IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT SHREWSBURY
HHJ BARRIE

CASE NO 202303404/A3

Neutral Citation No. [2025] EWCA Crim 237

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 14 February 2025

Before:
LORD JUSTICE DINGEMANS

MRS JUSTICE TIPPLES

HIS HONOUR JUDGE FORSTER KC
(Sitting as a Judge of the CACD)

REX
v
"FPK"

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Lower Ground, 46 Chancery Lane, London WC2A 1JE
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MS D WHITE appeared on behalf of the Appellant.
MR M CONNOR appeared on behalf of the Crown.

J U D G M E N T
Approved

LORD JUSTICE DINGEMANS:

Introduction

1. This is an appeal against sentence, in circumstances where the Registrar identified two possible errors in the sentencing remarks, and leave was granted by the single judge to deal with those two matters. The appellant also renews grounds of appeal against sentence where leave was refused by the single judge. We have been very much assisted by Ms White and Mr Connor, who appear by CVP this morning, who made helpful written and oral submissions.

2. The appellant was born in March 1988 and is now a 36-year-old man. He was, before these offences, of previous good character and he was convicted on his own pleas of guilty to eight counts of sexual offences against children. The pleas were entered in the Crown Court and the appellant was entitled to a discount of 25 per cent for the pleas of guilty. Count 1, which was assault by penetration of a child under 13; count 2, rape of a child under 13 (being aged 11); count 3, rape of a child under 13 (being aged 12) and count 4, causing a child to engage in sexual activity; count 5, rape, and count 9, rape relating to C1. Count 16, penetration of the vagina with the penis, and count 17, penetration of the mouth with the penis, related to C2.

3. The appellant was sentenced to 16 years 6 months' imprisonment on count 2, with concurrent sentences on the other counts relating to C1, and to 3 years consecutive on count 16 with a concurrent sentence on count 17. This gave a total of 19 years 6 months' imprisonment. The judge applied a 4 year 6 month extension period.

4. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences so that 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 the offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. Given the relationship between the victims and the appellant it is necessary to anonymise the appellant's name to ensure that the victim's anonymity is

preserved, and this is done for the victim's benefit and not for the benefit of the appellant, who we shall refer to as "FPK".

5. The renewed grounds of appeal are that first, the judge applied too high a starting point within the guidelines, and second, the judge erred in increasing the sentence on the lead offence by 7 years, taking it to 9 years over the starting point. The grounds on which leave were granted are third, the judge did not specify which sentence or sentences attracted the extended sentence. This should have been done because a global approach is not permissible, see *R v DJ* [2015] 2 Cr App R(S) 16 at [52] to [53]. The fourth ground is that the sentencing remarks state the sentence for count 4, causing sexual activity with a child, was 6 years, whereas the Court Associate's record and both counsel recorded it as being 3 years 9 months. The correct sentence needs to be announced although it will make no difference to the overall sentence because it was concurrent.

Factual Background

6. C1 was born in 2007, the appellant was her stepfather and became part of the complainant's family when she was around 3 years old. She was aged between 11 and 14 when she was sexually abused by the appellant. She described that the appellant had attempted to have sexual intercourse with her about five times before he successfully managed to penetrate her vagina with his penis and during the incidents of rape she would sometimes cry and she remembered that on one occasion the appellant asked her what was wrong. She told him she did not like what he was doing but he ignored her and walked out of the room. She said when she became upset the appellant would either just carry on or stop. On one occasion, he apologised saying "sorry" but that did not prevent him continuing. On other occasions, she told him that she wanted him to stop, he apologised and said he would and he would be a better father and that he would buy her an iPhone if that helped. She told him it would not. He did not stop the abuse.

7. The appellant would tell C1 that having sexual intercourse felt nice and that he loved her. He asked her if she wanted a relationship and to have a baby, she told him "no" because he was her father and her mother's husband. She asked him why he was abusing her but he would not respond.

8. The first complainant went to boarding school in about October 2020. The appellant would ask her, "Are we doing it this weekend?" She would always tell him "no". He would have sex with her when her mother was in the shower or asleep or out picking up other children and when she was doing school work online upstairs. He would attempt to bribe her with gifts in return for sexual favours. He would join her in the bathroom when she was having a shower. She told police that she hated him and believed he had only sexually abused her because she was not his biological daughter. The appellant would grope her and finger her, and there were times when she threatened to tell her mother but he would cry and ask her not to, saying that he would go to prison. She asked him "why do it", and he did not respond.

9. The first time anything happened was when the appellant had performed oral sex on her and fingered her in her bedroom. He told her to be quiet. It hurt when he attempted to rape her. At that time she was in Year 6 at school.

10. C1 said that the abuse was frequent. When she was at school he tried to persuade her to take her old mobile phone so that they could exchange messages and he tried to persuade her to send indecent messages, which she refused. On some occasions when she was upstairs, he would join her on the pretence of helping with homework, he would stand her up, lean over her and vaginally rape her. He made sexual requests which she refused.

11. There were other occasions of sexual abuse. On 28 March 2021, it was the appellant's birthday during lockdown. C1 and her family were in a social bubble with C2 and C2's family. C2 was C1's friend. They had a small party for the appellant, at which he gave both girls whisky and gave them a Vape to smoke. C1's mother was unwell and C1 noted that the appellant did not help his wife. C2 (who was then aged 14) stayed over and slept downstairs. C1 was worried that something might happen to her and tried to keep an eye on her but she was too tired and went to sleep.

12. C2 told the police that she thought of C1 and her family as her second family. The appellant would give both girls a kiss and a cuddle when he used to take them to school and she thought nothing of that. On the night of the party he gave the girls alcohol and then he brushed C2's bottom with his fingers. Later on, when her family had gone, the

appellant asked the girls if they wanted to Vape, which they did. Later on, when C1 had gone upstairs the appellant demanded a kiss in exchange for a Vape with C2. She refused and tried to walk out of the room but the appellant grabbed her by her hips and forced a kiss. She put it down to him being drunk and stupid. She then began to feel sick from the alcohol. C1 got her a duvet so she could sleep on the sofa.

13. C2 went to the kitchen to get a drink of water. The appellant offered her more alcohol, he then groped her bottom and said that she made him feel hard. She said to him that he knew she was 14 and he was married and what he was doing was disgusting. He responded by telling her that she was stunning and had the perfect figure. She sat down on the sofa. The appellant told her that as he had given her a Vape she had to show him her bum, she said "no" but he began touching her bottom under her clothing. She got up to move but he insisted he touch her vagina; she refused but he was persistent and groped her. She managed to get to C1's brother's room to play on a computer before returning downstairs. The appellant asked her if she was a virgin and she said she was. He then undid her bra, she felt sick and her recollection after that point became poor. The next thing she remembered was being naked on the floor and the appellant was insisting they had intercourse. When she told him it hurt, he told her to shut up and be quiet. She threatened to scream and he put his hand over her mouth. He also made her perform oral sex on him. Afterwards he said, "You'd better not fucking tell anyone" and referred to not liking snitches. The appellant took photographs of what they were doing including images of penetrative sexual activity. After the incident with C2, he left her downstairs. Going upstairs he said, "Thank you for being my birthday present." He used no protection.

14. The same morning after that incident with C2, C1 had gone up to his bedroom to ask about feeding the dog and he pulled her into bed and raped her. The brother walked in and the appellant pretended he was giving C1 a hug. The next day C2 told a friend, who informed her parents, and the disclosures by C1 came to light. The police were informed. The appellant was arrested and gave a "no comment" interview.

The Sentencing

15. The appellant pleaded guilty at the PTPH to various offences and the Crown considered the pleas to be acceptable. A pre-sentence report and psychiatric report was obtained and on 1 September 2023 he was sentenced. It was common ground that count 1 was a category 2A offence, with a starting point of 11 years and a range of 7 to 15 years; counts 2 and 3 were category 2A offences, with a starting point of 13 years and a range of 11 to 17 years. That is relevant to the renewed grounds of appeal, where the starting point is 13 years on count 2 with the range of 11 to 17. Count 2 was taken as the lead offence.

16. Count 4 was a category 3A offence, with a starting point of 5 years and a range of 3 to 8 years. Counts 5 and 9 were category 2A offences, with a starting point of 10 years and a range of 6 to 9 years. Counts 16 and 17 were category 1A offences, with a starting point of 5 years and a range of 4 to 10 years.

17. Count 2 was taken as the lead offence for C1 (vaginal rape of a child under 13) being 11. The judge had aggregated all of the offending on that sentence and said that a sentence of 22 years less 25 per cent discount, giving 16 years 6 months was appropriate. Counts 16 and 17, which related to C2, were aggregated together and a consecutive sentence with discount for plea was added. The judge found that there was a significant risk that the appellant would commit further offences and thereby cause serious harm and pursuant to section 308 of the Sentencing Act 2020 imposed a 4½ year extended licence period.

The appeal and renewed grounds

18. As to the renewed ground of appeal that the judge applied too high a starting point within the guidelines, we consider that the judge's starting point of 15 years (increased from 13 years) was perfectly permissible in the circumstances given the offending that had led up to the actual rape of the 11 year old. We do not consider there is any force in the proposition that the sentences were too high in the guidelines. The judge had proper regard to the guidelines, and the devastating effect of the offending on the victims.

19. So far as the second ground of the renewed grounds is concerned, which was that the

judge erred in increasing the sentence on the lead offence by 7 years, taking it to 9 years over the starting point, that is correct but the judge only did that to ensure that there was one sentence to which the extension was attached and that was a perfectly permissible approach in circumstances where all the other offending was made concurrent to the offending in relation to count 2. So for those short reasons, the renewed application for leave to appeal against sentence is refused.

20. That then leaves the matters on which leave to appeal against sentence was taken. The judge did not specify which sentence or sentences attracted the extended sentence. This should have been done because a global approach to such matters is not permissible.

21. The respondent, in a helpful note, referred to relevant authorities on this provision and submitted that the extended sentence should be attached to count 2. On behalf of the appellant, Ms White did not make any contrary submissions. Having looked at the way in which the judge structured the offences it is apparent that that was what he was intending to do and, in those circumstances, we will attach the extended sentence to count 2. That means that count 16, to which count 17 is concurrent of 3 years, should be served first. Count 2 should be made consecutive to the sentence on count 16 and the extended sentence attached to count 2.

22. That leaves the fourth matter, which is the sentence on count 4. Count 4 was a count relating to the sexual activity in requiring C1 to masturbate the appellant. The judge said at page 3D of the sentencing remarks that the shortest sentence after trial would be 5 years' imprisonment but the judge then said at page 4B of the sentencing remarks "on count 4 becomes a sentence of 6 years". It seems that the Court Associate's record and both counsel had recorded it as being a sentence of 3 years 9 months, which is 5 years less the 25 per cent discount. We can confirm that the sentence on count 4 should have been a sentence as recorded by the Court Associate of 3 years 9 months, that is because the judge took a sentence, after trial, of 5 years' imprisonment, having taken account of aggravating and mitigating features and then the 25 per cent discount was applied to give the sentence of 3 years 9 months. This is all, in many respects, academic because, as already indicated, the main sentence was taken on count 2 and this sentence was

concurrent to it.

23. For these reasons, the renewed applications for leave to appeal against sentence are refused. The record is adjusted to show that the concurrent sentence on count 4 is 3 years 9 months and the record is adjusted to show that the extended sentence is attached to count 2, which is consecutive to counts 16 (3 years), with count 17 being concurrent to count 16. All the other sentences are concurrent to the sentence on count 2, and the ancillary orders remain as they were.