

NCN: [2019] EWCA (Crim) 1167
No. 201/01741 A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 14 June 2019

Before:

LORD JUSTICE SIMON

MR JUSTICE PICKEN

and

MR JUSTICE SWIFT

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

REGINA

- v -

FREYA SQUIRES

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Miss D Heer appeared on behalf of the Attorney General

Mr R Cherrill appeared on behalf of the Offender

J U D G M E N T

LORD JUSTICE SIMON:

1. This is an application by Her Majesty's Solicitor General, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court sentences which he considers to be unduly lenient.

2. The offender, Freya Squires, is now 47 years of age. She was charged on an indictment containing seven counts. Counts 1 to 6 were charges of sexual activity with a child under the age of 16, contrary to section 9(1) of the Sexual Offences Act 2003. Count 7 was a charge of sexual activity with a child by a person in a position of trust, contrary to section 16(1) of the 2003 Act.

3. On 7 March 2019, the case was listed before the magistrates' court, which was informed that the offender intended to plead guilty. A pre-sentence report was prepared and the case was sent to the Crown Court.

4. On 12 April 2019, in the Crown Court at Lewes, at the plea and sentence hearing, the offender pleaded guilty to all counts and was sentenced as follows: on count 1, to a term of twelve months' imprisonment; on count 2, 30 months' imprisonment concurrent; on counts 3 and 4, 40 months' imprisonment concurrent; on counts 5 and 6, 30 months' imprisonment concurrent; and on count 7, twelve months' imprisonment concurrent. The overall length of the sentence was a term of 40 months' imprisonment. In addition, a Sexual Harm Prevention Order was made under section 103 of the Sexual Offences Act 2003, and a Restraining Order under section 5 of the Harassment Act 1996. The terms of those orders are not relevant to the present application.

5. The offender was a teaching assistant and the offences were committed against a pupil, "C",

at a school where she taught, over a period of about eighteen months. The offender, who was openly gay, worked at the Tideway School, Newhaven. In about late 2007, or early 2008, when she was aged 35, she befriended the victim who was then aged 13.

6. C had had a troubled home life. Her father had died when she was only 3, and her mother had been diagnosed with cancer. Her older siblings no longer lived at home and she had no one to confide in. The offender was popular with the children at school. The victim liked her and they became close. They began to walk home from school together. The victim began to go to the offender's gym after school and joined the school band in which the offender played. They exchanged telephone numbers and sent text messages to each other. C began to discuss with the offender her confusion about her sexuality, and told the offender that she felt attracted to her.

7. On 2 February 2009, the school was closed due to snow. The offender sent a text to C inviting her to come to her flat, which she did. As they sat together on the sofa, the offender climbed on C, straddling her. C said "No", and the offender got off. She subsequently kissed C in the hallway as she was about to leave. The victim was 14. This gave rise to the charge under count 1.

8. Thereafter, the telephone contact between them increased and the calls became sexual in nature. They began to have oral sex in the toilets at the gym, when the offender would penetrate the victim's vagina with her tongue and they would kiss. The victim described this as happening nearly every day after school. Count 2 charged a single occasion; and count 3, at least ten occasions.

9. At about this time, C's mother started to become concerned about her daughter. She had become withdrawn, and her behaviour was rude and belligerent. She spoke frequently and

inappropriately about the offender. C's mother spoke to her daughter about her behaviour and informed the school of her concerns. As a result, the offender was spoken to by the school student support co-ordinator who told her that she had heard that the victim was seeking special attention from her and advised her not to put herself in a situation where she would be vulnerable to any accusation. The offender was removed from C's classes and C was offered counselling, which began in May 2009. C did not disclose anything about her relationship with the offender at this point. The offender told her not to.

10. Thereafter, although their meetings became less frequent, they continued to see each other. The offender was worried about meeting at the gym, so they would go to the public toilets at Seaford beach, where the offender would perform oral sex on the victim and they would kiss. This was charged as count 4, which specified at least two occasions.

11. During the summer of 2009, when C was 15, her mother decided to take her on a holiday to Australia, hoping that it would have a positive effect on her behaviour. However, C remained in telephone contact with the offender, and the sexual contact resumed upon her return to the United Kingdom.

12. Thereafter, they spent each weekend together. C would lie to her mother, saying that she was staying at a friend's house. Instead, disguised in a wig and a big, baggy coat, she went to the offender's flat. There they indulged in sexual activity which involved digital penetration of the victim's vagina, oral sex, rubbing their vaginas together (scissoring) and kissing, while both victim and offender were naked. This continued until the victim was about 17. Count 5 specified a single occasion; and count 6, at least 20 occasions.

13. The victim turned 16 in May 2010 but remained at school until June. During this period

sexual contact between them continued (count 7).

14. After she left school, the victim began to go out with boys and ended the relationship with the offender. She said that this happened when she was about 17.

15. Subsequently, C told a boyfriend about what had happened and in 2014, when she was pregnant, she disclosed to her health visitor that she had been in a relationship with a teaching assistant. She was advised to call the police, but did not want to. When a police officer went to her home, she was scared and told him that nothing sexual had happened. She was anxious and did not want her mother to know.

15. In 2017, however, she found out that her niece attended the same school, now called Seahaven Academy, and she decided to report the matter to the school in order to protect her. Thereafter, she made a complaint to the police. The offender was suspended from the school, pending an investigation, and was ultimately dismissed.

16. On 12th December 2017, the offender voluntarily attended Eastbourne Police Station, where she was interviewed. She admitted that she had been in a sexual relationship with C when C was 14 or 15. She accepted that she had abused her role as a teaching assistant. She said that she had been depressed and lonely, and had been flattered by C's attention. She said that the victim had come to her flat once when it was snowing and they had kissed. A few months later, they had sex which, she said, involved kissing, cuddling, touching, oral sex and "scissoring". She denied that it involved digital penetration until after the victim had left school. She said that their relationship did not finally come to an end until C was 18. She accepted that she had been advised by the school not to go to the gym with C and had ignored that advice because, she said, it felt like they were in a relationship. She said that she had loved C, but knew that what she had

done was wrong and hated herself for it. She said that she wanted to be honest because she did not want to put the victim through anything else.

17. In her Victim Personal Statement, C said that as a result of the offending she suffered from trust issues and self-doubt. She said that when she was 14, she thought that she was more mature than she was. She now realised that she was emotionally vulnerable and lonely. The offender was friendly and seemed to take an interest in her. During the relationship, she felt that the offender had looked after her. She said that it was not a horrible relationship and the offender never abused her in the sense of forcing her to do anything. Looking back, she thought that the offender had been struggling with depression. However, while the relationship continued, she had lied to her family, which made her feel bad, and she had distanced herself from her friends. She did not feel as if she could confide in anyone. She had felt pressurised by the offender not to tell anyone what was going on because the consequences would be serious. Looking back, she realised that the offender had emotionally manipulated her.

18. The offender has no previous convictions or cautions recorded against her. She was of good character. There were a number of references before the sentencing judge that we, too, have seen. She was highly regarded as a teaching assistant and youth worker. She was genuinely remorseful and ashamed about what she had done.

19. A pre-sentence report described how the offender explained that the offences were committed shortly after she had come out of a long-term relationship. The report suggested that she was motivated by feelings of rejection and loneliness, and that her actions were impulsive rather than planned. Believing herself to be in love with C, the offender had developed a distorted view that the victim was a willing, consensual participant, and failed to recognise her vulnerabilities. The offender described a difficult childhood and problematic drinking, as well

as depression, for which she had been prescribed medication. She had received some counselling and had completed some online work regarding sexual offending. She was assessed as a low or very low risk of re-offending and a medium risk of causing serious harm, the nature of the risk being the sexual and psychological abuse of children, which would be reduced if she were prohibited from working with or having access to them. The report recommended a community order. However, prior to the sentencing hearing, the senior probation officer at court indicated that he did not support such a proposal.

20. The Sentencing Council definitive guideline for offences charged under section 9 of the 2003 Act identifies harm and culpability factors which establish the seriousness of the offending. Miss Heer, for the Solicitor General, submits that this is a case of category 1 harm, since there was penetration of the victim's vagina; and category A culpability, since there was an abuse of trust. The offender was employed as a teaching assistant at the victim's school. There was also significant planning, steps taken to conceal the offending behaviour, and a significant disparity of age, since the offender was about 22 years older than the victim. All of these are category A culpability factors.

21. The Solicitor General also identifies a number of further aggravating factors, which she submits makes the offending more serious. First, she points to the number of offences and the period over which they were committed. The indictment included multiple incident counts, resulting in a total of 36 offences over a period of eighteen months. Second, the offender continued to offend, despite receiving a warning from the school. Third, she told the victim of the serious consequences if the offending were discovered. This prevented the victim from reporting it.

22. The Solicitor General acknowledges that there are a number of mitigating features which

tell in the offender's favour. First, she had no previous convictions and was of positive good character, albeit it was this good character which facilitated the offending. Second, she had admitted the offences when interviewed, and she indicated a willingness to plead guilty at the first opportunity. Third, there was evidence of genuine remorse.

23. For the offender, Mr Cherrill submitted that although the sentence imposed was lenient, it was not unduly lenient in the light of many factors, which included those recognised by the Solicitor General. He submitted that the judge was in the best position to assess the powerful mitigation and balance this against the aggravating features which the judge had identified. The mitigation included: the offender's deep and genuine remorse, her immediate admission in interview and her plea of guilty at the first opportunity; her good character and the many testimonials, including from Lisa Glanville, who had given evidence before the judge, which spoke not only of the offender's good qualities but also of her shame. Although Mr Cherrill acknowledged that this was a criminal relationship, he submits that it was a loving relationship and one in which no force was used. The offender had lost her job which she loved, as well as her accommodation, and she has suffered from depression. The view of the probation officer in the pre-sentence report was that she presented a low risk of re-offending. He submitted that the offender accepted responsibility in full and that she had paid an enormous penalty for this, which was her first offending. The judge was satisfied that there would be no repetition. In the circumstances, he submitted that mercy was appropriate.

24. In her sentencing remarks, the judge did not doubt that the offender had been a fine member of the teaching profession and noted that there were many people who were supporting her. However, she also noted that the offender had engaged in a long-term relationship with a child of the ages of 14 and 15 – a child who was vulnerable because of her personal circumstances, sexually inexperienced, and who had talked about her vulnerability and confusion. It was the

offender's professional duty to step back and not engage in an unlawful sexual relationship – a relationship that was manipulative and deceitful because, while acting as a teaching assistant, the offender was indulging her own needs by having sexual activity with a child in the school toilets. With those remarks we agree.

25. The judge identified the offending as falling within category 1A of the guidelines, with a starting point of five years and a category range of four to ten years. We note that there was more than one category A culpability factor: the abuse of trust, the steps taken to conceal the offending, and the disparity in age. The judge rightly acknowledged that the starting point had to reflect the fact that the offending was repeated over such a long period of time, but then took a starting point of 60 months, which, with full credit for the guilty plea, she reduced to 40 months.

26. In our view, the starting point was too low for the reasons that the judge herself, in part, articulated: the extent of the offending, reflected by multiple incident counts, over a period of eighteen months; the further offences that were committed after the offender had received a warning from the school; and the offender telling the victim of the serious consequences if the offending were discovered. We would accept that the offender's remorse and good character were matters to be taken into account in her favour, although it was her good character that enabled her to carry out the offences against the child as a school assistant. However, even taking into account these matters, in our view the starting point should not have been less than seven years.

27. The offending took place over eighteen months, on numerous occasions. There were a number of culpability factors which made the offending more serious. In addition, the offender could and should have stopped when spoken to, and she warned the victim of the serious consequences of reporting the offending.

28. We are not impressed by Mr Cherrill's argument that the offending could have been worse. No doubt it could. But it was serious criminality over a long time. With full discount for the prompt guilty plea, the sentence should have been a term of 56 months' imprisonment.

29. Accordingly, we grant leave, quash the sentences of 40 months' imprisonment on counts 3 and 4 and substitute concurrent terms of 56 months' imprisonment. The total sentence will, therefore, be a term of four years and eight months' imprisonment, and not three years and four months.