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IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/05/2024

Before :

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE JAY
and
HER HONOUR JUDGE MORELAND

- -

Between :

DANIEL CHRISTOPHER LEITCH	**First Appellant**
PB	**Applicant**
PAUL FLEET	**Third Appellant**
DS	**Fourth Appellant**
ANDREW ADAMS	**Fifth Appellant**
RENNY FLETCHER	**Sixth Appellant**
- and -	
REX	**Respondent**

- -
- -

Nicholas Lewin (instructed by **Baileys Law LLP**) for the **First Appellant**
Michael Green (instructed by **WYS Solicitors**) for the **Applicant**
Simon Mintz (instructed by **Gamlins Law**) for the **Third Appellant**
Ayesha Smart (instructed by **DN Law Limited**) for the **Fourth Appellant**
Chantel Gaber (instructed by **Reeds Solicitors**) for the **Fifth Appellant**
Stephen Fidler (instructed by **Bark and Co**) for the **Sixth Appellant**
Paul Jarvis (instructed by **Criminal Appeals Unit**) for the **Respondent**

Hearing date : 9 May 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 22.05.24 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE WILLIAM DAVIS :

This is the judgment of the court to which each of us has contributed.

Introduction

1. These six otherwise unconnected cases have been listed together to allow the court to consider issues relating to administrative amendment of a sentence pronounced in court. Such amendments appear to be relatively common. The amendments with which we are concerned cover almost every aspect of sentencing. The need for an apparently minor alteration of a sentence arises very frequently. It will be part of the regular diet of any judge sitting in the Crown Court. The problems which arise when an alteration is carried out administratively can be out of proportion to the apparent significance of the alteration.

2. This court recently considered a similar issue in relation to the calculation of minimum terms when a life sentence is imposed: *Sesay and others* [2024] EWCA Crim 483. A minimum term must take account of days spent on remand prior to sentence. Since the minimum term applied to any life sentence is part of the sentence, it is not permissible to carry out administrative correction when it becomes apparent that an error has been made in the calculation of remand days. The cases with which we now are concerned relate to the day to day caseload of the Crown Court. Many judges will never have cause to impose a life sentence. Every judge will encounter the kind of case exemplified by these appeals and applications.

3. We shall first consider the general principles applicable to the pronouncement and amendment of sentences in the Crown Court. We then shall consider the individual appeals and applications for leave, most of which involve substantive challenges to the sentences imposed. The substantive issues raised by the various appellants and applicants are not of any wider significance.

4. We have been greatly assisted in our consideration of general principles by Paul Jarvis instructed on behalf of the respondents to the individual appeals and applications. At the request of the Registrar he provided an overarching respondents' notice which traced the history and development of the power of the Crown Court to amend a sentence. We have drawn heavily on his work in our review of the general principles.

General principles

5. An indication of the unsound premise upon which amendment of a sentence is approached in many Crown Courts comes from the response of counsel in one of the individual cases to an enquiry from the Registrar. Counsel said this: "This was not a variation under the slip rule, merely a correction on the same day on being informed that the sentence was unlawful, something that happens on a regular basis". The case to which this comment related was one in which the sentence announced in court was wrong in law.

6. The fundamental principle is that the sentence imposed on a defendant in the Crown Court is the sentence pronounced in open court by the judge. If there is a discrepancy between what appears from the transcript of the proceedings and the order recorded

by the Crown Court, the former takes precedence. By way of example we cite *Buttigieg* [2016] 1 Cr App R 18 at [45]:

> "Although the log records a verdict pursuant to section 17 the transcripts show that the judge did not pronounce such an order in open court. It appears that the judge intended to make such an order but the reference to dealing with that matter later does not, in our view, constitute a sufficient pronouncement. The record made by the clerk is not such an order and does not constitute a verdict under section 17 . Where the judge fails to pronounce an order in open court, the omission cannot be remedied by an officer of the court making an entry on a court record sheet (R. v. Kent (1983) 77 Cr App R 120 at pp. 124–5; R. v. Watkins [2014] EWCA Crim 1677 at [6])."

Buttigieg was concerned with an order rather than a sentence. There is no valid distinction to be drawn between the two.

7. *Kent* demonstrates that the problem with which are concerned is not a new phenomenon. The court there was concerned with errors relating to orders made and sentences imposed in relating to driving offences. Lord Lane CJ said this:

> "Crown Courts have been making mistakes resulting in illegal sentences."

He gave a number of examples after which he said:

> "There have been further difficulties arising in the following way. There have, on occasions, been, understandably, efforts made by court staff to prevent mistakes arising. This has resulted in discrepancies being observed between the sentence pronounced by the judge and that appearing on the record sheet. We wish to make….clear: first of all, the order of the court is that pronounced by the judge in open court. Secondly, the responsibility of the court staff is to make a record which accurately reflects that pronouncement."

8. Before the advent of the Crown Court in 1972 there was no statutory power to amend or alter a sentence imposed in any higher criminal court. There was a common law power exercised either by the judge of an Assize or by the Recorder of a Quarter Sessions. At the end of the Assize or the Quarter Session the relevant judge would sign the calendar authenticating the sentences which had been passed. On occasion the judge would decide to alter the sentence imposed in court. The practice was that any alteration would not be one which operated to the disadvantage of the defendant.

9. Section 11(2) of the Courts Act 1971 introduced a statutory power. A sentence imposed or other order made by the Crown Court could be varied or rescinded within 28 days of the imposition of the sentence or making of the order. The statute did not stipulate how a sentence should be altered. This court made clear on more than one occasion that any alteration had to be announced in open court. Save for there being some good reason for his absence, the defendant was to be present in court when the

alteration was made. However, it was possible for an alteration to be made in a defendant's absence if they were represented by counsel.

10. There were instances where this guidance was ignored. In *R v Dowling* (1989) 88 Cr App R 88 the judge imposed a total sentence of three years' imprisonment for a number of offences. The judge activated a suspended sentence of 15 months' imprisonment. This sentence was ordered to run consecutively. After the sentencing hearing the court clerk spoke to the judge in his room. The clerk expressed concerns about the fact that the suspended sentence was to be served consecutively. The judge decided to amend the sentence. He ordered the suspended sentence to run concurrently. He did not reconvene the court to announce the sentence. Rather, he directed that the defendant should be informed of the position before he was removed from the court building. In fact, the defendant was not told. Nor were the prison authorities. The court record was altered to show the sentence as amended by the judge. For some reason this did not translate onto the warrant issued to the prison authorities. They recorded the sentence as one of 51 months' imprisonment. The discrepancy only was discovered when the defendant appealed against sentence. In the course of the judgment Taylor LJ (as he then was) said:

> "….we would like to emphasise that, if a judge is minded to vary a sentence he has passed or even to clarify a doubt or ambiguity as to the effect of it, he should do so in open court. He should not do it behind the scenes or by transmitting a message. Only if the matter is finally resolved in open court will all concerned and the public hear the final decision from the judge himself and in his own terms. Only thus will a shorthand note be recorded and available."

11. The statutory power to alter a sentence or order is now in section 385 of the Sentencing Code. The time limit (when the power was in section 155 of the Powers of Criminal Courts (Sentencing) Act 2000) was increased in 2008 to 56 days. Part 28.4 of the Criminal Procedure Rules 2020 sets out the current procedural regime governing the exercise of the power. It may be exercised on application by the prosecution or the defence in which event the application must be in writing and must be served both on the court and on all other parties. It may also be exercised by the court acting of its own motion. The statutory power may be exercised at a hearing in public or a private hearing or without a hearing at all. The judge may not exercise the power in the defendant's absence unless the defence have proposed the variation or the variation will not lead to the defendant being more severely dealt with than before or the defendant has had an opportunity to make representations at a hearing. But, whatever the decision is and howsoever it is made, it must be announced at a hearing in public along with the reasons for the decision. Although the decision must be made by the judge who imposed the original sentence, it may be announced by another judge. This provision is directed particularly at instances of a fee-paid judge altering their sentence.

12. The procedure mandated by the Criminal Procedure Rules has been designed deliberately to allow the court and the parties to discuss potential alteration of sentence after the hearing other than in open court. After the day of the hearing, such discussion is likely to be by e-mail or some other digital means. When the alteration is limited or technical in nature and it is non-controversial, the hearing will not require

the attendance of any party. However, the announcement of the varied sentence in court at a public hearing will ensure the lawfulness of the sentence.

13. There will be instances where there is some controversy involved in the proposed alteration of the sentence. The obvious example is where the altered sentence will lead to the defendant being dealt with more severely than before. This court when considering the original iteration of the statutory power concluded that it should not be used to turn a suspended custodial sentence into immediate custody: *R v Grice* (1978) 66 Cr App R 167. That is no longer the law. As Sir Brian Leveson explained in *R v G* [2016] 2 Cr App R (S) 17 the sentencing landscape now is very different. Inter alia judges operate within a framework in which sentences can be referred as unduly lenient. The provisions of the Criminal Procedure Rules to which we have referred assume that a sentence may be made more onerous via an exercise of the statutory power.

14. The statutory power in section 385 of the Sentencing Code can only be exercised within 56 days of the imposition of the sentence, counting the day of sentence. This period cannot be extended. If an error in the sentencing process is identified after that time, the sentence may only be varied by this court. Any such variation cannot involve the offender being dealt with more severely than the sentence pronounced in the Crown Court: section 11(3) Criminal Appeal Act 1968. Where an application for leave to appeal is necessary but it appears to the Registrar that all that is sought is a technical adjustment to a sentence, it will not be necessary for there to be a full appeal hearing. The Registrar will refer the case to the full Court for a decision since any adjustment to a sentence must be announced publicly. The decision will be made in open court by reference to the papers with no representation order.

15. There is a residual common law power which can be exercised outside the confines of section 385 of the Sentencing Code. The common law power is not subject to the time limit of 56 days. However, it is very limited. Essentially it is restricted to correcting the court record so that it corresponds to the sentence pronounced in court. The furthest that this court has permitted the common law power to extend was in *R v Saville* [1981] QB 12 where a criminal bankruptcy order had been imposed when sentence was passed in relation to seven separate offences. The global order at that point was not apportioned between the offences as was required by the statutory provision relating to criminal bankruptcy orders. Outside the period permitted for exercise of the statutory power the sentencing judge carried out the apportionment exercise. The defendant appealed against the order. This court dismissed the appeal on the basis that the global order was an inchoate order capable of later adjustment. It may that the court was influenced by the fact that there was only one creditor. Apportionment was described as “an exercise of futility”. We consider that the facts in *Saville* were highly unusual and unlikely to be repeated. The very restricted circumstances in which the common law power may be exercised was emphasised recently in *R v Water* [2024] EWCA Crim 345.

16. As will be apparent from the facts of some of the individual cases, failing to announce an alteration of a sentence in open court will mean that the alteration is of no effect and the sentence remains as originally pronounced. That may mean that an offender’s sentence ought to be more onerous than as originally pronounced but that nothing can be done to remedy the position. That creates injustice. With that observation we turn to consider the individual cases.

Daniel Leitch

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 s3 of the Act.

Introduction

17. On 8 June 2023 in the Crown Court at Exeter Daniel Leitch who is aged 31 appeared to be sentenced in relation to offences for which he had been committed for sentence and for which he had been sent for trial.

18. On 11 February 2022 Mr Leitch was committed for sentence by the North and East Devon Magistrates' Court for a single offence of possession of cannabis. On 11 March 2022 he appeared in the Crown Court to face an indictment containing three counts. He pleaded guilty to count 3, an offence of criminal damage. The prosecution offered no evidence on the other counts.

19. Mr Leitch was also charged on an indictment containing nine counts. On 10 November 2022 he pleaded guilty to counts 5 (criminal damage) and 6 (assault on an emergency worker). On 3 April 2023 the remaining counts were listed for trial. Mr Leitch pleaded guilty to counts 2 (wounding with intent to do grievous bodily harm), 3 (causing a female to engage in sexual activity) and 9 (theft). The remaining counts were left to lie on the file.

20. At the sentencing hearing the judge purported to sentence Mr Leitch for the offences on the three count indictment in relation to which no evidence had been offered. He failed to sentence him for the offence on that indictment to which he had pleaded guilty. He also failed to sentence for the offence for which Mr Leitch had been committed for sentence. However, the court record shows sentences being imposed for the correct offences. That is because the court clerk realised that the judge had made an error when she was trying to result his decision. She spoke to him in his room. The judge agreed that he had announced sentences in relation to matters where Mr Leitch had been acquitted. He authorised the clerk to amend the court record. He did not announce this amendment in open court.

21. In relation to the nine count indictment the judge sentenced as follows:

    i) Count 2 – extended determinate sentence of 9 years 2 months comprising a custodial term of 7 years 2 months and an extended licence period of 2 years.

    ii) Count 3 – 12 months' imprisonment.

    iii) Count 5 – 1 month's imprisonment.

    iv) Count 6 – 12 months' imprisonment.

    v) Count 9 – 12 months' imprisonment.

22. Mr Leitch also admitted that he was in breach of an order of conditional discharge in relation to three offences. Short sentences of imprisonment were imposed in relation to those offences.

23. All of the sentences were ordered to run concurrently.

24. Mr Leitch's application for leave to appeal against sentence has been referred to the full Court by the single judge. We grant leave.

The facts

25. The possession of cannabis (the committal for sentence) and the criminal damage (the three count indictment) arise out of the same facts. Since the appellant was not sentenced in relation to those offences, one of our number (HH Judge Moreland) at the conclusion of the hearing sentenced the appellant for those offences. By this point we had quashed the sentences imposed by the judge on the counts where verdicts of not guilty had been entered. HH Judge Moreland imposed short concurrent sentences of imprisonment in relation to these offences. It is unnecessary for us to say anything further about them save that they were committed in February 2021, that the appellant was arrested shortly after the offences and that he was on bail for those matters when the offences on the nine count indictment were committed.

26. We turn to the events of 5 October 2022 which were reflected in the nine count indictment. Paul Newby and a woman to whom we shall refer as C2 were asleep in Mr Newby's caravan which was on green land just off the A386 in Northam, North Devon. They were awoken at 3 in the morning by shouting and kicking at the door. Mr Newby went to open the door. The appellant and a female barged in. Mr Newby picked up a wooden pole to try to defend himself but was pushed to the ground. The applicant took the pole from him and threatened him with it. The appellant called Mr Newby a paedophile, demanded money and claimed that he had been sent to kill him. As Mr Newby tried to get up, the applicant hit him in the face with the pole. C2 told the intruders that she had some money. The female snatched approximately £200 cash from her. The female then picked up an angle grinder, belonging to Mr Newby, plugged it in and handed it to the appellant. The appellant lunged at Mr Newby with the angle grinder with the disc spinning. Mr Newby put his hands up to defend himself. The grinder injured his finger. The appellant threw the grinder down and threatened to kill Mr Newby again

27. The appellant then told C2 to lift up her top and show her breasts. Feeling she had no choice but to comply, C2 did so. The appellant demanded that she take her top off and told her that he was going to rape her. The female said they needed more money. C2 gave the female her bank card and PIN number. The appellant demanded that Mr Newby and C2 drive them to a cashpoint.

28. Once outside, C2 ran off. The appellant hit Mr Newby with the pole again and he fell to the floor. The appellant continued to hit him to the head and body for around 30 seconds. He also smashed the rear window of Mr Newby's car with the pole. The appellant and the female then left the scene.

29. Mr Newby managed to make it to a nearby house where he was reunited with C2. The police were called. Mr Newby had a large, open wound to his head, and bruising and swelling to his head and body. He was covered in blood.

30. The police found the appellant and the female in an alleyway nearby at around 5 a.m. the same morning. The appellant was heavily intoxicated. He was drinking whisky. When arrested, he was abusive and aggressive. He spat in the face of one of the arresting officers. The female was in possession of C2's bankcard and her mobile phone. The appellant and the female made no comment in interview when interviewed.

The sentence

31. The judge summarised the effect of the offences on Mr Newby and C2. He said that "the appalling attack….was carried out against two people who were over 60 years of age and who still worked hard for their living. One is a cleaner. The other is a carpenter. The impact upon them has been enormous, and they will never be the same again. They thought they were going to die. They have both been limited in the amount of work they can do after the attack. Mr Newby continues to suffer from dizziness and blurred vision, and he has lost the ability to grip his work tools, as he was able to do before the attack."

32. In relation to the offence of wounding with intent, the judge found that the offence fell into Category 3A in the relevant Sentencing Council guideline. There were five factors indicating high culpability: a significant degree of planning and premeditation; vulnerable victims; use of a highly dangerous weapon; sustained and persistent attack; leading role played by the appellant. Although the harm suffered did not justify moving the case up from the bottom harm category, the judge was satisfied that serious psychological harm had been caused.

33. The starting point for a Category 3A offence was 5 years' custody with a category range of 4 to 7 years. The offence was aggravated by the appellant's previous convictions. He had 36 convictions for 87 offences. Much of his offending involved burglary or theft for which he had received many custodial sentences. He also had been convicted of offences of violence. The offence was further aggravated by the commission of the offence when intoxicated and whilst the appellant was on licence, on bail and subject to a conditional discharge. The only mitigation was some remorse.

34. The judge took the offence of wounding with intent as the lead offence. Thus, the sentence had to reflect all of the appellant's criminality. The offence of causing C2 to engage in sexual activity fell into Category 2B in the relevant guideline. That provided a starting point of 12 months' custody with a category range up to 2 years' custody. The offence of theft was a Category 3A offence in the theft guideline with a starting point of 12 months' custody and a category range up to 2 years' custody. These were distinct offences which would have justified consecutive sentences.

35. The judge considered that the appropriate overall sentence after a trial would have been 8 years' imprisonment. Pleas of guilty to the principal counts were tendered on the day of trial. The judge reduced the sentence by 10% to take account of the pleas of guilty. By that route he arrived at a custodial term of 7 years 2 months.

36. By reference to the facts of the offences committed against Mr Newby and C2, the assessment of future risk set out in the pre-sentence report and the appellant's previous convictions, the judge found that the appellant was a dangerous offender. He further concluded that an extended determinate sentence was required to protect the public from serious harm.

The appeal

37. We have given leave to appeal against sentence because the appellant was sentenced for offences in relation to which he had been acquitted. Those concurrent sentences of 2 months' imprisonment (possession of cannabis) and 1 month's imprisonment (criminal damage) have been quashed. The appellant has been sentenced for the offences to which he did plead guilty. The length of those sentences is of no significance other than to note that they properly reflected the offending and were shorter than the sentences supposedly imposed by the judge after the hearing.

38. However, the appellant's focus is the extended determinate sentence imposed for the offence of wounding with intent. He put forward grounds of appeal as follows.

39. First, a custodial term of 7 years 2 months was outside the category range for a Category 3A offence. Given that there was a reduction of 10% for the late pleas, that meant that a sentence after trial of 8 years' custody had been adopted. The proposition is that this was manifestly excessive. All the shocking aspects of the case were what put it into Category A3. To inflate the sentence further and to put the starting point outside the category range amounted to double counting.

40. Second, whilst a finding of dangerousness was justified, the judge erred in imposing an extended determinate sentence. He had a discretion which he should have exercised so as to avoid any extended licence. A determinate sentence of 7 years 2 months' was sufficient to protect the public.

41. Third, in imposing a sentence of 12 months' imprisonment for causing C2 to engage in sexual activity the judge went behind a promise made by a different judge who was sitting when the relevant pleas were entered. The appellant's argument is that he was promised a sentence that would avoid the notification requirements. In the course of oral submissions it was established that this would have required no separate penalty to be imposed for the sexual offence.

42. Finally, the appellant had been charged with aggravated burglary in relation to the offence involving Mr Newby and C2. In the light of the pleas tendered, the prosecution did not proceed with that count. It was left on the file on the usual terms. It is argued that the judge sentenced the appellant as if he had been convicted of aggravated burglary. This created a legitimate sense of injustice on the part of the appellant.

Assessment

43. The judge categorised the offence of wounding with intent correctly. Given the factors which greatly increased the seriousness of that offence and the very limited mitigation available to the appellant, a sentence after trial at the top of the category range would have been justified even if the judge had been sentencing for this offence

alone. The sentence imposed on count 2 had to reflect the entirety of the appellant's criminality on 5 October 2022. That included causing a person to engage in sexual activity, assaulting an emergency worker and theft from the person. As the judge implied, these offences could have attracted consecutive sentences, each of which merited a sentence in its own right. A sentence of eight years' custody after a trial properly represented the total criminality. It reflected the principles of totality. The overall sentence was just and proportionate.

44. We acknowledge that the judge had a discretion in relation to the imposition of an extended determinate sentence. There will be cases where the public can be sufficiently protected from a dangerous offender by the imposition of a determinate sentence. But it is an exercise of a discretion. For this court to interfere it would have to be shown that the judge clearly had made an error. That is not the position here. There were multiple indications of the risk the appellant posed to the public. The judge identified them. He was entitled to conclude that protection of the public required an extended determinate sentence. That is sufficient to dispose of this argument. In fact we can go further. We are entirely satisfied that the judge had no alternative but to impose the sentence he did.

45. As to the supposed breach of promise, we have no clear evidence of what was said by the judge who was sitting when the appellant tendered his plea to the offence of causing a woman to engage in sexual activity. We have no transcript of the hearing on that day. In the grounds of appeal counsel said this:

> "I asked for some assistance from the court with regard to a concern that Mr Leitch had about having to be on the Sex Offenders Register should he plead to Count 3. The judge on that occasion (who I assumed would be the judge at sentence) indicated that the sentences imposed could be done in a way to reflect the fact that that offence was not sexually motivated but instead an act of pure aggressive degradation."

46. Assuming the judge on that occasion said that, it is difficult to understand what he meant. The appellant pleaded guilty to an offence involving sexual activity. Whatever its precise motivation, it was sexual behaviour. The judge did not say that the sentence imposed would avoid notification requirements. As we have indicated, this would have required no separate penalty to be imposed for the offence. That would have been wrong in principle. Nothing said by the judge bound the sentencing judge. It may be that the appellant was labouring under a misapprehension. It is not for us to alter a sentence when there is no legitimate basis to do so.

47. The final argument relates to exchanges between the judge and prosecuting counsel in the course of the sentencing hearing. The judge was troubled by the fact that the offences against Mr Newby and C2 seemed to have all the elements of aggravated burglary. We can understand the judge's concern. However, the judge did not sentence by reference to the aggravated burglary guideline. Had he done so, it would have been an offence with a starting point of 8 years' custody and a category range up to 11 years. The judge did not refer to any guidelines save for those specific to the offences to which the appellant had pleaded guilty. The appellant barged into the home of Mr Newby and C2. He was not invited in. He viciously attacked Mr Newby and engaged in sexual conduct towards C2. He and the female stole from their

victims. The appellant cannot have any conceivable legitimate sense of injustice arising from being sentenced as he was for that behaviour.

48. It follows that we allow the appeal solely in order to quash the sentences announced in court for offences where no evidence had been offered. Quashing those sentences does not affect the overall sentence. The appellant has been sentenced for the offences to which he did plead guilty and in respect of which the judge did not sentence him. Those sentences similarly have no effect on the overall sentence. The practical outcome is that the overall sentence imposed by the judge on 8 June 2023 is unaltered.

DS

Introduction

49. On 30 August 2023 in the Crown Court at Burnley before Mr Recorder Maher DS was sentenced following his guilty pleas to a total term of imprisonment of 14 years and 3 months. The sentence was composed as follows. On Count 3, rape of a child under 13 contrary to section 5(1) of the Sexual Offences Act 2003, the sentence was 14 years' 3 months' imprisonment. On Counts 4-7, alleging the same offence, concurrent sentences of the same duration were imposed. Finally, on Count 8, assault by penetration of a child under 13 contrary to section 6(1) of the Sexual Offences Act 2003, there was a concurrent sentence of 9 years' imprisonment. Other standard orders were made which are not subject to this appeal.

50. A special sentence for offenders of particular concern under section 278 of the Sentencing Act 2020 was mandatory on all counts but, although mentioned during the Recorder's sentencing remarks, was not pronounced at the hearing. DS was not told in terms that he would be subject to an extended licence of 1 year. Further, although it is clear from his sentencing remarks that the Recorder intended to impose a restraining order, no pronouncement to that effect was made during the hearing itself; in particular, the duration of the order was not specified.

51. On the day after the hearing the judge was alerted to these omissions by a court clerk. As a result on 31 August 2023 the court clerk made entries on the DCS which stated that a person of special concern sentence had been imposed in relation to the offences of rape and assault by penetration. In relation to the offences of rape, the sentence was recorded as "15 years extended sentence (Person of concern, comprising of: 14 years and 3 months custodial, with an extended licence of one year)". In relation to the offence of assault by penetration, the DCS record read "10 years extended sentence (Person of concern, comprising of: 9 years custodial, with an extended licence of one year". The total sentence was recorded as "15 years and 3 months extended sentence (Person of concern, comprising of: 14 years and 3 months custodial, with an extended licence of one year imprisonment". At the same time the judge made an entry on the DCS which read "Total extended Sentence IS 15 years 3 months. Custodial element 14 years 3 months and extended licence one year – concurrent" recording the special sentence of 15 years 3 months on all the rape counts and a similar sentence of 10 years on the assault by penetration count. A restraining order was recorded as having been made "until further order". In an e-mail to this court, the judge explained that he intended to write to counsel. He had told the court clerk that he would do so. In the event he did not.

52. The application for leave to appeal has been referred to the full court by the Registrar in order to consider the effect of these administrative amendments to the sentence. DS also pursues various substantive grounds of appeal against sentence which we will consider in due course. We grant leave for DS to pursue all his grounds.

53. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. 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. Given the family relationships in this case it is appropriate to anonymise the appellant.

The Facts

54. DS was born in 1976. He has no relevant previous convictions.

55. Between May 2004 and April 2009 DS raped and sexually assaulted his step-daughter ("C1"), then aged between 8 and 12. He pleaded guilty to Counts 3 – 7 on the basis, acceptable to the Crown, that he raped C1 on 2 occasions per count.

56. When C1 was 6 years old DS commenced a relationship with her mother. He eventually moved into the home they shared with C1's grandmother. C1's mother withdrew and as a result C1 found herself increasingly alone in the company of her step-father It was in these circumstances that DS began to sexually assault C1. This escalated to his repeated rape of her. On nearly all occasions the appellant ejaculated. The offences were committed in a number of locations, primarily C1's bedroom, under the pretext of watching television with her, but also in DS' sister's home. There were times when C1 would wake up to find him raping her as she lay in bed. DS also raped C1 while camping. C1 believed that her mother knew what was happening but chose to ignore it. On one occasion C1's mother entered the bedroom to find him with his trousers down. When challenged he told her that she had a "dirty mind". Instead of addressing DS's offending, C1's mother accused C1 of having "an affair" with him, and told C1 that if she became pregnant she would be put on the Jeremy Kyle show. DS would put his fingers into C1's vagina to "test" when she was having a period.

57. Count 8 reflected a specific incident of digital penetration. DS was riding a bicycle to work with C1 sat on the crossbar. Both fell and ended up having to go to hospital for treatment. While waiting on a couch DS put a blanket over them and digitally penetrated C1's vagina. This was despite the presence of others in the room.

58. The sexual abuse stopped after C1 was 12. She confronted DS when an adult. He responded, "I just wanted to see what it felt like to have sex with someone else." DS's sister was present when he made this admission. The offences were eventually reported to the police and he was arrested on 13 February 2021. He made no comment to questions in his police interview.

The Sentence

59. According to the pre-sentence report DS was not a dangerous offender. This was because these offences were committed over ten years ago and there was no evidence that he had committed any offences of any nature since 2009.

60. There was a basis of plea acceptable to the Crown in which DS admitted that, on each of the five multiple counts of vaginal rape, the offence had been committed on two occasions. As drafted, each multiple incident count alleged that C1 had been raped on at least 10 occasions i.e. at least 50 offences of rape over a period of five years. The Recorder said that he completely understood that C1 regarded the limitation of the offending against her as "utter nonsense" although he made it clear that he would be loyal to the basis of plea. DS was therefore being sentenced for ten offences of vaginal rape committed when C1 was aged between 8 and 12.

61. In his detailed and clear sentencing remarks the Recorder said that the appropriate reduction for the pleas of guilty was 25%. That is not disputed. For the purposes of the Sentencing Council's Sexual Offences Definitive Guideline for the offence of rape of a child under 13, these were Category A offences because there was sexual grooming and a manifest breach of trust. As for harm, it was acknowledged on DS's behalf that C1's victim personal statement made "harrowing reading" but it was submitted that the impact on her fell short of the severe psychological harm referred to in the guideline for a Category 2 offence. The Recorder did not accept that submission. He stated that he had listened with care to C1's detailed personal statement that she had read out in open court and the profound impact that it had on her. In answer to the Recorder's question, C1 stated that she had not received a formal diagnosis of PTSD. In his judgment, however, the absence of that label did not preclude him from concluding that C1 had suffered severe psychological harm. The starting point under the guideline was, therefore, 13 years' custody with a range up to 17 years.

62. The aggravating features of the offending were the location in which the offences were committed (often, C1's bedroom), the repeated ejaculation, concealing evidence in telling C1 not to say anything, and the vulnerability owing to C1's personal circumstances in having a suggestible mother and an older grandmother who could not protect her in the circumstances in which she was living. The only available mitigation was DS's effective good character. That was of limited effect given the rubric in the guideline which reads "the more serious the offence, the less the weight which should normally be attributed to this factor". He had not shown any genuine remorse.

63. The Recorder's overall notional sentence before reduction for plea was one of 19 years' imprisonment. This reflected DS's multiple offending which took his case significantly above the category range.

64. The Recorder disagreed with the opinion of the author of the pre-sentence report and concluded that the dangerousness criterion was met. Given, however, that the Recorder imposed determinate sentences and intended to impose sentences for an offender of particular concern.

The Appeal

65. The Grounds of Appeal are that the notional sentence of 19 years' custody was manifestly excessive and failed to reflect the principle of totality. Further, it is contended that the Recorder ought not to have concluded that C1 had suffered severe psychological harm so as to bring this case within Category 2 of the guideline. In oral argument Ms Ayesha Smart contended that the Recorder was wrong in principle to reach this conclusion given the concession C1 made in answer to the Recorder's question.

Assessment

66. It is convenient to address the substantive merits of DS's appeal before directing our attention to the difficulties brought about by the purported administrative amendments to his sentence which took place after the hearing had concluded.

67. We share the Recorder's concerns about the basis of plea in the light in particular of C1's account of what happened over several years. The Recorder described the Crown's acceptance of the basis of plea as "pragmatic" and we can understand the reasons for the approach taken. We emphasise, as did the Recorder, that DS can only be sentenced on his basis of plea despite these misgivings.

68. We have read C1's victim personal statement with care. It includes the following:

69. "Being asked to talk about my suffering is difficult when what you did consumed my very being, attachment disorders, anxiety, self-blame, complex PTSD and dissociation all suffered because I tried to forget just so both you and I could live our lives. Complex PTSD just in case you don't know means that I was exposed to masses of trauma over time unlike just one traumatic event which could leave a person with PTSD for example a car crash, you [DS] continuously abused me for years …"

70. The Recorder's question clarified that C1 had not received a formal diagnosis of complex PTSD although it must be obvious to anyone reading this powerful statement in its entirety (and it would have been all the more obvious to the Recorder who heard the statement being delivered in the court room by C1) that these events have had a profound psychological impact. Although in *R v Forbes* [2016] EWCA Crim 1388 this Court emphasised the need for caution in assessing victim personal statements given their "intensely personal nature", it is well established that supporting expert evidence is not required: see *R v Chall* and others [2019] EWCA Crim 865. The Recorder's conclusion that this was a Category 2 case was one which in our view he was entitled to reach.

71. We have nonetheless considered whether the notional sentence of 19 years' imprisonment before reduction for plea was manifestly excessive. DS was not being sentenced for a "campaign of rape". A sentence in excess of 20 years' imprisonment would not been appropriate. However, the Recorder was entitled to impose an overall sentence which was above the upper limit of the range for a Category 2A offence. The starting point of 13 years' custody assumes a single offence. Here there were ten offences with significant aggravating factors. The sentence that he imposed was severe but it was not in our view manifestly excessive.

72. Given our generic conclusions as to administrative amendments to sentence, it follows that the Recorder's post-sentence attempt to bring his sentences in line with what he

intended to achieve was of no effect. The issue arises as to whether, in the circumstances that have arisen, it is open to this Court to impose sentences of particular concern under section 278 of the Sentencing Act 2020 given the effect of section 11(3) of the Criminal Appeal Act 1968.

73. The interrelation between the mandatory special sentence regime and the effect of section 11(3) of the Criminal Appeal Act 1968 has been addressed in a number of decisions of this Court: see, for example, *R v Fruen* [2016] EWCA Crim 561; [2016] 1 WLR 4432; *R v Thompson (Christopher)* [2018] EWCA Crim 639; *R v KPR* [2018] EWCA Crim 2537; [2019] 1 Cr App R (S) 36; *R v A* [2020] EWCA Crim 948 and *R v JD* [2021] EWCA Crim 1866.

74. The effect of section 244A of the Criminal Justice Act 2003 is that an offender in DS's position who receives a mandatory special sentence is eligible for release at the two-thirds point but actual release is subject to a direction from the Parole Board. In the absence of such a direction, such an offender would serve the entirety of the custodial element of his sentence before being released on licence for one further year.

75. We agree with the Respondent that the most helpful authority is *R v A.* At the time this case was decided the offender's eligibility for release arose after serving half the custodial term but in all other respects the regime for offenders of special concern was the same. A had erroneously been sentenced to two concurrent determinate sentences of 10 years. This Court concluded that this custodial term was manifestly excessive and imposed concurrent special custodial sentences of eight years. The reason why there was no infringement of section 11(3) of the Criminal Appeal Act 1968 was that A was not being sentenced more severely: whereas under his original sentence he would have been automatically released after five years, he now would be eligible for release one year sooner. The fact that he might remain in custody for the whole of the custodial term because the Parole Board might not direct his release was not the issue.

76. The core reasoning of this Court was to the effect that the focus must be on eligibility rather than embarking an exercise in speculation as to an offender's prospects before the Parole Board on a date or dates which may be long into the future.

77. A key feature of *R v A* was that this Court reduced the custodial term by two years. In the instant case the custodial element of the sentence remains unaltered. In such circumstances Mr Jarvis concedes that this Court cannot impose concurrent special custodial sentences without violating section 11(3) of the Criminal Appeal Act 1968. We do not propose to go behind counsel's concession and it therefore follows that we are unable to do more than declare that the determinate sentences imposed at the hearing must stand and that the special custodial sentences imposed administratively must be set aside.

78. The restraining order purportedly imposed administratively on 31 August was equally of no effect. In the circumstances of this case it is unnecessary to address the quite complex question of whether our imposing such a restraining order might breach section 11(3). We simply record that DS is not subject to any restraining order and we quash the Court record wrongly stating that he is.

79. The sentences to which DS is subject are those announced at his sentencing hearing. There is no arguable ground of appeal against those sentences. We dismiss the appeal. We declare that the administrative amendments made on 31 August 2023 are of no effect. DS remains subject to the concurrent determinate sentences of 14 years 3 months (on Counts 3-7) and 9 years imprisonment (on Count 8) imposed by the Recorder at the sentencing hearing on 30 August 2023.

Paul Fleet

The provisions of the Sexual Offences (Amendment) Act 1992 apply to 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 s.3 of the Act.

Introduction

80. On 30 January 2023 Fleet appeared before Llandudno Magistrates' Court. He pleaded guilty to two offences of stalking involving serious harm or distress contrary to section 4A(1)(a) (b)(ii) of the Protection from Harassment Act 1997. He was committed for sentence pursuant to section 18 of the Sentencing Act 2020. He also pleaded guilty to an offence of sending by public communication network an indecent or offensive or obscene message. In relation to that offence he was committed for sentence pursuant to section 20 of the 2020 Act. In relation to a charge of attempting to engage in sexual communication with a child, Fleet was sent for trial.

81. On 24 April 2023 Fleet again appeared before Llandudno Magistrates' Court. He pleaded guilty to one offence of harassment contrary to section 2 of the 1997 Act and one offence of possession of a controlled drug of Class B contrary to section 5(2) of the Misuse of Drugs Act 1971. He was committed for sentence pursuant to section 20 of the 2020 Act for the offence of harassment and pursuant to section 14 of the 2020 Act for the drugs offence.

82. On 30 August 2023 in the Crown Court at Caernarfon Fleet was convicted of the offence of attempting to engage in sexual communication with a child.

83. On 26 October 2023 Fleet was sentenced as follows:

i) Stalking involving serious harm or distress (two offences) – 4 years' imprisonment and 2 years' imprisonment;

ii) Attempting to engage in sexual communication with a child – 12 months' imprisonment;

iii) Harassment – 4 months' imprisonment.

iv) Possession of Class B drugs – no separate penalty.

All of those sentences were ordered to run concurrently. The total sentence was 4 years' imprisonment.

84. On the same date a Sexual Harm Prevention Order ("SHPO") was made. At that point the order was for an indefinite period. The judge also purported to impose notification requirements for an indefinite period.

85. On 17 November 2023 the SHPO was amended at a hearing pursuant to section 385 of the 2020 Act. The order now was specified as being 5 years in duration. At the same hearing the judge purported to reduce the notification requirements to the same period.

86. The order of the court was amended after the slip rule hearing. The duration of the SHPO and the notification requirements was specified as 10 years. There was no hearing at which this period was announced by the judge.

87. Fleet's application for leave to appeal against the sentence has been referred to the full Court by the Registrar.

88. The applicant now is aged 26. Prior to the matters with which we are concerned, his only criminal conviction was for possession of a Class B drug. The offences for which he was sentenced were committed between November 2022 and April 2023.

The facts

89. On 4 November 2022 a woman known to the applicant (we shall refer to her as C1) began to receive messages from an Instagram account. She did not recognise the name attached to the account. The applicant was the user of the account. C1 did not realise this at the outset. The messaging quickly became explicitly sexual. The applicant sent photographs of his penis and videos of him masturbating. He requested photographs of C1. In all the messages the applicant ensured that his face was covered or obscured. Also in November 2022 on three occasions the applicant sent C1 a picture of his erect penis from his own WhatsApp account. The applicant sent messages with the pictures saying that it was a mistake made by him in drink. Included in the messages were obscene comments about C1's body.

90. On 18 November 2022 the applicant turned his attention to another woman known to him to whom we shall refer as C2. He began to send her messages via the bogus Instagram account. These messages made varying obscene references to C2's body. He sent her pictures of his erect penis. He tried to video call her.

91. At the same time the applicant messaged yet another woman he knew. He sent these messages via Facebook. The first message contained an image of his erect penis. Later messages claimed that this had been an accident about which the applicant was embarrassed.

92. The applicant continued with his harassment of C1 and C2. He asked them both for photographs of themselves in return for money. He made repeated video calls in which he could be seen masturbating. These calls were made late in the evening or in the early hours of the morning.

93. On 24 November the applicant used the bogus Instagram account to message a 10 year old child (C4) whom he knew. The messaging was sexual. It began in the later part of the evening and continued into the early hours. The applicant made video calls

to C4 in which he would have been seen to be masturbating had C4 answered the calls – which she did not.

94. The messaging via Instagram to C1 and C2 continued. Due to the WhatsApp messages which came from the applicant, they began to suspect him of being responsible for all of the messaging. In December 2022 they contacted the police. The applicant was arrested. He admitted sending the WhatsApp messages. He said that he knew nothing about the bogus Instagram account. He was released on bail.

95. The messaging to both women continued. Eventually the applicant sent C1 a message from his own Instagram account in which he made explicit sexual reference to her body and his sexual attraction for her. As a result it was C2 who confronted the applicant. He then admitted that he was behind the bogus Instagram account and was responsible for all the messaging. He apologised and said that it was not his fault because he had been unwell.

96. In January 2023 he was re-arrested and interviewed again. He admitted that he had previously lied to the police. He accepted full responsibility for the bogus Instagram account. In respect of C1 he denied that he was masturbating during the video calls he made to her but which she did not answer.

97. The applicant was bailed again. On 22 March 2023 he logged into C1's Facebook account using a mobile telephone. In the early hours of the next day he sent sexual and inappropriate messages from her account to neighbours and work colleagues. On 23 March C1 was confronted by those who had received the messages. Given their nature C1 realised that the applicant must have been responsible. He was arrested. He admitted that he had a mobile telephone of the relevant type. Via the IP addresses used the police were able to demonstrate that the Facebook messages had been sent from the applicant's home address.

The sentence

98. The judge had a pre-sentence report in relation to the applicant. He asserted that his behaviour was due to declining mental health aggravated by self-medicating with drugs and alcohol. The author of the report concluded that he had an addictive personality and that he was at high risk of future similar offending.

99. C1 and C2 provided victim personal statements. C1 said that the emotional effect of the offending on her had affected her life in general and her day to day life massively. C2 said that the psychological effect on her had been immense. Both women explained the effect of the offending in some detail.

100. In sentencing the judge decided that the offence of stalking involving serious harm or distress in relation to C1 should be used as the lead offence for the purposes of sentence. The sentence on that count was intended to reflect not only the offending against C1 but also the overall offending. The judge determined that the stalking offence fell into Category 1A in the relevant Sentencing Council guideline. The starting point for such an offence was 5 years' custody with a category range of 3 ½ to 8 years. The offence was aggravated by the continuing offending on bail and by the fact that the applicant was affected by alcohol and drugs. The applicant's mental health, relative youth and previous good character mitigated the offending.

101. The judge went on to categorise the other offending by reference to the relevant guideline. In relation to C2 the offence fell into Category 1B which led to a starting point of 2 ½ years' custody with a category range of 1 to 4 years. The judge found that the offence involving C4 (where the applicant was convicted by a jury) required a starting point of 12 months' custody by reference to the relevant guideline. The other offences involved shorter starting point when the relevant guidelines were considered.

102. The judge concluded that the overall sentence after a trial on the charges relating to C1, C2 and C3 (taking into account the offence involving C4) would have been 6 years. In relation to those charges the applicant was entitled to a reduction of one third by reason of his pleas at the magistrates' court. Thus, the total overall sentence was 4 years' imprisonment

The appeal

103. The ground of appeal is that the judge erred in concluding that the stalking of C1 fell into Category 1A. Taken in isolation it properly could have been categorised as a 1B offence with a lower starting point. It was appropriate to place the overall sentence within the sentencing range for a Category 1A offence. But the sentence after trial should not have been elevated as it was.

104. We are satisfied that this submission has no merit. The judge was sentencing for a catalogue of offending. It involved four different females. A child had been targeted. The main element of the offending continued even after the applicant had been bailed. When he was bailed for a second time he targeted C1's Facebook account. An overall starting point of 6 years was amply justified notwithstanding the applicant's age and good character.

105. The remaining issue which must be addressed by us concerns the SHPO and the notification requirements. The duration of the SHPO as originally imposed was lawful. Given the length of the sentence which was imposed in relation to the sexual offence to which the SHPO lawfully could be attached, the notification requirements ordinarily would be 10 years in duration. That did not require the SHPO to be of that length and no longer. The only consequence of imposing a SHPO of indefinite duration was that the notification requirements would also be indefinite. That is the effect of section 103G of the Sexual Offences Act 2003.

106. It is common practice for the period of any SHPO and the duration of notification requirements to be consistent. The notification requirements are automatic by reference to section 80 of the 2003 Act. They are not imposed by a sentencing court. All that is required of the sentencing court is that it must tell the defendant that such requirements apply and under what legislation: Part 28.3(2) of the Criminal Procedure Rules.

107. Where a sentence falls between 6 months and 30 months, section 82(1) of the 2003 Act provides that the duration of the notification requirements will be 10 years. The judge had no power to disapply sections 80 and 82 of the 2003 Act. The order made at the slip rule hearing in relation to notification requirements is invalid and of no effect. Those requirements will last for 10 years from the date of sentence. This is due to the operation of the statutory provisions. It is unaffected by what the judge said at the slip rule hearing.

108. The amendment of the duration of the SHPO following the slip rule hearing was not carried out in court in the presence of the applicant or his counsel. We understand from counsel that, at some point whilst all parties were still at court, it was realised that the notification requirements had to apply for 10 years. It was believed that this meant that the SHPO also had to be further amended. This was not done in open court. The parties informed the court clerk that the duration of each order/requirement ought to be 10 years. The clerk went to see the judge in her room. She agreed to vary the SHPO.

109. It is obvious that everyone agreed that the SHPO ought to have had a duration of 10 years. It is reasonable to assume that the applicant was informed of the position. However, the SHPO was part of the sentence. It could not be amended other than in open court. The administrative amendment was and is of no effect. This does not involve us in allowing any appeal by the applicant. Rather, we confirm that the sentence imposed was that pronounced in open court at the slip rule hearing. The SHPO will last for 5 years from the date of sentence.

110. It follows that there is no arguable ground of appeal against any part of the sentence as announced by the judge in court. His announcement at the slip rule hearing in relation to the notification requirements is and was of no effect. The applicant may consider himself fortunate that the SHPO is far shorter than it should be. We can do nothing to remedy that deficiency in the sentence imposed. The application for leave to appeal is refused.

PB

Introduction

111. On 30 June 2023 in the Crown Court at Winchester PB was convicted of two counts of rape of a child under 13 contrary to section 5(1) of the Sexual Offences Act 2003, two counts of attempted rape of a child under 13 contrary to section 1(1) of the Criminal Attempts Act 1981, two counts of sexual assault of a child under 13 contrary to section 7(1) of the Sexual Offences Act 2003, one count of engaging in sexual activity in the presence of a child contrary to section 11(1) of the Sexual Offences Act 2003, and two counts of causing a child to watch a sexual act contrary to section 12(1) of the Sexual Offences Act 2003.

112. On 8 September 2023 there was a sentencing hearing before the trial judge, HHJ Mousley KC. The overall sentence pronounced on the principal counts was a determinate sentence of 20 years' imprisonment, each such sentence to run concurrently. This appeal is not concerned with the concurrent determinate sentences imposed on the lesser counts or with the standard ancillary orders that were made. We confirm that PB is not subject to a Victim Surcharge Order. The judge did not impose the mandatory special custodial sentences on Counts 1, 1A, 2 and 2A as required by section 278 of the Sentencing Act 2020.

113. This error was drawn to the judge's attention by prosecution counsel in an email dated 13 September. There then followed an exchange of emails involving both counsel and the court, as a result of which on the same day the judge appears to have amended the sentence on Count 1 only by imposing a special custodial sentence of 22 years comprising a custodial term of 20 years and an extended licence of 2 years. This was

purportedly done "administratively and under the slip rule". It was then said by prosecution counsel that a more severe sentence should not have been imposed. This led to a slip rule hearing in open court under section 385 of the Sentencing Act 2020 when the judge amended the sentence on Count 1 only to a special custodial sentence of 20 years comprising a custodial term of 19 years and an extended licence period of one year.

114. PB has sought leave to appeal sentence on the basis that the custodial term was manifestly excessive. The Registrar has referred this application to be listed in this special court considering administrative amendments to sentence. In these circumstances, we will consider the substantive merits of PB's proposed appeal before addressing the judge's failure to impose special custodial sentences on the other principal counts.

115. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. 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. Given the family relationships in this case it is appropriate to anonymise the appellant.

The Facts

116. PB was born in 1987. He had no previous convictions for sexual offences.

117. PB was in the army when he met the victim's mother. The victim was 3 years old at the time. PB married the victim's mother in 2009 and lived in army married quarters. They had a daughter together in 2010 and a son in 2011. PB was compulsorily released from the army in 2012 and the victim's mother left him soon afterwards, taking the 3 children with her to refuges because of his violence towards her and his treatment of the children.

118. In 2015 police spoke to the victim's mother about PB in the context of sexual allegations. The victim denied that anything had happened to her but her mother gave an account of finding him under the covers in the victim's bed, after he had come home drunk. This had happened several times. The victim did not let PB bathe her and she did not want to be left alone with him. He treated her differently from the other children. The mother did not talk to the victim about PB after that until September 2018, when the victim said she had something to tell her mother. She had by then started secondary school and had attended a sex education lesson that day. She said words to the effect of, "Do you remember when we spoke to that officer and I said he didn't do anything? Well, he did. I didn't want to tell you".

119. The victim revealed that PB used to come into her room and touched her private parts under the bedcovers and underneath her clothes. She said he kissed her privates and indicated her vagina. She also said that he had put his penis into her mouth and would make her touch his penis. This had gone on for a few months until she was about 6 years old. PB had told the victim that nobody would believe her and that it would upset her mother if she knew. PB told the victim that she would be the one in trouble.

120. The victim's mother called the police and they both gave statements.

121. The victim said that her mother would go out to work in the evenings, around twice a week. After her mother left, PB would get the victim out of bed, take her downstairs into the lounge, throw her onto the floor, take her pyjamas off and lick her vagina and/or put his penis into her mouth. If she resisted, he would slap her. He also threatened to hurt her and the victim's mother if she told anyone about it. During the interview, the victim wrote a note which read, "He used to try and put his penis in my mouth and I would refuse. And then he would hit me and tell me to listen to him. He used to lick me in my privates and I would say, "It hurts. Please stop." But he wouldn't listen to me".

122. On 28 April 2022, a second interview with the victim was conducted. During that interview, she disclosed that sometimes PB would get her out of bed and take her to the lounge, where he would show her pornography. She recalled seeing a video of a male ejaculating on a woman's stomach. After showing her the video, PB would lick the victim's vagina and/or put his penis inside her mouth. He also masturbated in front of her and ejaculated in the corner of the room. PB would also shout at the victim and she had to ask for things in the right way. He would also force feed the victim and she started to develop an eating disorder.

123. PB was interviewed on 12 November 2020. He provided a prepared statement, which denied the allegations and suggested that the victim's mother had manipulated her into making false accusations against him and that she had done the same thing to the victim's natural father. Thereafter, he elected to answer "no comment" to all further questions asked.

The Sentence

124. The judge had the benefit of a powerful victim personal statement which spoke to her self-harming and eating disorder. She said that PB had ruined her childhood, which we do not doubt.

125. According to the pre-sentence report, PB posed a high risk of serious harm to children. His offending had not relied on grooming but was instead an example of aggression and violence to overpower and control a child victim.

126. It is clear from his sentencing remarks that the judge proceeded to sentence PB on the basis of at least three offences of oral rape (Counts 1 and 1A), three offences of attempted rape (Counts 2 and 2A) and three offences of assault by licking the vagina (Counts 3 and 3A). The less serious offences where concurrent sentences were imposed were treated as aggravating the principal offences. The victim had suffered severe psychological harm and violence was used. The case entailed a flagrant breach of trust. It followed that for the purposes of the guideline the rape offences were Category 2A offences with a starting point of 13 years custody and a category range up to 17 years. These offences were aggravated by PB's intoxication. The only available mitigation was his lack of relevant previous convictions as well as "the positive sides" of his character as demonstrated over the years. This included PB's military service. The judge stated that the sentences on Counts 1, 1A, 2 and 2A would have to reflect the totality of his offending against the victim. He was clearly making the point that the guidelines set out a framework for just one offence.

The Appeal

127. The sole ground of appeal is that the overall sentence was manifestly excessive because there was no basis for going outside the category range of 17 years. In oral argument Mr Michael Gordon for PB accepted that the relevant guideline applies to only one offence but submitted that to go so far above the starting point for a Category 2A offence led to an outcome that was simply too high.

Assessment

128. We do not consider that there is any merit in the ground of appeal advanced by counsel. The fallacy underlying counsel's primary argument is that it fails properly to recognise, as we have already pointed out, that the judge was sentencing PB not for just one offence but for several. In such circumstances, the judge was fully entitled to impose a sentence above the category range to reflect, as he put it, the totality of PB's offending. We are unable to conclude that the overall sentence was manifestly excessive or wrong in principle.

129. However, the judge was required to impose special custodial sentences on Counts 1A, 2 and 2A. We do not understand his reasons for limiting the variation of the sentence at the slip rule hearing to Count 1, where a special custodial sentence was correctly imposed. By allowing this appeal to bring the other sentences in line with Count 1 no difficulty arises under section 11(3) of the Criminal Appeal Act 1968 because PB would not be treated more severely. The special custodial sentence on Count 1 means that PB cannot be released until he has served two-thirds of his sentence on that count and the Parole Board so directs.

130. It follows we grant leave to appeal. The appeal will be allowed to the following extent. The determinate sentences of 20 years' imprisonment on Counts 1A, 2 and 2A are quashed. We substitute concurrent special custodial sentences of 20 years for an offender of particular concern under section 278 of the Sentencing Act 2020 comprising a custodial term of 19 years and an extended licence period of one year.

Andrew Adams

Introduction

131. On 20 October 2022 before the Oxford Magistrates' Court Andrew Adams pleaded guilty to offences of handling stolen goods, using a vehicle without insurance and driving otherwise than in accordance with a licence. He was committed for sentence pursuant to the appropriate provisions of the Sentencing Act 2020.

132. On 15 November 2022 in the Crown Court at Oxford Adams was sentenced to a period of 2 years' imprisonment for the offence of handling stolen goods. That offence had been committed during the operational period of a suspended sentence of 6 months' imprisonment imposed on 7 October 2022 for an offence of possession of a bladed article. That sentence was activated and ordered to run consecutively. The total sentence of imprisonment was 2 years 6 months.

133. In his sentencing remarks the judge imposed a fine of £300 in relation to using a vehicle without insurance and a fine of £400 for driving otherwise than in accordance

with a licence. In each case he ordered a default sentence of 7 days' imprisonment, those sentences being ordered to run concurrently with the overall sentence of 2 years 6 months. The judge disqualified Adams from driving for 3 years and ordered him to take an extended retest before he could drive again. These orders were made in respect of the offence of driving otherwise than in accordance with a licence.

134. After the sentencing hearing there was a discussion between counsel and the court clerk. The transcript does not disclose the substance of the discussion. At its conclusion it is recorded that the court clerk went to see the judge in his room. Shortly afterwards the clerk returned to court. The clerk said "Right, the disqualification goes on the no insurance and it's disqualified for 21 months with 15 months uplift for the sentence of imprisonment, which takes it to three years. Yes. Everybody happy?" Counsel said that there was some concern as to whether an extended retest could be ordered when the relevant offence was using a vehicle without insurance. The clerk went to see the judge again. When she returned, she said that the judge had approved an amendment so that the test to be taken would be "an ordinary test". The court order in relation to disqualification was drawn up in accordance with the post hearing discussions. Counsel told the clerk that it was not necessary for the judge to return to court. We should mention that Ms Gaber who represented Adams before us did not appear at the court below.

135. Adams now appeals against the sentences imposed with limited leave of the single judge. The single judge concluded that the only arguable grounds related to the imposition of fines and the disqualification.

The facts

136. The circumstances of the appellant's offending are of little relevance to the issues we have to consider. In very brief outline, on 9 October 2022 a Toyota RAV4 was stolen in the course of a domestic burglary in Oxford. The next day the appellant was seen driving the Toyota by the brother of the car's owner. The brother called the police. The appellant was arrested. He claimed in interview that, although he realised that the car was stolen, he had been given the opportunity to buy it. He had bought the car intending to inform the police and to enable the car to be recovered.

The sentence

137. The appellant is now aged 35. He has an unenviable criminal record. When sentenced, he had 47 convictions for well in excess of 70 offences. He regularly offended in order to raise money to pay for drugs. He had been the subject of many different types of sentence. The offences for which he had to be sentenced were committed within days of the imposition of a suspended sentence.

138. The judge concluded that the offence of handling was a Category 2A case within the relevant Sentencing Council guideline. The starting point within the guideline was 3 years' custody. The judge concluded that this would have been the appropriate sentence after a trial. The sentence was reduced by one third due to the plea of guilty at the first appearance in the magistrates' court.

139. There can be no criticism of that part of the sentencing process. Nor can it be said that the activation of the suspended sentence was wrong in principle. It was appropriate that this sentence should run consecutively to the principal sentence.

140. The sentence in relation to the driving offences was as announced in the course of the judge's sentencing remarks. What the judge said to the clerk in his room did not form part of the sentence. The court order did not reflect the sentence imposed.

The appeal

141. The question for us is whether the sentence in relation to the driving offences as announced in court was wrong in principle or manifestly excessive. We are satisfied that it was. The appellant was sentenced to a period of 30 months in custody. He had no savings or other means of paying a fine. The imposition of significant fines with a period of custody in default of payment amounted to imposing short periods of custody in relation to offences for which no custodial sentence was available. Whilst the default terms were ordered to run concurrently, that did not mean that the principled objection to the sentences was not still valid. The proper course when someone is in the appellant's position and falls to be sentenced for summary only non-imprisonable offences is for no separate penalty to be imposed.

142. The disqualification from driving was imposed in relation to driving otherwise than in accordance with a licence. That is an endorseable offence if the offender's driving would not have been in accordance with any licence that could have been granted to him. The only licence which could have been granted to the appellant was a provisional licence. Thus, the offence carried with it obligatory endorsement and discretionary disqualification. However, driving with no insurance was the more serious offence. In the administrative alteration of the sentence the judge purported to apply the disqualification to the offence of no insurance. That is the course we shall take.

143. It is accepted on the appellant's behalf that a period of disqualification was justified in respect of using the car without insurance. We shall not offend section 11(3) of the 1968 Act if we disqualify the appellant from driving for that offence. The appellant argues that a period of disqualification of 3 years would be manifestly excessive. We agree. In his invalid out of court amendment of the sentence the judge disqualified the appellant for 21 months with an extension period of 15 months pursuant to section 35B of the Road Traffic Offenders Act 1988. We consider that a discretionary disqualification of 21 months was manifestly excessive. The appellant had a very bad record but he was not someone with a significant history of driving offences. In our view, the discretionary period of disqualification should be 6 months. We do not consider that an extended retest was necessary or appropriate.

144. We allow the appeal. We quash the fines and the periods of custody in default. We substitute an order for no separate penalty in relation to the driving offences. We quash the period of disqualification from driving for the offence of driving otherwise than in accordance with a licence. We substitute a discretionary disqualification of 6 months and an extension period of 15 months. That disqualification will be in respect of the offence of using a car without insurance. We quash the order for an extended retest and substitute an order that the appellant take an ordinary driving test.

Renny Fletcher

Introduction

145. On 2 February 2024 in the Crown Court at Wood Green Mr Fletcher pleaded guilty to an offence of aggravated vehicle taking and admitted offences of careless driving and driving without insurance. The latter offences had been sent to the Crown Court pursuant to section 51(3) of the Crime and Disorder Act 1998.

146. On 15 March 2024 he was sentenced as follows:

> For aggravated vehicle taking he received a sentence of 36 weeks' imprisonment. Initially he was disqualified from driving for 62 weeks. This was intended to represent a discretionary period of 12 months (the minimum mandatory period for the offence) and an extension period of 18 weeks to represent the period that the appellant would be in custody. The appellant's counsel told the judge that the appellant had been remanded in custody for a week. The judge then reduced the overall disqualification to 61 weeks to take account of the week spent in custody. He was required to take an extended retest. There were two errors with this part of the sentence. First, the judge's arithmetic was faulty. The overall period of disqualification should have been 70 weeks. Second, the judge reduced the extension period by 1 week to take account of time spent on remand. That was not within the terms of section 35A of the Road Traffic Offenders Act 1988. The extension period must be fixed by reference to the custodial sentence imposed. Where a defendant has spent a prolonged period on remand, any injustice that might result from the operation of section 35A will be met by an adjustment of the discretionary period of disqualification: *Needham* [2016] 1 WLR 4449 at [32] to [39]. Given the period of remand in this case, no such adjustment was necessary.

147. The court record sheet detailed the period of disqualification as a discretionary period of 52 weeks and an extension period of 17 weeks. On the DCS the judge's entry on the sidebar is in the same terms. There was no further hearing at which this period of disqualification was announced. It appears to have been an effort to correct the arithmetical error made in the course of the sentencing hearing. We have no evidence that the parties were given any notice of this supposed correction. The correction maintained the error relating to the allowance made for time spent on remand.

148. For careless driving and for driving without insurance, no separate penalty was imposed and his driving licence was endorsed.

149. He appeals against sentence with the leave of the single judge.

The facts

150. At about 2.45 pm on 10th October 2020 the attention of the Police was drawn to a Ford Fiesta being driven in Cricklewood in North West London. The driving was erratic. The occupants appeared to be young. The appellant was aged 18 at the time. The car was insured only to a female yet the driver was a male.

151. When the police signalled to stop the car, the appellant made off at 50 miles per hour in a 30 mile per hour limit. It travelled from Claremont Road towards Cricklewood Lane, passed over a junction into Lichfield Road, continuing onto Westbere Road. It took a sharp left turn on to Menelik Road and a sharp right turn onto Somali Road towards the junction of Minster Road. There was no sign of the driver stopping or checking the junctions. The car then took a sharp right turn on Minster Road at a speed of about 30 miles per hour, ending up on the wrong side of the road and colliding head on with a vehicle travelling up Minster Road.

152. Both occupants of the Fiesta (the appellant and his female passenger) got out of the vehicle and began to make off on foot. The appellant was detained on a nearby footpath. It subsequently became apparent that the car was displaying false number plates. The number plates were only stuck on to the car.

153. The Fiesta had been stolen in late July 2020 from outside an address in Uxbridge Road in West London, W7. It was valued at £4000. The car with which the Fiesta collided was valued at £14,000. It was written off. In the days following the collision the driver of that vehicle developed issues with his mobility.

The chronology of the proceedings

154. The appellant's first appearance at the magistrates' court was on 10 October 2020. He was sent to the Crown Court for trial. He pleaded not guilty at the PTPH. The case was thereafter listed on no less than 21 occasions. There were ample opportunities for the appellant to plead guilty. He chose not to do so until the hearing on 2 February 2024. Many of the earlier hearings were ineffective because the appellant did not attend court.

155. After pleading guilty, the appellant was offered the opportunity of having a pre-sentence report prepared to assist the judge who sentenced him with a view to putting forward suitable alternatives to immediate custody.

156. The appellant refused to co-operate with the author of the pre-sentence report. He was obstructive and abusive during the short online meeting he had with the probation officer. No alternatives to custody could be canvassed. The judge was thereby driven to the conclusion that immediate custody was the only option

The sentence

157. The judge observed that there was no Crown Court guideline for the offence of aggravated vehicle taking. She reminded herself that the maximum sentence was two years imprisonment. She took into account that the offending involved prolonged bad driving with a deliberate disregard for the safety of others. She noted that there was a passenger in the car, that the appellant was trying to avoid arrest by escaping from the police, and that the appellant drove aggressively, speeding in a built up area and ignoring junctions

158. She took into account the appellant's previous convictions. He had convictions for driving offences in 2019 and 2020 i.e. at around the time of the offences for which the judge had to sentence the appellant. Since October 2020 the appellant had been

convicted on eight separate occasions of offences involving drugs, possession of weapons and violence. He had served custodial terms, the longest being 27 months.

159. The judge said that she had in mind that he was aged 18 at the time of the offence and that the offences for which he had to be sentenced were committed over 3 years before the date of sentence. We observe that this is not a case in which the delay was due to any failure to charge the appellant or to problems in the criminal justice system.

160. The judge concluded that the least sentence after trial would have been one of 40 weeks' imprisonment. Despite the fact that the appellant's plea was tendered on the third occasion on which the trial had been listed, she applied a reduction of 10% to take account of the plea of guilty. The resulting sentence was 36 weeks' imprisonment.

161. The judge considered the Sentencing Council guideline on the imposition of community and custodial sentences. She said this:

162. "Suspension is not possible because I have considered the guidance and the matters which suggest it would be possible simply do not arise in your case and the matters which suggest that immediate custody is appropriate do arise."

The appeal

163. It is argued that the judge did not give sufficient weight to the defendant's age and immaturity. The grounds of appeal describe 40 weeks as "the starting point before mitigation and credit". That is not correct. It is clear from the judge's sentencing remarks that she had given weight to mitigation, including the appellant's age and immaturity, in concluding that the appropriate sentence after trial would have been 40 weeks' imprisonment. Given the nature of the driving and its consequences, a mature adult could have expected a sentence after trial in the range 12 to 15 months' custody.

164. It is further argued that the judge should have suspended the sentence. For this court to interfere with the assessment of a judge in relation to suspending a sentence, it must be shown that the judge went wrong in some material respect. That is not the position here. The judge expressly considered the factors in the guideline on the imposition of community and custodial sentences. There was no basis for a finding that any one of the factors favouring suspension was present. There was no realistic prospect of rehabilitation. The appellant did not have strong personal mitigation. This was not a case in which immediate custody would result in significant harmful impact upon others.

165. Rather, the judge was right to conclude that the appellant presented a risk to the public. He had offended repeatedly since the commission of the offence for which she had to sentence him. He had a history of poor compliance with court orders. The conclusion that appropriate punishment could only be achieved by immediate custody was inevitable.

The disqualification from driving

166. We have outlined the way in which the period of disqualification was announced in court. As we have said, disqualification should have been a discretionary period of 52 weeks plus an extension period of 18 weeks, namely a total of 70 weeks. As pronounced in court, the overall period of disqualification was 61 weeks. We cannot correct that erroneous calculation. To do so would be to impose a penalty more onerous than that imposed in the Crown Court.

167. It follows that the appeal is dismissed.