Neutral Citation No. [2025] EWCA Crim 206

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT LEWES
(HIS HONOUR JUDGE GOLD KC) [47NC167523]

Case No 2025/00132/A5

Tuesday 18 February 2025

B e f o r e:

LORD JUSTICE DINGEMANS

MRS JUSTICE CHEEMA-GRUBB

THE RECORDER OF HULL AND THE EAST RIDING
(His Honour Judge Thackray KC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

R EX

- v -

AJAZ KARIM

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Miss T McCarthy appeared on behalf of the Appellant

J U D G M E N T
Approved

LORD JUSTICE DINGEMANS:

Introduction

1. This is an appeal against sentence brought with the leave of the single judge.

2. On 29 November 2024, following a trial in the Crown Court at Lewes before His Honour Judge Gold KC and a jury, the appellant (aged 70) was convicted of an offence of indecent assault, contrary to section 14(1) of the Sexual Offences Act 1956.

3. On 13 December 2024, he was sentenced to 21 months' imprisonment.

4. The victim of the offending is entitled to lifelong anonymity, pursuant to the provisions of the Sexual Offences (Amendment) Act 1992. She was a 13 year old girl at the school at which the appellant was a sports coach.

5. The appellant had been sentenced to a term of ten years' imprisonment on 9 August 2018 for sexual offences against six other female pupils at the same school. They included sexual assaults and digital penetration of the vagina. The offending overlapped in time. The appellant was released on licence in April 2023. The judge found that the appellant had made attempts to rebuild his life since that sentence. The appellant had secured work and had complied with the terms of the Sexual Harm Prevention Order imposed on him.

6. The single ground of appeal is that insufficient weight was given to the overlap of this case with the sentence imposed for the appellant's previous offences.

Factual circumstances

7. The offence with which we are concerned was committed on a date between 1 September 1991 and 17 June 1993. The appellant had kept the complainant behind after playing indoor hockey in the evening. The appellant persuaded her to allow him to massage her legs over clothing in a secluded room at the sports centre. The complainant saw that the appellant had an erection.

The sentence

8. The complainant reported the offence to the police on 19 December 2022, having seen coverage of the 2018 sentence. The appellant was interviewed by police on 6 March

2023, when he denied the offence. The trial therefore took place.

9. There was no pre-sentence report before the judge.

10. A victim personal statement showed that the offending had had a serious effect on the complainant.

11. There were references in support of the appellant, including from his then current employer.

12. The judge considered that under the current guidelines, the offence would have been classified as a section 2A sexual assault, with a starting point of two years' imprisonment and a range of one to four years. If the complainant had been under 13 at the time (she was aged 13), the starting point would have been four years' imprisonment under the guidelines.

13. The judge noted the previous sentence and recorded that he had been referred by counsel to *R v Cosburn* [2013] EWCA Crim 1815 (*Cosburn*) and *R v Green* [2019] EWCA Crim 196, [2019] 2 Cr App R(S) 16 (*Green*). The judge said that he could not ignore the fact that the appellant had contested the trial and continued to deny offending, so that the sentence could not be suspended. He imposed a sentence of 21 months' imprisonment.

The Appeal

14. In *Cosburn* the problem of sentencing for an offence for which the defendant was convicted after an earlier sentence for similar offending was addressed. In *Green*, which was another case involving a sports teacher offending against pupils, the court said that it was wrong to ignore previous sentences and that those sentences should have been taken into account. Non-exhaustive relevant factors to adjust sentences included: how recently the other sentence was imposed; the similarity of the offences; whether the offending overlapped in time; whether the defendant could have wiped the slate clean by bringing those other offences to the attention of the police; and whether, if no account were taken of the previous sentence, the overall length of the two sentences would offend the totality principle. In later cases reference was also made to whether there had been further offending.

15. The Sentencing Council's Guideline on Totality is relevant. It has guidance for specific applications, custodial sentences and a drop-down box for existing

determinate sentences, were a subsequent determinate sentence to be passed. The guideline provides that generally the sentence will be consecutive as the offending will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence to ensure that the total sentence to be served is just and proportionate. This reflects the non-exhaustive guidance given in *Green*.

16. In this case it is relevant to note that the offending was similar. It overlapped in time. There has been no offending since, and because of the earlier sentences the appellant was already subject to licence provisions and a Sexual Harm Prevention Order.

17. On the other hand, it is also relevant to record that this was a separate event against a separate victim, causing separate harm. The victim was younger, and the appellant had the chance to make a clean sweep of matters before his sentencing in 2018, and did not do so.

18. In our judgment, it is apparent that the sentence that was imposed was required to be an immediate custodial sentence. That was because, notwithstanding the length of time for the sentence that was imposed, this was separate harm against a separate victim, where there had been a denial of offending, which impacted the court's ability to consider whether there would be any rehabilitation. Given the circumstances of the offending, it was an offence where appropriate punishment could only be achieved by immediate custody.

19. On the other hand, having considered the relevant factors set out in *Cosburn* and expanded upon in *Green*, we consider that this was a sentence which failed to have sufficient regard to the proportionate sentence that might have been imposed when matters were considered in 2018. We consider that some downward adjustment to the sentence of 21 months is required to reflect that fact.

20. Having considered the helpful submissions of Miss McCarthy this morning, together with the written submissions that were made by the prosecution below, we consider that the downward adjustment should result in a sentence of 15 months' imprisonment, rather than 21 months' imprisonment.

21. We have also considered whether that adjustment is of such a limited degree that it cannot be said that the original sentence was manifestly excessive. However, given the proportion that a reduction of six months represents of the sentence, it can be so

described. In our judgment the reduction is required to ensure that the sentence is just and proportionate, having regard to the sentences that had been passed before.

22. For all those reasons we will allow the appeal to the extent of reducing the determinate sentence of 21 months to a determinate sentence of 15 months' imprisonment.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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