



IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT WINCHESTER
HER HONOUR JUDGE ANGELA MORRIS CP: 44BB0743122

CASE NO: 2024 02168 A5

[2024] EWCA Crim 1674

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 19 December 2024

Before:
LADY JUSTICE ANDREWS
MR JUSTICE BRYAN
MR JUSTICE EYRE

REX
v
BLP

(1992 Sexual Offences Act applies)

Non-counsel application

APPROVED JUDGMENT

MR JUSTICE BRYAN:

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 section 3 of the Act. This judgment has been anonymised accordingly.
2. On 9 April 2024, in the Crown Court at Winchester before Her Honour Judge Angela Morris and a jury, the applicant (then aged 56) was convicted of two counts of sexual assault, contrary to section 3 of the Sexual Offences Act 2003, and on 23 May 2024 the applicant was sentenced to 40 months' imprisonment on each count concurrent.
3. The applicant renews his application for leave to appeal against sentence following refusal by the single judge.
4. Turning to the facts of the applicant's offending, the two offences of sexual assault were committed against his partner's granddaughter (then aged 16). The offences were committed on 21 November 2022 in the home he shared with C1's grandmother. The applicant arranged to meet C1 on the pretext that he was taking her to have breakfast with her grandmother during her break from work. The applicant did so knowing that her grandmother's shift had changed, and there was therefore no need to collect C1 so early. His partner was unaware of the arrangement.
5. The applicant collected C1 and took her back to the property, which had belonged to her mother, who was now deceased. C1 was in care and had not been to the house for a number of years. While alone with C1 in the house, the applicant sexually assaulted her by touching her breasts, unsuccessfully trying to touch her under her clothing and touching her genital area over clothing. When C1 resisted, the applicant asked her if she was a virgin and said he would not have "done it" if he had known that she was.
6. C1 went to see her grandmother at the bus station where she worked and immediately told her what had happened. The applicant denied the offences and claimed he had arranged a surprise visit for C1 to see her grandmother.
7. There was a victim impact statement from C1 before the court. She stated that the sexual assaults upon her had affected her a lot. She finds it hard to talk to men in her family and she hates what the applicant did to her both physically and mentally. She has trouble sleeping, and regularly wakes up with panic attacks. She is struggling with anxiety and depression and is not eating properly. She also does not like leaving the house unless someone is with her. It is evident that C1 has experienced both emotional and long-lasting psychological harm, which has impacted upon her mental health and her ability to trust others, including those within her family.
8. There was a pre-sentence report before the court in respect of the applicant who was of previous good character. The author noted that the applicant did not take any responsibility for his behaviour and denied having sexually assaulted C1; though he admitted kissing C1 on the head and giving what he described to have been a "hug". The applicant had only met with C1 on one previous occasion when she had been taken into care and so the author questioned why he believed it would be appropriate to kiss her on the head or hug her in any event. The author considered that he gave this account as a way to minimise the sexual element of his sexual behaviour and that the applicant used his status as the victim grandmother's partner to take advantage of her and breach her trust. She also considered that the fact the applicant

pleaded with C1 not to tell anyone or she would not be able to see her mother or grandmother again was an attempt to persuade C1 not to report what he had done. The applicant was assessed as posing a medium risk of serious harm towards children, specifically female adolescents. The author said that if the court was not minded to impose an immediate custodial sentence, the author proposed a community sentence of 24 months' duration with various specified requirements.

9. In her sentencing remarks the judge identified that C1 was a young person, to an extent already damaged by her domestic background having been in care for many years, and that what the applicant did only served to psychologically damage her further. The judge placed the offending within Category 2A, with a starting point of 2 years with a range of 1 to 4 years' custody. In terms of harm, C1 was particularly vulnerable due to her personal circumstances. It was a planned act of deception by the applicant towards a vulnerable teenager. The applicant was in a position of trust because as the applicant was her grandmother's partner, C1 had no reason to question the applicant's account about plans, and she had every reason to trust him when those plans seemingly changed after the applicant picked her up. What the applicant did in luring C1 back to the family home was against a background of a blatant untruth, and the judge took into account the effect that such deception and associated sexual assaults had on a vulnerable teenager. The judge considered that whilst the psychological harm caused could not be categorised as severe psychological harm, it required an uplift within Category 2. It was Culpability A for two reasons: first, the clear abuse of trust by the applicant, and secondly, the significant degree of planning.
10. In circumstances in which the offences were committed on the same occasion, the judge passed concurrent sentences. Aggravating facts placed the case at the top of Category 2A, and making all adjustment for aggravating and mitigating features in respect of both offences, the judge passed a sentence of 40 months' imprisonment on each count concurrent.
11. The grounds refused by the single judge and now renewed before us are that the sentence passed was manifestly excessive for the following reasons: (1) The judge used the wrong starting point and category within the sentencing guidelines, and/or (2) there was no evidence of "severe psychological harm", and/or (3) the judge erred in concluding that there was an abuse of trust sufficient to place the offences within a higher category, and/or (4) the judge erred in concluding that there had been a "significant" level of deception and planning sufficient to place the offences into a higher category, and/or (5) there was no evidence that the victim was "extremely vulnerable", and/or (6) there was an element of double counting with regards to the breach of trust, psychological harm, vulnerability and planning. We have also recently received further written submissions from the applicant to which we have had regard.
12. Like the single judge before us, we are satisfied that the grounds (and the further submissions recently received) do not bear examination and that there is nothing in them:-
 - (1) This was clearly Category 2A offending. As to Harm, it was Category 2 harm. C1 was particularly vulnerable due to her personal circumstances, being in care and being lured back to an empty family house. Equally it was Culpability A. The judge rightly found there was significant planning, with the applicant planning and carrying into effect the deception of C1 being lured to the house on the pretext of meeting her grandmother.
 - (2) The judge did not find that there was severe psychological harm, but the victim personal statement evidenced that C1 had suffered significant psychological harm, which amply justified an increase from the starting point within Category 2A.

- (3) The judge was entitled to find that there was an abuse of trust. But this was not in any event the only Culpability A factor.
 - (4) There was a significant degree of planning, as the judge rightly found.
 - (5) There was evidence that C1 was "particularly vulnerable" due to her personal circumstances, being in long-term care and the fact that she was lured to a property where she was alone with the applicant.
 - (6) There was no double counting in relation to the breach of trust, psychological harm, vulnerability and planning.
 - (7) We would only add that there were also aggravating factors not expressly mentioned by the judge, including the location of the offence and the fact that the applicant sought to persuade C1 not to report his offending.
13. The sentence passed was not arguably manifestly excessive and accordingly, the renewed application for leave to appeal against sentence is refused.