Judgment Approved by the court

Neutral Citation Number: [2025] EWCA Crim 137

Case No: 2024/01533/A4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT CAERNARFON
His Honour Judge Timothy Petts
60EF0402123

Cardiff Crown Court
Cathays Park
Cardiff
CF10 3PG

Date: Tuesday 4 February 2025

Before :

THE LADY CARR OF WALTON-ON-THE-HILL
(THE LADY CHIEF JUSTICE OF ENGLAND AND WALES)

MR JUSTICE KERR
and
MR JUSTICE NICKLIN

- -

Between :

GARETH LAMBERT	**Appellant**
- and -	
REX	**Respondent**

- -

Mr S Mintz appeared on behalf of the Appellant

Hearing date: Tuesday 4 February 2025

- -

Judgment Approved by the court

APPROVED JUDGMENT

This judgment was handed down *ex tempore* on Tuesday 4 February 2025 in Cardiff Crown Court.

- -

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

- -

The Lady Carr of Walton-on-the-Hill, CJ :

1. 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 the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

Introduction

2. This is an appeal against sentence, leave having been granted by the single judge.

3. On 22 March 2024, following a trial in the Crown Court at Caernarfon before His Honour Judge Petts and a jury, the appellant was convicted of two offences of rape, contrary to section 1(1) of the Sexual Offences Act 2003 (counts 1 and 2), and one offence of sexual assault, contrary to section 3(1) of the Sexual Offences Act 2003 (count 5). No evidence was offered against him on counts 3 and 4 (rape), and not guilty verdicts were entered on those.

4. The appellant was 29 years old at the time of the offending and 31 at the time of sentence. The offences involved two different victims, but in similar circumstances. Both women were known to the appellant. In each case the offences were committed in the appellant's flat above the public house where he was landlord.

5. On 19 April 2024, the judge imposed the following sentences. On count 1, an extended determinate sentence of ten years and 9 months, made up of a custodial term of 7 years and 9 months and an extended licence period of three years; on count 2, an extended determinate sentence of thirteen years and 3 months, made up of a custodial term of 10 years and three months, with an extended licence period of 3 years; and on count 5, a sentence of 18 months' imprisonment, to run concurrently with the sentence on count 2. The sentence on count 2 was ordered to run consecutively to the sentence on count 1. Thus, the overall sentence was an extended determinate sentence of 24 years, comprising a custodial term of 18 years and an extended licence period of six years.

The Facts

6. On 29 January 2022 there was a regular band night at the public house where the appellant was landlord. C1 was a former partner of the appellant, having recently ended the relationship. It was agreed that she would come to the band night to catch up with friends. It was also agreed that she would stay overnight on the sofa in the appellant's flat.

7. During the evening, despite the relationship having ended, the appellant constantly tried to kiss C1. She made it clear that she did not want this. She went upstairs early. She was drunk and, through force of habit, went to sleep in the appellant's bed, instead of on the sofa.

8. At about 2 am the appellant went upstairs. C1 awoke to find the appellant on top of her, pulling down her pyjama bottoms and knickers. She tried to push him away, but he was

too strong. He placed his arms in such a way that she could not move hers. She shouted at him to "Get off!". Despite all of her protestations, the appellant carried on. He inserted his penis into her vagina, raping her. After a short time he stopped, went to the bathroom and said out loud to himself, "I can't believe I've just raped you".

9. The following morning C1 went home. Although she told a friend shortly afterwards what had happened, she did not report the rape to the police until she had heard of the second rape of C2 about a month later.

10. C2 was someone to whom the appellant was attracted, but the feeling was not mutual, as C2 made very clear to the appellant. On 24 February 2022, the appellant eventually persuaded C2 to meet up for a drink with him. They went back to his pub for a private drink after hours. Initially, there was a member of staff still on duty. During this time, the appellant was touching C2, but she remained uninterested. She told the appellant that they were "just friends". Time passed. The two of them were alone. They carried on talking and drinking. Then, given the difficulties of getting home safely in the early hours of the morning, it was agreed that C2 would stay over upstairs. The appellant showed her around his flat and they watched television whilst finishing their drinks. The appellant tried to kiss her, but she again made it clear that nothing sexual was going to happen. It was agreed that they would share a bed. C2 felt safe in doing so on the basis that she knew that the appellant understood her position, to which the appellant had said, "Fine".

11. However, once both were in bed the appellant again started to try to kiss her. She tried to push him away and told him to stop, but he continued. He progressed to touching her body, removing her clothes and then raping her. She told him that he was hurting her. At one point, in what was a prolonged incident, he performed oral sex on her and placed his fingers in her vagina. At another point, he picked up his phone and deliberately recorded what was happening. When challenged by C2, he lied and said that he had not recorded anything. However, he immediately deleted the recording.

12. At this stage, C2 pushed the appellant off, got dressed and returned home, despite the appellant's attempts to chase after her in his car and to persuade her to return to the flat. She had, in fact, told others before leaving the flat and when she was on her way home about what the appellant had done.

13. The appellant was arrested the following day. In both cases his defence, rejected by the jury, was that the sexual activity was fully consensual.

14. Both C1 and C2 provided harrowing Victim Personal Statements setting out their extensive trauma. C1 had been close to suicide at times. She had what she recognised was an irrational self-blame. She had had nightmares, panic attacks and flashbacks. All of what had happened had had a high impact on her work, social and personal life.

15. C2 was also caused trauma and extreme distress. She had had medication and counselling, with a knock-on impact on her young children who had seen her so upset, without her being able fully to explain why. She, too, had had panic attacks and suffered from anxiety, again with an impact on her work and social life.

16. The appellant had no previous convictions for sexual offending. He had one previous conviction from 2020 for an offence of driving with excess alcohol. He had a positive character reference.

The Sentence Below

17. In clear and well structured sentencing remarks, the judge placed the offending in count 1 into category 2B of the Sentencing Council's Sexual Offences Guideline for rape, and the offending into count 2 in category 2A. The offending in count 5 fell into category 2B of the Sentencing Council's Sexual Offences Guideline for sexual assault.

18. The judge found the appellant to be dangerous and that an extended sentence was necessary for public protection. He indicated that he had reduced each of his notional single sentences by approximately nine to 12 months for the sake of totality.

The Grounds of Appeal

19. Mr Mintz, appearing for the appellant before us as he appeared for the appellant below, makes three succinct and able submissions. In relation to count 1, it is said that the category 2B starting point of between eight and a half years and 8 years and nine months' imprisonment, before allowing for totality, was too high. In relation to count 2, it is said that the category 2A starting point of between 11 years and 11 years and three months' imprisonment, before allowing for totality, was also too high. Mr Mintz emphasises in particular the very brief nature of the recording incident. Finally, it is said that the judge ought to have reduced each of these very substantial sentences by far more than the nine to 12 months that the judge in fact allowed in order to take account of totality; and that the end result of 18 years' imprisonment was manifestly excessive, having regard to, amongst other things, the appellant's age and lack of relevant convictions. Mr Mintz points to the fact that the judge must have had a term of 19½ to 20 years' imprisonment in mind; that was simply far too high.

Discussion

20. As indicated, there is no challenge to the judge's categorisation of the offending; to the passing of consecutive sentences on counts 1 and 2; or to the finding of dangerousness. The challenge is to the terms applied for notional single sentences and the judge's reduction for totality.

21. Count 1 (the offence relating to C1) was category 2B offending. Harm was category 2, because the victim was particularly vulnerable – she was asleep and drunk – and severe psychological harm was present. Culpability was category B. As a result, the starting point was eight years' custody, with a range of seven to nine years. The aggravating feature was the domestic abuse context.

22. Count 2 (the offence relating to C2) was category 2A offending. Harm was category 2, because this was a sustained incident which caused severe psychological harm, with the additional degradation of the performing of oral sex. Culpability was category A, because of the recording, although, as we have said, the recording was immediately deleted. The starting point was ten years' custody, with a range of nine to 13. The sentence on count 2 also had to reflect the sexual assault in count 5, albeit that we accept that that offending was part and parcel of the rape.

23. In each case there was, in our judgment, significant mitigation. The appellant was 29 years old. He had no relevant previous convictions and there had been no further offending since these events. He was a successful landlord, and these convictions were career-ending. There is a character reference which describes the appellant as "professional", "an excellent manager", a "respected member of the community", and a "dedicated father and partner". The appellant was in a stable relationship and had a very young daughter.

24. We agree that the term of eight and a half years' to eight years and nine months' imprisonment on count 1, before reduction for totality, was too high. As indicated, the starting point was eight years' imprisonment. Even making some upward adjustment for the element of domestic abuse, there was significant mitigation. Nine years was a term at the top of the relevant sentencing range. It is difficult to see how a term of nine years' imprisonment, or even more was justified, before reduction for mitigation.

25. We also agree that a term of 11 years', or 11 years and three months' imprisonment took on count 2, before making any reduction for totality, was too high. The starting point was ten years' imprisonment. We accept that culpability fell only just into category A. Even allowing for a necessary increase to reflect the sexual assault, it is difficult to see how a term of around 12 years' imprisonment, before reduction for mitigation, could be justified.

26. The real question, against this background, is whether or not, at the end of the day, a custodial term of 18 years was manifestly excessive, looking at the offending overall. The overriding principle of totality is that the overall sentence should reflect all of the offending behaviour, with reference to overall harm and culpability, together with the aggravating and mitigating factors relating to the offences and those personal to the offender and be just and proportionate.

27. The judge was entitled to pass consecutive sentences to reflect the fact that there were two separate victims. With consecutive sentences, it is usually impossible to arrive at a just and proportionate sentence simply by adding together notional single sentences – something which the judge rightly recognised.

28. The question for us is whether his notional single sentences were too high, and the end result of 18 years' custody, with a licence period of six years, was manifestly excessive. As set out above, we have concluded that the notional single sentences were too high. We also conclude that the end result of 18 years' custody was disproportionate to the overall offending.

29. There can be no doubt that this was very serious offending on two victims whose suffering can in no way be minimised. But, as set out above, many of the negative features in this offending were catered for in the starting points identified by the relevant parts of the Sentencing Council Guideline for Sexual Offences, including vulnerability, additional degradation, the sustained nature of the incident in count 2, and the undoubtedly serious psychological harm caused to each victim.

30. Against this, there was significant mitigation. It included the appellant's relative youth, the lack of sexual offending before or after what was offending over a period of a month or so, the effect of these convictions on the appellant's career, and his young family.

31. We have concluded that a sentence of 18 years' imprisonment, together with an extended licence period of six years, was manifestly excessive in all the circumstances on the specific facts of this particular case.

32. In our judgment, a just and proportionate overall sentence would be one of 14 years' imprisonment, plus an extended licence period of four years.

Conclusion

33. We therefore allow the appeal. We quash the sentences below on counts 1 and 2. On count 1, we substitute a sentence of six years and six months' imprisonment, with an extended licence period of two years. On count 2, we substitute a sentence of seven years and six months' imprisonment, and an extended licence period of two years. That sentence is to run consecutively to the sentence on count 1.

34. The overall sentence is therefore an extended determinate sentence of 14 years' imprisonment, plus an extended licence period of four years.

35. All other elements of the sentence remain undisturbed.
