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IN THE COURT OF APPEAL
CRIMINAL DIVISION



[2021] EWCA Crim
1692
No. 202102631 A2

Royal Courts of Justice

Tuesday, 26 October 2021

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE DOVE
HIS HONOUR JUDGE JOHN POTTER

REGINA

V

MATHEW KEYWOOD

REPORTING RESTRICTIONS APPLY

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MR S. FOX appeared on behalf of the Applicant.

The Crown was not represented, did not attend

J U D G M E N T

LORD JUSTICE POPPLEWELL:

- 1 This is an application for leave to appeal and an extension of time which has been referred to this Court by the Registrar of Criminal Appeals. The sole ground of appeal relates to a Sexual Harm Prevention Order ("SHPO") which the Recorder imposed in place of an existing Sexual Offences Prevention Order ("SOPO") which he discharged. The ground of challenge is that the Recorder lacked jurisdiction to grant the SHPO or to discharge the SOPO.

- 2 On 29 November 2007 the applicant was sentenced at Nottingham Crown Court to an indeterminate sentence with a minimum custodial period of 21 months for seven sexual offences. A SOPO was imposed which prohibited him indefinitely from, amongst other things, communicating in any way with a person under the age of 16 without the prior consent of a public protection team in the police force area responsible for the management of sex offenders.

- 3 On 23 October 2020 the applicant pleaded guilty in the Magistrates' Court at Nottingham to an offence of contacting a 12-year old girl over the internet when he was prohibited from doing so by the SOPO, contrary to s.103I(1) of the Sexual Offences Act 2003. He was committed to the Crown Court at Nottingham for sentence where, on 21 March 2021, he was sentenced to 14 months' imprisonment by the Recorder. On the application of the Crown the Recorder also imposed an SHPO made to run until further order in more restrictive and extensive terms than the SOPO which he discharged. The SHPO was sought due to concerns on the part of the police that the terms of the original SOPO were inadequate to protect the public against harm from the applicant through his access to the internet and social media networks, and his access to, and use of ,devices capable of accessing such networks.

- 4 There was no power to grant the SHPO. Under s.103A of the Sexual Offences Act 2003

(now s.345 of the Sentencing Act 2020), an SHPO could only be made on conviction for an offence listed in schedule 3 or schedule 5 to the Sexual Offences Act 2003. A breach of a SOPO is not such an offence.

- 5 The power to discharge a SOPO at the date of sentence was to be found in s.103E of the Sexual Offences Act 2003 (now s.350 of the Sentencing Act 2020), which, although referring to SHPOs, was applicable to SOPOs by virtue of the transitional arrangements in s.114 of the Anti-social Behaviour Crime and Policing Act 2014 which was the Act which replaced SOPOs with SHPOs with effect from 8 March 2015. It requires an application for variation or discharge to be made by the defendant or a chief officer of police, which did not occur in this case. In this context a valid order cannot be made without an application by a prescribed applicant: see *R v Hamer* [2017] EWCA Crim 192; [2017] 2 Cr App R (S) 13 at [21]; *R v Ashford and Others* [2020] EWCA Crim 673; [2020] 2 Cr App R (S) 56 at [18]; *R v McLoughlin* [2021] EWCA Crim 165 at [28]-[29].
- 6 The error was noted by the police officer responsible for the applicant in the Management of Sexual Offenders and Violent Offenders Unit, who drew it to the attention of the Crown Court with the intention that the error would be corrected. Unfortunately, although the Crown Court was notified of the error before the expiry of the 56 days allowed by s.385(2) of the Sentencing Act 2020 for the variation or rescission of a Crown Court sentence, listing delays caused by the coronavirus pandemic prevented the case being listed within 56 days of 21 March 2021. When the case was listed and heard on 18 June 2021 the court had no power under s.385 to vary or rescind the SHPO.
- 7 The only remedy available now is for this court to quash the order for the imposition of the SHPO and the discharge of the SOPO. Accordingly, we extend time, grant leave to appeal, and allow the appeal by quashing the order imposing the SHPO and quashing the order discharging the SOPO. The result is that the SOPO remains in full force and effect.

8 Finally, we observe that there is a separate power under s.103A(3) to (7) of the Sexual Offences Act 2003 for a magistrates' court, on application by a chief officer of police or by the Director General of the National Crime Agency, to make an SHPO against a "qualifying offender" who has "acted in such a way as to give reasonable cause to believe that it is necessary for such an order to be made". This is the available route for the imposition of an SHPO in a case such as this. We understand that the police intend to make such an application.

(The Bench confer with the court associate)

(To the Applicant) Mr Keywood, I hope you have understood that the effect of the sentence is that the Sexual Harm Prevention Order disappears and the original Sexual Offences Prevention Order remains in place and you are bound by that. That concludes the hearing.

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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