IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 800

No. 201903632 A4

Royal Courts of Justice

Wednesday, 13 May 2020

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE GOOSE
MR JUSTICE MARTIN SPENCER

REGINA
V
GERALD MICHAEL HEDGES

REPORTING RESTRICTION APPLIES:
SEXUAL OFFENCES (AMENDMENT) ACT 1992 APPLY

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Mr M. Florida-James appeared on behalf of the Appellant.

The Crown were not represented.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

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 that offence. This prohibition shall apply unless waived or lifted in accordance with section 3 of the Act.

2 The applicant Gerald Michael Hedges renews his application for leave to appeal against a sentence of 26 years' imprisonment imposed by His Honour Judge Timothy Moseley QC in the Crown Court at Portsmouth on 10 September 2019 for various sexual offences involving his two daughters when they were young, his former wife and his former partner.

3 After trial the applicant was convicted of all counts on the indictment except count 9. The indictment was divided into groups of counts relating to each of the four victims of the applicant's offending. Counts 1 to 5, comprising three offences of indecent assault, one offence of indecency with a child and one offence of inciting a child under 16 years of age to commit incest, related to his daughter KB. Counts 6 to 8, comprising two offences of indecent assault and one offence of indecency with a child related to his daughter AB. Counts 10 and 11, comprising two offences of rape, related to his former wife SH, and counts 12 and 13, an offence of buggery and an offence of rape related to his former partner JR. Finally, there was an offence of attempting to arrange the commission of a child sex offence, which was count 14.

4 The facts were that the applicant committed a number of sexual offences against his two biological daughters, KB and AB, when they were children. He also committed sexual offences, including rape, against his ex-wife, SH and former partner JR. Those offences were committed in the 1980s and 1990s. More recently, between May and June 2017, the applicant attempted to arrange the commission of a child sex offence. He began chatting with an undercover police officer on the internet. During those exchanges he sought to make arrangements to meet an eight-year-old girl for sex, and this is count 14.

5 As a result, on 22 October 2017, he was arrested on suspicion of arranging, facilitating and exploiting a child under 13. Following his arrest, Children’s Services contacted his adult daughters in relation to safeguarding their children. KB and AB both independently revealed to the police that they had been sexually abused by the applicant when they were children. During the course of the investigation officers spoke with the applicant's ex-wife and ex-partner and they both disclosed that he had raped them.

6 The applicant was married to SH. They had two children together, KB and a son MH. While SH was pregnant with MH, the applicant commenced a relationship with JR, who also fell pregnant, resulting in their daughter AB. The applicant lived with SH, KB and MH. During the week they lived in a house in Liss, and most weekends they would stay in a flat on Hayling Island. AB would sometimes stay with the family at that flat during the weekends.

7 I start with KB. She described a background of domestic violence towards her mother by the applicant. It was when she was around eight that she believed the sexual offending against her commenced. She recalled the applicant touching her vagina whilst they sat on the sofa watching television. This occurred a number of times, usually in the evening after he had been drinking. He would also get her to get into his bed with him while he was naked and make her touch his penis. If KB pulled her hand away he simply replaced it.

The sexual assaults progressed as KB grew older. She remembered a time when the applicant touched her vagina with his penis but he did not in fact penetrate her. When a teenager, KB told the applicant she was going to tell people what was going on. He said she would get into trouble and would break the family apart. She was about fifteen when the offending against her stopped, so it had gone on for about seven years. There were many times when the applicant told her it had been her fault. The reason she had until that time not told anybody was because she had been told that she was to blame. Count 5 reflected the time that the applicant asked her to let him penetrate her vagina with his penis.

8 AB told police her earliest memory of sexual abuse was from when she was six or seven. The applicant would pick her up from home on a Friday night and take her to the flat on Hayling Island. There he would ask her to take her clothes off under the guise of wanting to see how she was developing. She did not want to take her clothes off but did not think she had a choice. She described other incidents where the applicant touched her vagina. The offending stopped after AB started having her periods at the age of eleven. She described the applicant making her show him her naked body on more than five but fewer than ten occasions. This was count 6. There was a specific incident when AB had been in the bedroom with the applicant when he was naked and he told her to touch his penis. This was count 7. There were more than five but fewer than ten occasions when the applicant had stroked her pubic hair or touched her vagina, and that was count 8.

9 Turning to SH, she met the applicant when she was 18 or 19, and their marriage lasted between 1981 and 2001. The applicant became physically violent towards her after she became pregnant with their son MH. The applicant's alcohol consumption increased during the marriage. Between 1994 and 2002 the applicant raped SH vaginally on no fewer than ten occasions, and that was count 10. During the same period, he anally raped SH, again on no fewer than ten occasions, count 11.

10 Finally, JR. She met the applicant in 1987. Some time between July and September 1987 he took her to meet his parents. She was pregnant with AB at the time. The applicant told JR he wanted to take her for a walk in the woods. This was on Hook Common. While there he suggested they have sexual intercourse. The applicant told JR to bend over and began to put his penis into her anus. She told him, "Not there. Not there", but he said it was fine, before forcibly penetrating her anus with his penis, causing considerable pain. This was count 12. When the applicant had finished, JR vomited on the ground. He told her to pull herself together before they saw his parents.

11 Their daughter was born in [a month in] 1988. Towards the end of 1988 the applicant took JR away to the New Forest for a few days in a caravan. At that time she was suffering from a bad cold and felt very faint. At some point she passed out. She awoke to discover the applicant on top of her having sexual intercourse without her content, and this was count 13.

12 Mr Florida-James, who has represented the applicant on this renewed application, and for whose submissions we are very grateful, makes a single overriding point in relation to the sentence imposed by the learned Judge, namely that insufficient account was taken of the doctrine of totality. His submissions are to be understood in the context of the structure adopted by the learned Judge in relation to this difficult sentencing exercise. For the offences against KB the learned Judge considered that before reduction for totality there should be a sentence of five years' imprisonment for the indecent assaults, two years' imprisonment, concurrent, for the indecency against a child and two years' imprisonment, consecutive, for the offence of inciting her to commit incest, which would have been a total of seven years' imprisonment. In relation to AB, again, he considered a sentence of five years' imprisonment appropriate for the indecent assaults, with two years' imprisonment,

concurrent, for count 6, the multiple incidents of indecency, a total of five years, but consecutive to the sentences in relation to KB, making a total of twelve years' imprisonment for the offences against those two young girls.

13 The learned Judge then considered the offences committed against the applicant's wife and partner, involving the vaginal and anal rapes. In relation to the rape of SH he determined that a sentence of twelve years' imprisonment for each of the counts would be appropriate, concurrent with each other, but consecutive to the sentences in relation to the daughters. For the offences of vaginal and anal rape on JR he decided that sentences of nine years' imprisonment would be appropriate, concurrent with each other, but again, consecutive to the other sentences. Finally, he considered the appropriate sentence for the final count, that is the offence which led the police to investigate the applicant in the first place, the attempting to arrange the commission of a child sex offence relating to an eight-year-old. He considered that the appropriate sentence for this offence alone would have been four years' imprisonment, again consecutive to the other sentences. Thus, in the first instance, the learned Judge considered the appropriate sentences would have been seven years in relation to KB, five years in relation to AB, twelve years in relation to SH, nine years in relation to JR and four years for the attempted offence, a total of 37 years.

14 He then said this:

> "But in order to impose the right sentence, I have to take a step back and to look at the total length of the sentence that is appropriate in your case. That means that virtually all of the sentences which I have already indicated will be shorter than would otherwise be the case. Some will be concurrent, whereas otherwise they would be consecutive."

15 Thus, taking into account the principle of totality, the sentences actually imposed were six years in relation to the offences against KB, four years in relation to the offences against AB, eight years in relation to the offences against SH, six years in relation to the offences against JR and two years for the attempt offence, all consecutive to each other, making a total of 26 years' imprisonment.

16 In the context of those sentences, Mr Florida-James submits that the total of twelve years' imprisonment for the child sex offences does not make sufficient allowance for totality. It fails to take account of the fact that there were no penetrative offences, nor did it distinguish sufficiently between the two children and the relative seriousness of the offending against them. In his written submissions he submitted that the adult sex offences as part of an overall sentence did not make sufficient allowance for totality, being a combined sentence of fourteen years' imprisonment, but orally before us today he has conceded that the sentences in relation to the adult sexual offences were appropriate.

17 He makes a number of points in relation to the sentences in relation to the children. For example, he contrasts the sentence for count 7, which was for touching the applicant's penis on one occasion by AB, a sentence of four years' imprisonment, with count 2, the offence of masturbating on multiple occasions of the applicant by his daughter KB, for which the Judge also imposed four years, and he made the point that it made no sense that the sentence should have been the same for both of those, given their relative seriousness.

18 However, we take the view that the four years in relation to count 8, which was multiple offending, was to be equated with the sentence in relation to count 2, and given that the sentence in relation to count 8 was concurrent with the sentence in relation to count 7, the learned Judge could equally have made the sentence for count 8 the consecutive one, and

in those circumstances the point made by Mr Florida-James would have fallen away. Thus, although we understand fully the reasons for Mr Florida-James making the submission that he did, we consider that in the end, it does not achieve anything for the applicant because of count 8.

19 Having considered Mr Florida-James's submissions, we are unpersuaded that it is reasonably arguable that these sentences were manifestly excessive. These were wicked offences committed, in the case of the children, from a position of trust and purely for the applicant's sexual gratification without regard to the harm being done to these vulnerable children. Even in the absence of any penetrative offences the learned Judge was, in our view, entitled to take the view that they were very serious offences, meriting long sentences of imprisonment. Equally, in relation to the adult sex offences, these were committed in the context of abusive relationships, where the applicant was again interested only in his own sexual gratification, irrespective of the harm and damage done to those who could have expected a relationship of love and trust, but who were subjected to the opposite.

20 By reducing the sentence he would otherwise have imposed, 37 years to 26 years, the learned Judge made a reduction of almost one third to take into account the principle of totality, and we consider that he thereby took sufficient account of totality. Stepping back and looking at the sentence as a whole, we consider that it is not reasonably arguable that it was manifestly excessive, given the offences committed by this applicant against four different women, including his own two young daughters over a considerable period of time.

21 Refusing leave to appeal, the single judge, Jeremy Baker, J stated:

> "The individual sentences imposed upon you were well within the relevant Sentencing Guidelines for the equivalent modern offences and appropriately took such mitigation as was available to you, together with the principle of totality."

22 We agree, and in all the circumstances this application is dismissed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.