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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT CAMBRIDGE

HHJ PHILIP GREY 35NT1681122

CASE NO 202403937/A3

[2024] EWCA Crim 1667

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 20 December 2024

Before:

LORD JUSTICE EDIS

MR JUSTICE BRYAN

RECORDER OF MANCHESTER

HIS HONOUR JUDGE DEAN KC

(Sitting as a Judge of the CACD)

REX

V

JAMIE-LEE FOX

MS E RANCE appeared on behalf of the Applicant.

A P P R O V E D J U D G M E N T

MR JUSTICE BRYAN:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply in this case. Under those provisions, 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 that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. This judgment has been anonymised accordingly.
2. On 9 August 2024, in the Crown Court at Cambridge (Mr Recorder Williams KC), the applicant (then aged 37) changed her pleas to guilty the day before trial in respect of two counts of doing an act tending and intended to pervert the course of public justice contrary to common law.
3. On 9 October 2024, the applicant (then aged 37) was sentenced by His Honour Judge Philip Grey to 2 years and 8 months' imprisonment on each count concurrent (10 per cent credit for guilty plea).
4. The Registrar has referred this application for leave to appeal against sentence to the Full Court and has also granted representation by junior counsel, Ms Rance.
5. Turning to the facts of the applicant's offending. On 23 July 2022, the applicant's brother, Matthew Fox ("Fox"), was charged with the rape of a female (hereafter referred to as "the Complainant"). He was remanded into custody to await trial. The facts of the rape are that Fox had come across the complainant in a highly intoxicated state whilst out in Peterborough. He had taken advantage of her, plied her with further alcohol and then taken her into an alleyway, where he raped her, the Complainant having no recollection of such rape, being profoundly unconscious throughout. Fox was then effectively caught red-handed, pulling his trousers back up.
6. But Fox was not going to admit what he did. Instead, and with the involvement of his mother (the co-defendant, Alison Quinn-Gajdur), his sister (the applicant) and a close friend and cousin (Alfie Smith) he embarked on a series of attempts to apply pressure on the Complainant to change her account of the night of the rape and to withdraw her complaint, which amounted to a sustained course of attempting to pervert the course of justice.
7. The detail of what occurred is set out in the Criminal Appeal Office summary and is well-known to the applicant, as a result of which there is no necessity to set out all that occurred in great detail. Suffice it to say that in relation to the applicant, and as addressed below, there are two stages to the applicant's involvement, each reflected in a separate count on the indictment, with the second stage involving persistent direct contact by the applicant with the Complainant.

8. The former began with Fox using the prison phone system to call his mother. In the call, his mother told him that she had a phone number for “Alf”, that is his cousin, Alfie Smith. Fox said he might need to use Smith as “his solicitor - if you know what I mean” which she did, or soon did. He referred to Alfie Smith as his “solicitor”, in order to hide his true intention, knowing that his calls were being recorded.
9. His mother gave him a number for Smith. Fox then made it clear to his mother that the “solicitor” i.e. Smith should find the Complainant, mentioning her name, so that she “all of a sudden did remember leaving the club and – no matter what it takes – as long as this person fucking goes and admits the truth, I’m out man. But they’ve basically run away and said ‘oh I can’t remember’.”
10. Within minutes of the call ending Alison Quinn-Gajdur attempted to call Smith twice, he then called her back. That same day Fox made a further call to his mother. She was with the applicant at the time and the applicant participated in the call. She made it clear that she and the applicant had been investigating the Complainant on Facebook and found one of the Complainant’s friends with whom she had been shortly before the rape and also a male, who was the Complainant’s ex-boyfriend. Fox said he wanted the details to be given to the “new solicitor” (meaning Smith) and asked the applicant to video record what he said.
11. Fox then gave a videoed account of what happened on the night of the rape, suggesting that the Complainant had not been unconscious (as she had been) and that she had consented to sexual intercourse (which she had not). Fox told the applicant that she should give his video account to Smith, so that he would “get things sorted”. He told the applicant to see the “solicitor” in person. Whilst that call was in progress, the applicant was already in text and phone call communication with Smith. Fox told the applicant that she had to go quickly to see the “solicitor in person” and that “he will do what he can...otherwise I’m looking at 10 years in jail”. The applicant told Fox that she would do so, “so hopefully it will be dealt with really quick”. The applicant did show the video to Smith. The applicant’s involvement in this stage of the attempt to pervert the course of justice was the subject matter of the first count on the indictment against the applicant.
12. In a later call by Fox to his mother on 26 July he said he would “pay an arm and a leg to get this sorted”. In a further phone call to his mother that day, Fox reiterated the importance of getting “the solicitor” to persuade the Complainant to give an untruthful account “no matter how much it costs”. The same day, and over ensuing days, using a new mobile phone and an unregistered SIM, Smith made a series of phone calls and text messages to the Complainant and her ex-boyfriend.
13. The Complainant was scared about this approach, and got her ex-boyfriend to tell Smith to stop calling, after which Smith repeatedly called the ex-boyfriend. In text exchanges the Complainant texted Smith to say: “I don’t know who you are and I have nothing to say.” Smith replied: “I’m not going to argue, just need to talk to you.” The Complainant replied: “I don’t remember anything, there’s nothing I can tell you.” Her ex-boyfriend rang the number back and Smith offered him £1,000 to persuade the Complainant to give an untruthful account and said: “We can do this the easy way or the hard way.” Her

ex-boyfriend reported this to the Complainant. On 27 July, Smith made more attempts to call her and she blocked his number.

14. Smith continued to call and attempted to call the Complainant up until 4 August 2022. In all there were ten calls made to the Complainant and 39 phone call communications between Alfie Smith and the Complainant's ex-boyfriend as well as numerous text messages, indicating an intention to apply significant pressure on the Complainant to change her account. The Complainant was frightened by the persistent attempts to contact her.
15. By 4 August it was clear to all the defendants that the attempt by phone call and text to persuade the Complainant to change her account had failed. It was also clear that Fox was panicking at the lack of progress.
16. Faced with the lack of success of Smith's attempts to wear down the Complainant by bombarding her with phone calls, the applicant decided to apply pressure to the Complainant by more subtle means. This formed the subject matter of the second count on the indictment against her. On 8 August, she contacted the Complainant on Facebook Messenger. She sent a long message which was a mixture of self-pity: "I don't know what else to do" and pity for her mother who she claimed was an "emotional wreck". She asked if the Complainant would meet her for lunch or a drink because nothing was making sense to her. She signed the message with a kiss. The applicant made no reference to the calls and text messages sent by Smith, so the Complainant could not have connected these.
17. The Complainant responded politely to the applicant. She said all she could remember was going out to celebrate her friend's birthday and then waking up in hospital and being told that she had been found unconscious and that a man was pulling his trousers up. She said she had not accused anyone of rape because she had no recollection of what had taken place. The Complainant apologised to the applicant for the distress being suffered by her and her mother but said it was not pleasant for her to awake from unconsciousness to discover that she had been raped.
18. The applicant responded by pretending to sympathise with the Complainant but also attempted to gain the Complainant's sympathy for Fox. She tried to plant in the Complainant's mind that her drinks had been spiked by someone else and she then described what some of the CCTV footage showed before the Complainant became unconscious.
19. The applicant was selective in what she told her. She said that her brother thought he had "pulled on a night out" and was "in bits being accused of rape and was not like that... and he seems to think this is all because you said you can't remember." She tried to persuade the Complainant that her brother must be innocent and that he was only accused of rape because the Complainant had no memory of it. She told the Complainant that her brother was facing 20 years in prison, locked up with paedophiles and rapists. She asked if anything had come to the Complainant or triggered her memory and whether the Complainant's friends could shed any light on it.

20. The Complainant's response was polite but clear. She repeated that she was found unconscious and that the man was pulling his trousers up. She said the police had not shown her anything and she apologised for not being able to help because she could not remember.
21. The applicant continued to send her messages and eventually intimated that if the Complainant was shown the CCTV footage, it would help her remember rather than just accuse someone. The applicant then told her, "What's on CCTV is fact. It happened and you weren't unconscious." This was a lie - the Complainant had been unconscious when she was raped. It was a deliberate attempt by the applicant to make the Complainant change her account and withdraw her complaint.
22. The Complainant responded politely, saying that any CCTV footage could be shown in court and that the applicant's brother would have an opportunity to have his say. The applicant then repeated to the Complainant the false account which Fox had given on the video recorded phone call, even suggesting that the Complainant had given him a "blow job". The Complainant responded that she had nothing further to say and that if Fox was not guilty, he would be fine at court. The applicant sent further similar messages but the Complainant did not respond.
23. The Complainant provided the messages to the police after she had reported the calls made to her by Alfie Smith. They were not found on the applicant's phone when it was later examined. In interview she said she had deleted the messages and later claimed that her phone had broken whilst she was on the school run.
24. In interview, the applicant admitted that she had looked up the Complainant on Facebook and that she had contacted her because she wanted to hear from her what had happened. She said she was only in contact with Alfie Smith about once a month and could not remember the last time she had seen him. When asked about the prison phone calls, she denied knowing that Alfie Smith being referred to as "the solicitor". She said she had not known what was going on but admitted it was not normal for Alfie Smith to have been contacting her so much. She denied knowing that Alfie Smith had contacted the Complainant. She said with regard to the Facebook messages to the Complainant that she just wanted to know the Complainant's version of events and had not wanted to upset her.
25. There was a victim impact statement from the complainant. In addition to addressing the consequence of the rape, of which she had no memory, she also addressed the contact made with her, including by the applicant, stating:

"To make things even worse, a couple of days after I started to get contact about that night. This scared me more and my worries came true. A male I didn't know had found me and wanted to chat about Matthew and what happened that night. He made threats and was very intimidating. I was so scared.

I later had more contact from ... Matthew's sister trying to make me feel guilty about not remembering what happened to me. She was also trying to say things that I had or hadn't done, to try to make me change my story and tell me about CCTV I had not seen. I was so confused by this I didn't even have a story, I didn't remember anything.

Alongside every other emotion I was feeling about the incident, I was then left feeling guilty.

...

After the contact happened I was left feeling more scared, I was more anxious about the lengths these people would go to find me. I had to move house. I was scared to leave the house and, if I had to spend time there alone I didn't open the curtains and tried to hide away to avoid anyone else contacting me or finding where I lived."

26. The applicant was aged 37 at sentence and was of previous good character. She is a single mother and sole carer of three children aged 15, 14 and 6. The eldest children had no contact with her father and it was thought the eldest two would be placed into the care of the Local Authority if an immediate custodial sentence was imposed. However, in the event, the children are currently being looked after by their grandmother. The applicant is in poor health and had a diagnosis of rheumatoid arthritis, fibromyalgia and osteoarthritis. The applicant's mental health was also poor, as set out in the psychologist's report and the applicant suffers with depression and anxiety for which she is prescribed medication.
27. There was a pre-sentence report before the court. The applicant stated to its author that she did not believe that the Complainant was intimidated or threatened, as she was responding and she believed that the exchange was civil, and she was adamant that her intentions were pure. She said she was not aware she was committing an offence and, had she known, she would not have made contact with the Complainant. She expressed remorse for her actions. It was noted that the applicant understood that due to the severity of the offence the court might be considering an immediate period of imprisonment. The author noted that although such a sentence was likely to act as a future deterrent to prevent reoffending and manage risk of harm, there could be a detrimental impact on her three children, as the applicant was their primary care giver. Prison would be an unfamiliar environment for the applicant and there were concerns that her mental health would deteriorate. The author assessed the applicant as suitable for a community-based disposal and proposed the court consider imposing a minimum of 12-month community-based sentence with a Rehabilitation Activity Requirement for 20 days.
28. In his sentencing remarks the judge identified that the applicant's conduct involved passing on the recorded message from Fox to Smith and direct contact with the Complainant, with the applicant being significantly more involved than her mother. The

judge accepted that, at the time, the applicant genuinely, but wrongly, believed that her brother was innocent. She was motivated by that belief and wanted to help her brother. But the judge was sure that she knew full well at the time she was speaking to Mr Smith that pressure was going to be applied and money offered and that when she contacted the Complainant directly she knew that she should not be doing so and that she calculated with some care how best to go about getting her to give a false account. Her communication with her began with emotional blackmail, and then moved on to applying a degree of pressure.

29. The judge considered that whilst the applicant was put under pressure by her brother, it was not to an extent that amounted to coercion or intimidation. There was an element of planning and on the first count (count 3) it was borderline between Culpability A and B. In relation to the second count (count 4), it was medium culpability because although there was an extremely serious underlying offence, what the applicant did could not be said to be sophisticated. It was Category 1 harm, due to the fear caused to the Complainant by being repeatedly contacted directly and indirectly and the guilt she was left feeling as a result of the applicant's emotional blackmail. The judge identified the Category 1A offence had a starting point of 4 years' custody and a range of 2 to 7 years' custody whilst a category B1 offence had a starting point of 2 years' custody and a range of 1 to 4 years' custody.
30. The judge made express reference to the applicant's personal mitigation, including her health and personal circumstances and he also expressly referred to the pre-sentence report. He continued his sentencing remarks in relation to the applicant as follows:

“... I've considered your case with particular care. You of course have strong personal mitigation, namely your responsibility for your three children. The tragedy in your case is that because you chose not to admit your obvious guilt at an early stage I am simply unable to reduce the sentence to a level close to where I could have suspended it.

You offended in two different ways, you were a key player in facilitating the intimidation applied by Mr Smith... and... the pressurising of [the Complainant] and her boyfriend by him, and you then applied pressure yourself; and finally for reasons which only you know you denied your guilt until almost the last possible moment, depriving you of the best mitigation you could have had.

I have the impact on your children of the sentence I am about to pass well in mind, and I've reduced the sentence to take account of it, but the responsibility for this situation lies with you. The shortest total sentence that the court can impose in your case is two years and eight months' imprisonment which is reduced from three years which would have been the appropriate sentence after trial.”

31. The grounds of appeal against sentence are that the sentence passed was manifestly

excessive, in that the judge:

- (1) Did not adequately reflect the applicant's personal mitigation, previous good character, ill-health, impact of immediate custody on her three young children and the fact that she had not committed any other offences in the 2 years following the commission of these offences and/or
- (2) should have passed a sentence which was capable of suspension, and should have passed such a sentence.

32. In referring the application to the Full Court the Registrar stated:

“Perverting the course of justice is a serious offence and the underlying offence was Rape and in the majority of cases appropriate punishment can only be achieved by immediate custody. The applicant was described as a ‘key player’. The judge referred to her strong mitigation and had the impact of the sentence on the children well in mind (SRs at 9A-D). However, he did not specifically refer to *Petherick* [2012] EWCA Crim 2214 and it is unclear what information the judge considered as to arrangements that were in place for care of the children (aged 15, 14 and 6), where the PSR said the older two had no contact with their father and there was no-one else suitable to look after them, but they are currently being looked after by their grandmother (Grounds para.21). The application is referred to the full court to consider, in particular, the impact on the children.”

33. We have the benefit of a prison report prepared at the direction of the Registrar, from which it is clear that the applicant is doing well in prison. Wing staff describe her as being polite and compliant with the prison regime and she is currently on Standard IEP level, waiting for a decision on application for enhanced level. She does not have any adjudications or negative behaviour warnings. It identified that her children are being looked after by her mother and by the father of her older sons who has moved into the applicant's house temporarily while the applicant is in custody. The applicant's youngest son's father is also contributing to childcare. When the author of the report spoke with the applicant on 5 December, she reported that her youngest son was struggling with coping without her and had been displaying challenging behaviour, therefore he was staying with the applicant's mother.

34. We are grateful for Ms Rance, who appears on behalf of the applicant, for the quality of her written and oral submissions before us. She has updated us today in relation to the impact upon the children of the applicant's imprisonment, in particular, in relation to her youngest child, and also the fact that the applicant has not received in prison all the medication she was receiving in the community. We have borne all those matters well in mind.

35. Perverting the course of justice is a very serious offence which will almost always result in an immediate custodial sentence. Here the underlying offence was the serious offence of rape. As the judge rightly noted, it can be difficult to secure a conviction for rape and the evidence of the victim is crucial. The victim of any sexual offence is particularly vulnerable to any efforts that may be made to seek to dissuade them from assisting the police. Here there was a sustained course of conduct on the part of the applicant to do so, and this also greatly exacerbated the distress suffered by the Complainant. As the judge rightly noted in this regard, the entire system of criminal justice in this country relies on witnesses being prepared, and able, to give evidence in court and doing so honestly, and assisting the police when it is necessary for them to do so. Actions such as the applicant's strike at the very heart of the State's ability to prosecute serious offenders and to ensure that they are brought to justice.

36. In the present case, the judge had express and careful regard to the applicant's available mitigation. The reality is that the applicant squandered what would have been her best mitigation, namely an early guilty plea, given the overwhelming evidence against her.

37. There can be no doubt that the judge also gave careful consideration to the impact on the applicant's children that the imprisonment of their mother would have, and he expressly referred to the strong personal mitigation in the form of the applicant's responsibility for her three children. The information available to the judge about who was going to care for the children was less than it should have been (see *R v Rebecca Rescorl* [2021] EWCA Crim 2005). Nevertheless, and as is clear from the appeal report, satisfactory arrangements were put in place and remain in place. Whilst the judge did not expressly refer to the guidance in *R v Petherick* [2012] EWCA Crim 2214, we have no doubt he bore such guidance well in mind.

38. In the context of an immediate custodial sentence (and applying the principles in *Petherick* at [17] to [18]), there will undoubtedly be an interference with family life but such interference is in accordance with the law and due to legitimate aims in the context of such serious offending, with the result that the interference that occurred in the present case was proportionate, having regard to the seriousness of the offending when measured against the interference with family life in circumstances where the children would be properly cared for as they have been.

39. In this regard and as was said in *Petherick* at [21]:

“... in a criminal sentencing exercise the legitimate aims of sentencing which have to be balanced against the effect of a sentence often inevitably has on the family life of others, include the need of society to punish serious crime, the interest of victims that punishment should constitute just desserts, the needs of society for appropriate deterrence (see section 142 Criminal Justice Act 2003) and the requirement that there ought not to be unjustified disparity between different defendants convicted of similar crimes.”

It is also the case that:

“... the likelihood ... of the interference with family life which is inherent in a sentence of imprisonment being disproportionate is inevitably progressively reduced as the offence is the graver...”

- see *Petherick* at [23].

40. These sentiments were apposite in the present case. The applicant's offending was so serious that only an immediate custodial sentence was appropriate, and there can be no valid complaint, having regard to the seriousness of the applicant's offending when weighed against the available personal mitigation, including in relation to the impact upon the applicant's young children, that a sentence of 3 years' imprisonment (2 years 8 months' imprisonment after credit for the late guilty plea) was manifestly excessive. This was not a case where a sentence capable of suspension could be passed, nor was it a case where a suspended sentence order would have been appropriate.
41. The judge did not arguably err in principle in relation to the sentence passed and the sentence passed was not arguably manifestly excessive. Accordingly, the application for leave to appeal against sentence is refused.