Neutral Citation Number: [2018] EWCA Crim 478

No: 201703929 C2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 1 March 2018

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE SWEENEY

MR JUSTICE WILLIAM DAVIS

R E G I N A
v
GERARD PHILIPPE ANDRE SINGER

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd 190 Street London EC4A 2DY, Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr R Keogh appeared on behalf of the **Appellant**
Mr D Wilson appeared on behalf of the **Crown**

J U D G M E N T (Approved)

If this transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

1. MR JUSTICE SWEENEY: This is an appeal against sentence by leave of the single judge.

2. On 11 July 2016, at the conclusion of his trial before His Honour Judge Levett in the Crown Court at Ipswich, the appellant, who is now aged 71, was convicted of 27 sexual offences in relation to seven male victims who were aged between 9 and 13 at the time of the offending. On 9 September 2016, the judge sentenced the appellant, for 26 of the offences, to determinate terms of imprisonment totalling 19 years. On Count 24, an offence of assault with intent to commit buggery, he imposed a consecutive extended sentence of ten years' imprisonment, comprised of a two-year custodial term and an extended licence period of eight years. The appellant was also made the subject of an indefinite Sexual Harm Prevention Order and was automatically subject to statutory notification and barring requirements.

3. There are two grounds of appeal, namely that: (1) an extended sentence was not necessary or appropriate, having regard to the age of the appellant and the combined effect of the length of the sentence, the imposition of the Sexual Harm Prevention Order and the statutory barring order; (2) irrespective of the merits of the finding of dangerousness, the imposition of the extended sentence on Count 24 was unlawful. The respondent concedes that, as imposed, the sentence on Count 24 was indeed unlawful, because the custodial element of the sentence was less than four years, but submits that if an extended sentence was otherwise appropriate, that can be remedied in a number of ways.

4. The provisions of the Sexual Offences (Amendment) Act 1992 apply. No matter relating to any of the victims shall be published in their lifetime if it is likely to lead to their identification as such. We have anonymised our judgment accordingly.

5. The facts of the offences are appalling. Between 1978 and 1981, when he was in his early to mid-30s, the appellant, who is a French national, was employed as a modern language teacher at St George's School in East Anglia. It was a boarding school for boys aged between 9 and 13 and principally catered for those whose parents were in the armed forces. During the appellant's years at the school, the headmaster was a man called Derek Slade, who was a prolific abuser, both physical and sexual, of the boys in his care - employing institutionalised brutality and horrendous physical abuse to ensure that the victims were too frightened to complain. In that, he was joined by two other teachers, Alan Brigden and Alan Williams.

6. The appellant, in deliberate contrast, presented himself to the boys as informal, attentive and kind. But that behaviour was in fact, and in gross breach of trust, nothing other than grooming them for his sexual pleasure. At times the appellant used drugs to

subdue victims into performing sexual acts on him or to receive sexual abuse from him. Oftentimes, the abuse would take place with multiple boys present inside the appellant's rooms at the school. At other times he would isolate his victims, inviting them to his room alone. At times the appellant also watched and engaged in sexually abusing pupils with the headteacher. That included an incident involving an 11 year-old boy first performing oral sex on the appellant and then immediately afterwards on the headmaster. Victims were told not to say anything and were too frightened to do so.

7. Counts 1, 2 and 3B involved the victim FD, aged 12, and mutual oral sex, oral sex on the victim, and multiple touching.

8. Counts 4 and 5 involved the victim GD, aged 10 or 11, and involved kissing and performing oral sex on him.

9. Counts 6 to 9 involved the victim MS, aged 10 or 11, and included masturbating him, masturbating another boy in his presence, and masturbating both the victim and another boy at the same time.

10. Counts 10 to 13 involved the victim MH, aged 10 or 11, and kissing, oral sex on the victim, and fondling his genitals and penis.

11. Counts 14 to 16 involved the victim GH, aged 12 to 13, and included inciting him to masturbate the appellant, and the appellant then putting his penis in the victim's mouth; touching the victim whilst masturbating himself; and telling the victim to take a pill which rendered the victim unconscious, after which he woke up to find that he was being anally raped in the presence of a third person. When the victim screamed in pain he was told to shut up, and was slapped by the appellant to stop him screaming any further.

12. Count 17 involved the victim MW, aged 11 or 13, whose genitals the appellant touched.

13. Counts 18 to 22, 22A and 23 to 25 involved the victim PC, aged 9 or 10, who was incited to perform oral sex on the appellant on a number of occasions; was masturbated by the appellant on a number of occasions; was buggered on one occasion after he had been sexually abused first by the headmaster; and on another occasion, was drugged by the appellant and another, tied to a bed whilst unconscious and buggered again.

14. Finally, Counts 26 & 27 involved the victim GR, who was kissed and had his penis touched and fondled.

15. There was also evidence, which the judge found to be true, of sexual misconduct with other boys, including A, in the holidays outside England. Whilst that did not form the basis of any charge, the judge did, as he was entitled to, take it into account when deciding whether the appellant was a dangerous offender.

16. The appellant's offending at the school came to an end in November 1981, when an allegation was made against him and he left the school abruptly. The appellant next surfaced in 1998, when he was convicted at the St Omer Criminal Court in France of offences of sexual aggression on minors under 15 by a person in a position of power.

That offending occurred in 1994, 1996 and 1997. In consequence of his conviction the appellant was sentenced to a term of imprisonment. In 2009, following complaints in relation to his conduct at St George's School, efforts began to extradite the appellant from France. They were eventually successful in December 2015.

17. Passing sentence, the judge observed that the appellant's victims had been uniquely vulnerable. They were children who were apart from their families who had been sent, often from overseas, to St George's in the hope and trust that they would have stability in their education and upbringing. However, said the judge, it was clear from the victim impact statements that the appellant's crimes had destroyed both childhoods and families, some seemingly beyond repair, and that the victims, now men in their 40s, some with young families of their own, were put through further trauma by having to relive their experiences at trial.

18. The appellant's crimes, said the judge, had had far-reaching consequences for the victims' outlooks and their relationships in adulthood. They had had difficulty trusting, difficulty with managing anger, and many had had to turn to drink or drugs as a way to cope with what had happened to them as children. For a number of them however, the court process, although unimaginably difficult, had been a cathartic experience. They had been listened to and they had been believed, when the appellant and others like him had gone to such lengths to make them think that they never would be.

19. As to dangerousness, the judge observed that the offences of which the appellant had been convicted, both in this country and in France, involved boys aged between 9 and 14, each in the context of the appellant being a teacher at their school and in a position of authority and trust. The offences demonstrated, said the judge, that the appellant had a predatory nature to select the more vulnerable, the more isolated, and possibly more meek and mild amongst the boys in his care. The appellant had failed, said the judge, to demonstrate any recognition or atonement for what he had done, and the author of the pre-sentence report had concluded that the appellant had an entrenched sexual interest in young boys and that he would continue to seek out opportunities to offend. Indeed that, without interventions, his behaviour was unlikely to change, such that he posed a high risk of serious harm to young boys by the commission of further specified offences against them.

20. It was against that background that the judge concluded that the appellant was a dangerous offender and imposed the sentences to which we have referred.

21. In imposing those sentences, the judge remarked that the appellant would serve at least two thirds of the overall term of 21 years, at which point his sentence would be referred to the Parole Board who would consider when it was safe to release him, if at all, before the expiry of the full term, which would be followed by the extended licence period. That was clearly in error, as the effect of the sentence actually imposed was that the appellant would serve half of the determinate sentence of nineteen years, after which he would serve the custodial element of the extended sentence and be released no more than two years later, followed by the extended licence period.

22. That brings us to the grounds of appeal. On behalf of the applicant, Mr Keogh questions whether the judge was entitled to conclude that the appellant was a dangerous offender, given his age, both now and at the likely time of his release, the existence of the Sexual Harm Prevention Order and the statutory safeguards imposed consequent on his offending. In particular, Mr Keogh points out that the earliest point at which the appellant would be likely to be released would be when aged 80 or more, that that would be on licence, and that in those circumstances it would be highly unlikely that he would present any danger.

23. In any event, Mr Keogh submits that the judge should have exercised his undoubted discretion not to impose an extended sentence and imposed a determinate sentence instead. In so doing, Mr Keogh recognised that absent an extended sentence, but under the provisions of section 236A of the Criminal Justice Act 2003, the court would be bound to impose a special sentence in relation to one or more of Counts 1, 16, 18, 23 and 25. The effect of a special sentence is that at the halfway point the offender becomes eligible for consideration of release by the Parole Board, but will not be released unless and until the Parole Board concludes that it is safe for him to be released prior to the end of his overall term. If the Parole Board takes the view that the risk is too great, then the offender will serve the whole of the custodial term, followed by the compulsory year on licence.

24. As to ground 2, and as we have already touched on, we must in any event correct the unlawful sentence imposed on Count 24, but we cannot increase the overall term imposed by the judge, with whom we have every sympathy in what was a difficult sentencing exercise, in relation to which his overall approach was otherwise entirely laudable.

25. Finally, on the appellant's behalf, Mr Keogh stresses that the appellant will have to serve his sentence in this country, and thus a country that is foreign to him. He cannot be repatriated for the purposes of serving his sentence.

26. We have no doubt at all that the judge was right to conclude that the appellant is a dangerous offender. Any other conclusion would have been perverse. That conclusion results in a discretion as to whether to impose an extended sentence or a special sentence. As we have touched on already, given the appellant's age before he can even be considered for parole, the imposition of the Sexual Harm Prevention Order and the automatic application, in particular, of the statutory barring order, it seems to us that a special sentence is more appropriate.

27. We propose to achieve that by quashing the sentences imposed on Counts 24 and 25 and by substituting on Count 24 a determinate sentence of two years' imprisonment concurrent, and on Count 25 a special sentence of 21 years' imprisonment with an additional licence period of one year. The overall effect of the sentence which this court has imposed is therefore broadly similar to, but not more than, that of the sentences that the judge imposed.

28. To that very limited extent, this appeal is allowed.

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

165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400

Email: Rcj@epiqglobal.co.uk