appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

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 the person as the victim of the offence. We shall refer to the victims in this case as C and N.

2 The course of the proceedings involving Morgan Thomas (the offender) were not uncomplicated. On 30 October 2023 he pleaded guilty at the magistrates' court to breach of a sexual risk order. He was committed for sentence because he had other matters pending in the crown court. On 11 March 2024 in the Crown Court at Stoke-on-Trent, he pleaded guilty to distributing an indecent image of a child. That was count 4 on the indictment. On 24 July 2024 the offender pleaded guilty to two offences of sexual activity with a child (counts 2 and 5). This was on the first day that his case was listed for trial with a jury. The victim in count 5 had already been cross-examined pursuant to section 28 of the Youth Justice and Criminal Evidence Act 1999. That cross-examination took place on 27 September 2023. Thus, in her case, that date was the first day of the trial. On 7 August 2024 the offender pleaded guilty at the magistrates' court to unauthorised possession of a bladed article in prison. He was committed for sentence. It was on 27 September 2024 that all matters came to the Crown Court at Stoke-on-Trent for sentence. The offender was sentenced as follows: count 2, 46 months' detention; count 4, 24 months' detention, concurrent; count 5, 8 months' detention, consecutive; breach of the sexual risk order, one month's detention, concurrent; possession of a bladed article, 10 months' detention, consecutive. The total sentence was 5 years, 4 months' detention. Ancillary orders were made which do not concern us.

3 His Majesty's Solicitor General now applies for leave to refer the total sentence imposed as unduly lenient, pursuant to section 36 of the Criminal Justice Act 1988.

4 The offender is now aged 21. He was born on 11 September 2003. He lived in Stoke-on-Trent, as did C and N. In the late summer of 2022, when the offender was approaching his 19th birthday, he began a relationship with C. She was 15. They had met through mutual friends. They had sex together. According to C the offender knew her age. Any doubt about that so far as the offender was concerned was removed on 28 September 2022, when the offender was issued with a child abduction notice. This referred to C by name. It stated her age and date of birth, namely 15 and born in December 2006. It required the offender to cease any contact with C. This notice was issued because C's mother had notified the police on several occasions that her daughter had gone missing. The offender's name was mentioned in connection with C's running away from home. On 28 September the police had found C with the offender. This was what led them to issue the child abduction notice to him. It had no effect on the offender. C carried on running away from home. She spent time with the offender. The two of them had sexual intercourse when they were together. It was the sexual activity after 28 September which formed the basis of count 2. In November 2022 C told her mother that the offender had been violent towards her. She ceased any kind of relationship with him. She also became aware that the offender had recorded them having sex. The recording appeared to have been made in an alleyway. The offender sent it to other people. C knew this because people started calling her a tramp.

5 In December 2022 the offender was arrested for the offences committed in relation to C. He was interviewed. He claimed that he thought she was 16. The police at that time examined his mobile telephone. They found a video of a male having sex with a female. That was the offender having sex with C. It was apparent that it had been sent over Facebook Messenger to another Facebook user. Following his interview, the offender was released on bail to return to the police station at the end of March 2023.

6 Victim N was also aged 15. Her father was disabled and housebound. Her older sister was

his full-time carer. N had a poor school attendance record. She was losing weight. She was self-harming. She had had been assigned a family support worker from the local children's services department. On 6 March 2023 the support worker called at her home. A cannabis grinder was found in her room. When N returned home, she was asked about this and also about her self-harming. N's reaction was to leave home. N's sister reported N as missing. The next afternoon N telephoned her support worker. She broke down crying. She said she was scared and she just wanted to come home. When she returned to Longton in Stoke, she was met by the support worker and police officers. She said that she had been with the offender.

7 On 9 March 2023 she was interviewed by the police. It was recorded as an ABE interview. She said that she had first met the offender on an occasion at the home of a friend of hers. When she had left home on 6 March, she had put a message on Instagram to say that she had run away. The offender had then messaged her, saying, "I know you've run off. Come to me." He told her where to meet him. When they met, he took her to a derelict flat. There were some other men there who were much older than both the offender and N. The offender took her to a room where there was a mattress on the floor. During the night, as she started to fall asleep, the offender pulled down her leggings and had sexual intercourse with her. The next day he went to Crewe. N called the support worker.

8 The offender was arrested on 14 March 2023. When interviewed, he said that he had had sexual intercourse with N. He believed she was 16. She was the one who had instigated the sexual activity. He appeared at the magistrate's court the next day. He was sent to crown court charged with the offences relating to N. He was bailed. The first appearance at the crown court was on 17 April 2023, when the offender pleaded not guilty.

9 On 17 August 2023 an Interim Sexual Risk Order was made in relation to the offender requiring him to notify the police of any change of address within three days. In the

following six weeks he breached that order twice. On 30 October 2023 the offender was remanded in custody for repeated breaches of bail conditions arising from his breaches of the Sexual Risk Order.

10 On 30 March 2024 he was in custody at HMP Brinsford. He was involved in an altercation with another inmate in an exercise yard. He was heard to say something about producing a weapon. When he was searched by prison officers, they found a make-shift weapon on him. It appeared to be a broken toothbrush with a razor blade attached to the end.

11 The offender had been convicted on three previous occasions, including an offence in 2022 of inducing a child to run away, for which he was conditionally discharged.
A Pre-sentence Report dated 23 September 2024 set out the offender's account of his contact with C and N. He said that he believed each girl was aged 16 throughout any time that he had spent with them. He thought he was not guilty of any offence. He showed no empathy for their predicament. This, however, was put into context by the author of the report. The offender had been in residential care since he was 13. Despite an apparent level of independence, he demonstrated immaturity. He was assessed as presenting a high risk of harm to teenage girls from further offending of the kind of which he had been convicted. That was because his understanding of how to behave towards teenage girls was seriously deficient.

12 There was also a psychiatric report in relation to the offender. He was somebody who had engaged in self-harm and abused a variety of drugs. There were elements of an emerging borderline personality disorder. Although this was not something said to be directly linked to the offending involving C and N, it was a significant feature of the offender's personality.
C's victim personal statement indicated that she was very young when she first met the offender. She said that she had loved him. She would do anything to please him. As a result, she had missed a lot of her schooling in the run-up to GCSE's, which she was not able to sit. She had lost all her friends. She now struggled with relationships. She regretted

the way in which she had treated her mother. She said her family had been broken by the offender's behaviour.

13 N made a victim personal statement in which she said that after the encounter with the offender she felt dirty. Her relationship with her family had changed. She felt constantly anxious and even paranoid in her own home. She described her state overall as, "A constant battle of getting me through each day."

14 In relatively brief sentencing remarks the judge referred to the conclusions of the reports, as we have set out above. In relation to the offence involving C, the judge said it was a category 1A offence within the relevant guideline. Harm was at the highest level because there had been full sexual intercourse. There was high culpability because the offender had recorded and distributed a video of the sexual activity. That gave a starting point of 5 years' custody. The aggravating factors identified by the judge were ejaculation and ignoring the warning given in the child abduction notice.

15 In respect of N, the judge concluded there was no high culpability factor. He did not accept, as had been submitted by the prosecution and apparently conceded on behalf of the offender, that N was targeted as a particularly vulnerable child. Thus, the offence fell into category 1B, with a starting point of one year's custody. The aggravating factors were ejaculation and the location of the offence. In relation to both offences, the offending was mitigated by the offender's age, lack of maturity and mental health issues.

16 The judge found that the sentence after trial in C's case would have been 4½ years' custody, and in N's case 10 months' custody. With a limited reduction for the late pleas, the sentences then would be 48 months and 9 months, respectively. The offence of distribution justified a sentence of 3 years' custody before reduction for plea, but it was to be treated as part of the principal offence relating to C. Any sentence for that offence had to be concurrent to the sentence for the offence of sexual activity with C. The starting point for

the bladed article offence was 18 months' custody by reference to the relevant guideline. That was to be reduced to 15 months' custody to allow for mitigating factors. Since there was a plea of guilty at the magistrates' court, the reduction for plea in that case was one third, so as to give a sentence of 10 months' custody. The judge reduced the sentences slightly to ensure that the overall sentence was proportionate. By that route he achieved the overall sentence of 5 years, 4 months' detention.

17 The Solicitor General argues that the sentence in relation to C was unduly lenient because no apparent effect was given to the significant aggravating factors identified by the judge. In relation to N, it is said that the judge erred in his finding that she was not particularly vulnerable. Moreover, once the offender knew that she had run away from home, he targeted her as someone with whom he could have sexual intercourse. The solicitor says that this miscategorisation was very significant. The starting point should have been five years rather than one year. The Solicitor General also submits that this was a case in which the judge ought to have considered the risk presented by the offender, and having done so, determined that an extended determinate sentence was required.

18 On behalf of the offender it is argued that given the age and immaturity of the offender, the judge was right to mitigate the sentence significantly from that which would have been appropriate for an adult. We are invited to confirm the judge's view in respect of N's vulnerability or lack thereof. In the course of oral submissions, Mr Tanney, who appeared for the offender below, conceded that this was a case in which an extended determinate sentence was justified. In the course of his submissions he said that he was very surprised that one had not been imposed. He said that he could not object to such a sentence being imposed by us today. We shall have to return to that.

19 The correct approach in assessing whether a sentence is unduly lenient remains that set by the then Lord Chief Justice in Attorney General's Reference Number 4 of 1989, [1991] WLR 41:

"A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate."

20 We agree with the Solicitor General that there were aspects of the sentencing exercise which were unsatisfactory. The sentencing remarks did not deal with matters in a coherent manner. However, that is not to say that the outcome was a sentence which was unduly lenient. We have to look at the sentence in the round. In so far as the judge did not give proper weight to the relevant factors, we must do so in assessing whether the test for an unduly lenient sentence has been met.

21 At the time of the principal offending, the offender was relatively young. He was just 19 when he engaged in unlawful sexual activity with C. He was still well short of his 20th birthday at the time of the offence involving N. The available evidence demonstrated that he was immature even for someone aged 19. Having been brought up in residential care since he was 13 with no parental contact, he lacked the guidance afforded to most children. What was said by the then Lord Chief Justice in *R v Clarke* [2018] EWCA Crim 185 is relevant to this offender's case:

"Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. [...] Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research [...] is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday."

This offender still has a way to go in the maturation process. A sentencing exercise in his case was not to be approached as if he were an adult.

22 The judge was correct to categorise the offence against C as a category 1A offence. By the time the offence charged in count 2 was committed the offender knew well that C was a vulnerable child. She may have been 15, but she was still a child. The child abduction notice told him that she was vulnerable. Despite that, he continued with his abuse of her. The abuse included filming her. Had he been an adult with a reasonable level of maturity, a sentence before any reduction for plea in excess of 5 years would have been appropriate. But he was not an adult with a reasonable level of maturity. Rather, he was someone whose culpability was significantly reduced by his immaturity. The judge concluded that the proper sentence on count 2 after a trial would have been 4½ years. We consider that this assessment failed to take into account sufficiently all that we have set out in relation to maturity and the personality of the offender. In our view, the sentence before reduction for plea ought to have been in the region of four years. A 10 per cent reduction for plea would then lead to a sentence of around 43 months.

23 Categorisation of the offending involving N was not straightforward. We consider that there was no specific targeting of a particularly vulnerable child, as provided in the guideline. N met the description of a particularly vulnerable child even though she was 15. However, to say that the offender specifically targeted her is to stretch the language of the guideline beyond permissible limits. On the evidence, he took advantage of a situation which arose on 6 March 2023. In other words, he exploited a girl whom he realised was vulnerable. That is not the same as specific targeting. However, there were very substantial aggravating factors. The offender was on bail. He did not need to have any particular level of maturity to understand what that meant. The location of the offence was an aggravating factor. N suffered very real psychological harm as a result of the offence. She was not somebody who had had any form of relationship with the offender. The events of 6 March were genuinely traumatic. Even allowing for the offender's age and immaturity, the offence

was at the upper end of the category range for a category 1B offence, namely close to 2 years' custody. Since the plea was tendered some months after N had been cross-examined pursuant to the procedure under section 28 of the 1999 Act, reduction for the plea of guilty ought to have been negligible.

24 We agree with the judge's approach to the offence of distribution of an indecent image. Although a serious offence, it was an integral part of the sexual activity with C. The Solicitor General does not argue that the sentence for the bladed article offence was unduly lenient. The judge categorised the offence correctly within the guideline. The resulting sentence of 10 months' custody was reasonable.

25 Simple aggregation of the sentences we have identified gives a total sentence of 77 months' custody. The judge correctly concluded that some adjustment was required to the total sentence to ensure that it was just and proportionate. He reduced what in his case was a total sentence of 67 months by three months. That exercise cannot be purely arithmetical. In our judgment, the total sentence we have concluded would have been appropriate, namely 77 months' custody, should have been reduced by 4 months. That would have been achieved most sensibly by reducing the sentences in relation to the offending against C and N by 2 months in each case.

26 The outcome is that we consider that the appropriate custodial term to have been imposed on the offender was 73 months' custody. The sentence, in fact, imposed was 64 months' custody. In our judgment, that means that the sentence was lenient but not unduly so.

27 However, that is not the end of the matter. We agree with the Solicitor General that this was a case in which the judge ought to have addressed the issue of dangerousness. Having addressed the issue, he should then have considered whether an extended determinate sentence ought to have been imposed. We can entirely understand why he did not engage in that assessment. He was not directed to the issue of dangerousness either by the prosecution

or the defence. Nothing at all was mentioned on the issue, notwithstanding the very clear conclusions of the author of the Pre-sentence Report, which were supported by the psychiatric report.

28 It follows that we must consider whether the offender was dangerous within the meaning of the relevant statutory provisions and, if so, whether an extended determinate sentence is required. We have no difficulty in concluding that he is a dangerous offender. Even though he is relatively young and immature, the risk he poses to young girls in the position of C and N is clear and it is continuing. It is very difficult to say precisely when he will mature sufficiently in order for him to understand that this kind of behaviour is simply unacceptable. But whether he would gain sufficient guidance during the period of a determinate term and post-release supervision thereafter is very difficult to say.

29 We have come to the conclusion, much the same as Mr Tanney did, that this is a case in which an extended determinate sentence was and is appropriate. There is no individual sentence which meets the criterion required for an extended determinate sentence to be available, namely a sentence of 4 years or more. To impose an extended determinate sentence, we must restructure the sentence in a way that does not of itself make the sentence any more severe in terms of custody.

30 What we will do is to order that the sentence on count 2 should be one of four years, six months. That is to combine the sentences imposed on counts 2 and count 5. The sentence of eight months on count 5 will now run concurrently, rather than consecutively. The restructuring will require this: the sentence of ten months' detention in relation to the bladed article offence, a determinate sentence, must be served first. Once that sentence has been served, there will be an extended determinate period of detention. The custodial term will be four years, six months. The extended licence will be three years. Concurrent to that sentence will be the determinate term of twenty-four months imposed on count 4. That will not affect the overall length of the extended determinate sentence.

31 It follows, therefore, that we give leave to the Solicitor General to refer this sentence. We do not interfere with the overall length of the sentence as imposed by the judge. However, having conducted the assessment of dangerousness, and taking into account all the material that was available to the judge but not properly brought to his attention, we have concluded that an extended determinate sentence should be imposed rather than a simple determinate sentence. We have set out in our restructured sentence how the extended determinate sentence will take effect.

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