IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202302978/A4
[2024] EWCA Crim 259

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 15 February 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE FARBEY

MR JUSTICE LINDEN

REX

V

JASPREET SINGH

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MR N FOOKS appeared on behalf of the Appellant.

J U D G M E N T

MRS JUSTICE FARBEY:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. No matter relating to the victim of these offences 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 the offences. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

2. On 17 August 2023, in the Crown Court at Isleworth before HHJ Wood, the appellant (then aged 33) pleaded guilty on re-arraignment to four offences of sexual assault of a child under 13 and one offence of sexual communication with a child. On 24 August 2023, before the same judge, the appellant was sentenced in relation to the sexual assaults as follows: no separate penalty on count 1; 30 months' imprisonment on count 2; 10 months' imprisonment on count 3; and 14 months' imprisonment on count 6. Those sentences were ordered to run concurrently. For the sexual communication offence, he was sentenced to 6 months' imprisonment to run consecutively (count 7). The total sentence was therefore 3 years' imprisonment. Appropriate ancillary orders were made.

3. The appellant appeals against sentence by leave of the single judge.

The Facts

4. At the end of 2018, the mother of the victim of his offences (whom we shall call "VM") met the appellant at a Gurdwara. The appellant explained that he wished to attend the Gurdwara every day but that he could not do so because he lived too far away. The appellant started crying and VM felt sorry for him. She invited the appellant to live in her home in the box room. While the appellant lived at her address, VM considered that the relationship between him and her daughter would be as if it were a relationship between an uncle and a niece. The appellant thought of VM like an older sister so she was under the impression that he would treat her children as he would his own family, and she was happy to allow the appellant to discipline them and teach them good manners.

5. However, over the course of 2019 and up until the start of May 2020, the appellant touched her daughter (whom we shall call "C1") numerous times on her hand, arms and legs, after she had made him tea (counts 1 and 2). Also during that period, the appellant sat next to C1 in her bedroom and moved his hand up her ankle (count 3). C1 told the appellant to stop and he grabbed her just above the knee instead (count 3). The appellant told C1 that he "did not mean it like that".

6. Between 30 September 2021 and the beginning of November 2021, VM was working at night. After C1's father had fallen asleep, the appellant would go into C1's bedroom while she was sleeping. She would wake up to see the appellant standing over her, touching her thigh and her waist (count 6). C1 would tell the appellant to leave. She would go back to sleep before waking up to find him with his hand over her mouth to stop her screaming. On two or three occasions, C1 attempted to sit up and speak to the appellant but he would push her and hold her down. He would apologise to her before he left, saying he would not do it

again.

7. The appellant moved out of the property in late 2021 but continued to communicate with C1 by telephone and text message, treating her as if she were his girlfriend. He used sexual language and, in particular, sent her a message asking her to show him her "melons" (count 7).

8. In early 2022, the appellant visited C1's family home and stayed there for around a week. He visited the family on further occasions every now and then. On 27 February 2023, VM left C1 in the house with her brother and the appellant. C1's brother heard her screaming. When he asked her what had happened, C1 replied that she "could not take this" before leaving the address. C1's brother called VM to tell her that his sister had left home because she had had a fight with the appellant. VM rushed home and telephoned C1 numerous times but she did not answer. VM asked the appellant what had happened. He suggested that she speak to C1. When C1 eventually returned home, she explained to VM that the appellant had touched her in a wrong manner. The appellant said that C1 had taken it the wrong way and that he had not meant to touch her in a bad way. VM shouted at the appellant and told him to pack his bags and leave, which he did.

9. On 12 March 2023, the appellant was arrested. In interview he answered "No comment" to many of the questions put to him, but he did say that he wanted to provide an explanation in court and he denied the allegations in derogatory language. He had no previous convictions.

10. As we have mentioned, the sentencing hearing took place on 24 August 2023. C1 signed a victim personal statement on 21 August 2023, which was uploaded to the digital case system on 23 August 2023.

The Judge's Sentencing Remarks

11. In sentencing the appellant for the sexual assaults, the judge considered the Sentencing Guideline for sexual assault of a child under 13. He concluded that the level of harm was low, falling in category 3. However, the appellant's culpability was high, at level A, as the offences had involved an abuse of trust. The starting point for a category 3A offence is 1 year's custody; the category range is 26 weeks to 2 years' custody. In relation to count 7, the judge applied the Sentencing Guideline for sexual communication with a child. He concluded that it was a category 2A offence, ie low harm and high culpability, with a starting point of 1 year's custody and a category range of a high-level community order to 18 months' imprisonment. He reached this conclusion on the basis of a number of different messages captured on phone screenshots served by the prosecution.

12. By way of aggravating factors, the judge emphasised that the offences had taken place in C1's home. He had regard to C1's victim personal statement. His sentencing remarks quote from the statement in which C1 said that the appellant had made numerous attempts to stop her from telling her family about what he had done. He told her it was better for both their sakes to keep his behaviour quiet. He had gone so far as to threaten to burn down her house. He said he would come to her school. She was on one day the last to leave school because

she believed his threat and was in fear. The judge regarded this threatening behaviour as a further aggravating factor.

13. By way of mitigation, the judge took into consideration the appellant's previous good character, the lingering effects of Covid-19 in prisons (R v Manning [2020] EWCA Crim 592; [2020] 2 Cr App R(S) 46) and the effect of custodial sentences in the context of a high prison population (R v Ali [2023] EWCA Crim 232). Having weighed the factors on either side of the scales, the judge concluded that the aggravating factors outweighed the mitigating factors, such that there should be an upward adjustment to the appellant's overall sentence. In reaching that conclusion, the judge referred again to "the aggravating factors contained in the victim personal statement and the fact that the offences were committed in the victim's home".

14. Owing to what the judge regarded as an overlap between the appellant's conduct in counts 1 and 2, he decided to impose no separate penalty in relation to count 1. He imposed a sentence of 30 months' imprisonment on count 2 in order to reflect the overall seriousness of all the assaults to which the appellant had pleaded guilty. He imposed a consecutive 6-month sentence for the sexual communication as it was a different kind of offending. The other offences were the subject of concurrent sentences in order to take account of the principle of totality. For each offence, the judge's sentence reflected a 17.5 per cent reduction to reflect the appellant's belated guilty pleas.

The Grounds of Appeal

15. Mr Fooks makes four principal submissions. First, he submits that the judge made an error of law by treating the content of C1's victim personal statement as an aggravating factor. C1 had at no stage prior to that statement alleged that the appellant had threatened to stop her reporting his conduct or threatened to burn down her home. She had not, for example, mentioned these things in her 3-hour interview with the police.

16. Secondly, Mr Fooks submits that the judge undertook double counting by treating the location of the assaults (in C1's home) as an aggravating factor, when he had already treated the abuse of trust as the factor that raised the assaults to culpability A. Thirdly, he submits that the judge failed to give adequate weight to the appellant's mitigation including his previous good character. The judge should not have alighted on a 30-month sentence for the assaults which was far in excess of the category range.

17. Finally, he submits that owing to lack of clarity in the indictment, it was unfair for the judge to have sentenced the communication offence on the basis of more than one message. In all these circumstances, he submits that the appellant's sentence is manifestly excessive.

Discussion

18. It is now well established that victims of crime are invited to make a victim personal statement. The sentencing judge will take the statement into account when determining sentence (Cr PD 9.5.1). A statement may be made at any time prior to the disposal of the

case (Cr PD 9.5.2). It should contain evidence of the effects of an offence on the victim in the form of a witness statement (Cr PD 9.5.3). The statement must be served on the defence "in good time" (Cr PD 9.5.3)

19. In R v Perkins [2013] EWCA Crim 323; [2013] Cr App R(S) 72, paras 2 and 9, Lord Judge CJ observed that the purpose of the statement is to allow victims a more structured opportunity to explain how they had been affected by the crime of which they were victims. The statement provides a practical way of ensuring that the sentencing court will consider the extent of the harm caused by the offence, which is a necessary part of the sentencing process. As it is the victim's evidence, a victim personal statement must be in a formal witness statement, served on the defendant's legal adviser in time for the defendant's instructions to be taken and for any objection to the use of the statement to be prepared. The statement may give rise to disclosure obligations. Responsibility for presenting admissible evidence within statements remains with the prosecution.

20. In the present case, the victim personal statement was not signed until three days before the sentencing hearing and was not served until the day before the hearing. That was too late. The lateness of the statement deprived the appellant's lawyers of a practical opportunity to object to the content of the statements in a meaningful way. The appellant's lawyers were provided with no realistic opportunity to consider, for example, whether further disclosure was necessary to protect the defendant's interests. We discern no good reason for the delay.

21. By relying to a significant degree on the parts of the statement dealing with the appellant's threatening behaviour, the judge relied on evidence of what the appellant did during the course of his offending. That evidence had not formed part of the prosecution case upon which the appellant had been indicted. Notably, C1 had not mentioned the threatening behaviour when interviewed.

22. The defence could not have foreseen that the prosecution would serve evidence of threats as part of the sentencing process when it had not been served as part of the prosecution case. By introducing evidence of threatening behaviour, the content of the statement went beyond the proper purpose of informing the court of the effect of the appellant's offending on the victim. The judge was wrong in principle to rely on the alleged threats as an aggravating factor.

23. We turn to the appellant's other grounds. We agree with Mr Fooks that, having taken into account the appellant's breach of trust in assessing his culpability, the judge should not have treated the location of the offences as a further aggravating factor. It was part of the prosecution case that the appellant was a person trusted to live in the family home and trusted to care for C1 in her home. The judge founded his decision on the appellant's high level of culpability on this part of the evidence. By treating the location of the offences as an additional aggravating factor, the judge fell into the error of double counting.

24. We are not persuaded that the judge failed to give proper weight to mitigating factors and we do not regard this aspect of Mr Fooks's submissions as advancing the appellant's case. We reject the submission that the offending was not serious because the appellant did not touch

sensitive parts of C1's body.

25. In relation to count 7, we are persuaded that the judge ought to have sentenced on the basis of the one particularised message identified in the indictment (which was the message to which we have specifically referred above).

26. The question for this Court on appeal is whether the overall sentence is manifestly excessive. These were serious offences for which the appellant could expect a severe sentence. Nevertheless, we agree that the judge's errors, as we have identified them, led him to impose a sentence that was manifestly excessive.

27. We quash the sentence of 30 months on count 2 and substitute a sentence of 24 months after appropriate discount for the guilty plea. The sentences on counts 3 and 6 will remain the same and will remain concurrent with the sentence on count 2. The 6-month sentence on count 7 will be quashed and we substitute a sentence of 3 months which is again after appropriate discount for the appellant's plea. The sentence on count 7 will remain consecutive. It follows that the appellant's total sentence is 27 months' imprisonment.

28. To this extent, this appeal is allowed.