Neutral Citation Number: [2021] EWCA Crim 692

Case No: A4/2020/03264

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM SNARESBROOK CROWN COURT
Judge Hammerton
T20197438

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/05/2021

Before:

VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE FULFORD)
LORD JUSTICE HOLROYDE
and
LORD JUSTICE EDIS

- -

Between:

AB

Appellant

- and -

Respondent

The Queen

- -
- -

Mr T Siddle (assigned by the **Registrar of Criminal Appeals**) for **the Appellant**
Mr A Collings (instructed by **CPS Criminal Appeals Unit**) for the **Respondent**

Hearing date: 22 April 2021

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Approved Judgment

Lord Justice Fulford VP:

The provisions of the Sexual Offences (Amendment) Act 1992 apply to BM and CB. No matter during their lifetimes shall be included in any publication if it is likely to lead members of the public to identify either of them as the victims of the offences set out below. This prohibition applies unless waived or lifted. There is no prohibition on reporting this anonymised judgment. Furthermore, the reporting restrictions imposed by this court on 25 May 2019 ([2019] EWCA Crim 875) ceased to have effect once the retrial concluded; but that judgment must also be anonymised in any report, and is also subject to the restrictions under the Sexual Offences (Amendment) Act 1992.

This is the judgment of the court to which all members have contributed.

Introduction

1. On 3 and 4 May 2017 the applicant ("AB") was convicted at Snaresbrook Crown Court (Judge Kamill and a jury) of various historic sexual offences against, BM, his biological sister (between 6 November 1999 and 5 November 2007 when BM was between 10 and 17 years of age and AB was between 15 and 22 years of age), and against his wife, CB. He was sentenced for the offences regarding BM as follows:

    i) Count 1 (sexual intercourse with BM when under 13 years of age, contrary to section 5 Sexual Offences Act 1956 ("SOA 1956")): 4 ½ years' imprisonment;
    ii) Count 2 (indecent assault on a girl under 13, contrary to section 14(1) SOA 1956): 2 years' imprisonment, concurrent;
    iii) Count 3 (indecent assault on BM when under 13, contrary to section 14(1) SOA 1956): 2 years' imprisonment, concurrent;
    iv) Count 4 (rape of BM (on at least 5 occasions), contrary to section 1(1) SOA 1956): 4 ½ years' imprisonment, concurrent;
    v) Count 5 (indecent assault on BM, contrary to section 14(1) SOA 1956 on at least 5 other occasions other than in counts 2 and 3): 3 years, concurrent;
    vi) Count 6 (rape of BM, contrary to section 1(1) SOA 1956) 7 years' imprisonment, concurrent.

2. The overall sentence for the offences relating to BM was, therefore, 7 years' imprisonment.

3. He was sentenced as regards CB as follows:

    i) Count 7 (anal rape with CB in August 2004, contrary to section 1 Sexual Offences Act 2003 ("SOA 2003")): 7 years' imprisonment;
    ii) Count 12 (vaginal rape in 2012, contrary to section 1 SOA 2003): 7 years' imprisonment, concurrent;
    iii) Count 10 (a multiple incident count alleging assault by penetration, on at least 5 occasions between 2007 and 2013, contrary to section 2 SOA 2003): 7 years' imprisonment, concurrent.

4. The overall sentence on the offences relating to CB was, therefore, 7 years' imprisonment, to run consecutively to the 7 years' imprisonment imposed for the offences relating to BM.

5. The total sentence, therefore, in 2017 for the offending against BM and CB was 14 years' imprisonment.

6. On 23 May 2019 the full court allowed AB's appeal as regards all of the above convictions, which were quashed and a retrial was ordered.

7. The prosecution thereafter offered no evidence in relation to the offences concerning CB. The reasons for this decision have no bearing on the present application.

8. On 19 November 2020 at Snaresbrook Crown Court, before Judge Hammerton and a jury, AB was convicted of the same offences as regards BM, save they failed to return a verdict on count 3 (a charge of indecent assault which was said to have occurred whilst BM and AB were travelling in the family car to Yorkshire with their parents), which the judge ordered to lie on the file subject to the usual terms.

9. On 26 November 2020, AB was sentenced as follows:

    i) Count 1 (sexual intercourse with a girl under 13 years), 4 ½ years' imprisonment;
    ii) Count 2 (indecent assault when BM was aged 10), 2 years' imprisonment concurrent;
    iii) Count 4 (multiple incidents of rape), 4 ½ years' imprisonment concurrent;
    iv) Count 5 (multiple incidents of indecent assault) 3 years' imprisonment concurrent
    v) Count 6 (a single offence of rape when BM was aged 17) 3 years 3 months' imprisonment consecutive

10. The total sentence on the offences relating to BM was 7 years 9 months' imprisonment.

11. The present application for leave to appeal against sentence was referred to the full court by the Registrar of Criminal Appeals.

The Facts

12. On 23 April 2015 the applicant's former wife, CB, in addition to making allegations to the police that she had been sexually abused by the applicant, told the police that he had raped his sister, BM. BM was contacted by police officers and she gave an account of having been sexually abused by the applicant during the period 1999-2004 when she was aged between 10 and 15 and the applicant was between 15 and 20. He had also raped her in the family home when she was aged 17 and he was 22.

13. The abuse as regards BM began when the applicant entered her bedroom whilst their parents were out. He touched her vagina under her clothing until she reached orgasm (counts 2 and 5).

14. On a later occasion the applicant raped her. The offence was short-lived, and the applicant stopped when BM started crying. There was then a pause in the offending while the complainant was aged approximately 10 to 12. Once it recommenced, the applicant indicated to BM that he would deny any wrongdoing if she reported him. The applicant again raped BM, as well as touching her vagina and placing her hand on his penis. Events of this kind occurred about twice per week. The applicant suggested to the complainant that he was "*practising*" and he assured her that what occurred was "*normal*". He did not stop when she cried or tried to resist him. Although the applicant did not wear a condom, he was careful to withdraw his penis prior to ejaculation (counts 1 and 4).

15. The applicant thereafter left the family home, albeit he raped her during a visit in 2006, when she was 17.

16. BM told her husband in 2008 that she had been sexually abused by the applicant and in 2010 she told her parents. She had telephoned the applicant whose initial response had been to say, "*What the fuck*?" However, he had subsequently telephoned her saying that he had no memory of the events but that if he had done anything he was sorry.

17. She had not gone to the police at that point because she was afraid of "*losing everyone*".

18. In interview and at trial the applicant denied the offences. He said he could think of no reason why the complainant would fabricate these events.

The Appeal

19. There is a single issue raised on this application for leave to appeal against sentence. It is submitted that the sentence of 7 years 9 months' imprisonment for the offences against BM (absent count 3) was unlawful since it was of greater severity than the 7-year sentence passed at the original trial for the same offending with the addition of count 3. It is suggested the judge acted in contravention of paragraph 2 (1) schedule 2 of the Criminal Appeal Act 1968 ("CAA"), which provides:

> "(1) Where a person ordered to be retried is again convicted on retrial, **the court** before which he is convicted **may pass** in respect of the offence **any sentence**

authorised by law, **not being a sentence of greater severity than that passed on the original conviction**." (our emphasis)

20. Mr Collings, for the respondent, argues that in this context, all prison sentences, of whatever length, are to be viewed as being of equal severity.

21. An additional ground of appeal, abandoned at the hearing for reasons explained below, was to the effect that the total sentence of 7 years 9 months' imprisonment was of greater severity than the original 7 years sentence of imprisonment because, as submitted in the written Grounds of Appeal, the applicant will serve two-thirds of that sentence, rather than one-half, pursuant to Article 3 of The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 SI No 168.

Discussion

Ground 1

22. Paragraph 2 (1) schedule 2 CAA is deceptively simple in its terms, given it is not a straightforward exercise to establish what constitutes "*greater severity*", particularly following a complicated sentencing exercise involving a number of counts when the circumstances have materially changed between the two sentencing exercises. It is important, therefore, to define this expression, applying the earlier jurisprudence of this court. There is an important analogy to be drawn between the provisions in paragraph 2(1) schedule 2 and section 11 (3) CAA. The latter provides:

> "(3) On an appeal against sentence the Court of Appeal, if they consider that the appellant should be sentenced differently for an offence for which he was dealt with by the court below may—
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> (a) quash any sentence or order which is the subject of the appeal; and
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> (b) in place of it **pass such sentence** or make such order as they think appropriate for the case and **as the court below had power to pass** or make when dealing with him for the offence; **but** the court shall so exercise their powers under this subsection that, **taking the case as a whole**, **the appellant is not more severely dealt with on appeal than he was dealt with by the court below**." (our emphasis)

23. In *R v KPR* [2018] EWCA Crim 2537; [2019] 1 Cr App R (S) 36, Jeremy Baker J giving the judgment of the court explained, when considering the different wording in these two provisions, that:

> "[…] in relation to s.11(3) this court is required to ensure that taking the case as a whole, the offender is not more severely dealt with on appeal than he was dealt with

> by the court below; whereas para.2(1) of Sch.2 permits the sentencing court to impose any sentence authorised by law, not being a sentence of greater severity than that passed on the original conviction. However, we do not consider that the difference in wording between these two provisions materially affects the situation. In our judgement, similar considerations apply to both of these provisions."

24. It is to be stressed that "*taking the case as a whole*" means taking into account the totality of the matters in respect of which the appellant was being dealt with by the Crown Court (see *R v Sandwell* (1985) 80 Cr App R 78, *per* Glidewell J at page 81).

25. In *R v Skanes* [2006] EWCA Crim 2309, the court considered the effect of paragraph 2 (1) schedule 2 when the appellant pleaded guilty at the original trial but was convicted at the retrial, in the context of a case in which the appellant had tortured and degraded his victim. At the original trial he had pleaded guilty to rape and not guilty to assault occasioning actual bodily harm and indecent assault on a male. These pleas were accepted, and the appellant was sentenced to 7 years for the single count of rape. On appeal, the conviction was quashed on the basis that improper pressure had been placed on the appellant to plead guilty.

26. At the retrial he was convicted of all 3 counts and sentenced to 10 years' imprisonment for the rape with concurrent sentences of 3 years' imprisonment for the assault and 2 years' imprisonment for the indecent assault.

27. This court quashed the sentence of 10 years and a sentence of 7 years substituted. However, the 3-year sentence for assault was ordered to be served consecutively, resulting in a total sentence of 10 years' imprisonment.

28. The court expressed the view that a sentence of 10 years' imprisonment on a conviction by a jury may not be a sentence of "greater severity" than a sentence of 7 years after a guilty plea. In giving the judgment of the court, Simon J observed:

> "14. The appellant's construction has the effect that if a defendant has pleaded guilty and received credit for his plea, that sentence provides the upper limit if the conviction and sentence are quashed and if he subsequently fights the case and is convicted. Mr Blackburn accepted that this was "anomalous", if not absurd. It is an important cannon of statutory construction that if a particular construction leads to be an absurd result it should not be accepted, unless the statutory language admits of no other construction. It is, in our view, by no means clear that Mr Blackburn's construction is correct. The words of the schedule do not preclude a "longer" sentence, they preclude a "sentence of greater severity". That latter phrase plainly envisages looking at the circumstances of what occurred on the two occasions when a defendant is convicted. It might be properly argued that an overall sentence of ten years following a trial was not "a sentence of greater severity than that passed on the original conviction", where the original sentence reflected a single charge and the credit that the appellant was entitled to for a guilty plea."

29. As to individual elements of a sentence, it was noted in *R v Robson* [2009] EWCA Crim 1472 that a Sexual Offences Prevention Order ("SOPO") cannot be increased on retrial (in that case from 5 years to indefinite duration). We would add, however, that if, for instance,

a reduced custodial term was imposed, it may be possible to increase the duration of a SOPO without resulting in a sentence of greater severity.

30. In *R v Dobson* [2013] EWCA Crim 1416; [2014] 1 Cr App R (S) 54, the offender was convicted of two offences of rape and two offences of indecent assault against two girls under the age of 16. There was a further offence of making a threat to kill. For each of the offences of rape on each of the two girls he was sentenced to nine years' imprisonment to run concurrently. A term of 12 months was imposed consecutively for the offence of making a threat to kill, making 10 years in all. The appellant appealed and the convictions for rape and indecent assault were quashed. At the retrial, the offender was acquitted of one of the offences of rape and a nine-year term of imprisonment imposed by the judge was reduced on appeal to eight years, as the sentence passed did not accurately reflect the fact that he had been acquitted of one of the rapes. Having referred to paragraph 2(1) schedule 2, Sir Brian Leveson P. explained the reduction as follows:

> "Reflecting not that the sentence is in any sense manifestly excessive, but rather that it fails to have regard to an important sentencing practice that the offender should not legitimately be able to consider himself as having been sentenced for offences for which he was not convicted, we have taken the view that it is appropriate to make a small adjustment to the sentence imposed."

31. The court in *R v Bett* [2017] EWCA Crim 1909, [2018] 1 Cr App R (S.) 28 suggested that the correct approach when sentencing after a retrial was to assess the sentence in the usual way without regard to the previous sentence. Once the appropriate sentence had been arrived at, the court should then check that it is not more severe and, if it was, reduce it accordingly.

32. In *R v Thompson, R v Cummings, R v Fitzgerald, R v Ford* [2018] EWCA Crim 639; [2018] 2 Cr App R (S) 19 it was said that to understand the effect of section 11(3) CAA it was necessary to identify the statutory consequences of different custodial sentences open to the court. Although the general principle is that the ramifications of release provisions should not be taken into account when sentencing (see *R v Round* [2009] EWCA Crim 2667; [2009] 2 Cr App R (S.) 292; *R v Burinskas* [2014] EWCA Crim 334; [2014] 2 Cr App R (S) 45), the requirements of section 11(3) CAA mean that this court, when considering a sentence under this provision, should not ignore the potential impact of a sentence on the offender. We would add that the same applies when considering a sentence in the context of paragraph 2 (1) schedule 2. No general rule was identified in *R v Thompson*, in the sense that it was accepted that cases were fact specific (see [13]). The Court was bound to take its own view of the severity of the sentence when compared with that originally imposed (see [17]). Sir Brian Leveson P. concluded on this issue:

> "23. […] The limit of its power is that the court must be satisfied that, taking the case as a whole, the appellant is not being dealt with more severely on appeal. That requires a detailed consideration of the impact of the sentence to be substituted which must involve considerations of entitlement to automatic release, parole eligibility and licence. If a custodial sentence is reduced, the addition of non-custodial orders (such as disqualification from driving or sexual offences prevention orders) may be added but, in every case, save where the substituted sentence is

> "ameliorative and remedial", that sentence must be tested for its severity (or potential punitive effect) compared to the original sentence."

33. As regards a sentence which is wholly or in part "ameliorative and remedial", Sir Brian Leveson had earlier observed:

> 15. Furthermore, whether a sentence is "more severe" is not only determined by the period for which an offender might be affected by it; it is the punitive element of the sentence that has to be considered. Thus, in *R. v Bennett* (1968) 52 Cr. App. R. 514, the court (Widgery and Fenton Atkinson LJJ and Roskill J) concluded that a sentence of a hospital order with an indefinite restriction was not more severe than a sentence of three years' imprisonment. This was on the basis that the sentence (per Widgery LJ) was "a remedial order designed to treat and cure, even though in certain events the hospital order may involve the detention of the appellant for a longer period of time". That decision was followed in *R. v Searles* [2012] EWCA Crim 2685; [2014] M.H.L.R. 47 when Treacy LJ put the matter in this way (at [17]):
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> > "It is plain, particularly … in the light of the case of *Bennett* 52 Cr App R 514, that making a remedial order of the sort we intend cannot be regarded as more severe than a sentence of imprisonment or custody, notwithstanding the fact that this appellant will, within a matter of a week of two, be reaching the end of the term of custody imposed in the court below. The effect of the order which we make today will extend beyond the end date of that custodial term, but its purpose is ameliorative and remedial and not punitive and therefore does not fall foul of the restriction in s. 11(3)."

34. In *R v KPR* (see [23] above), the original sentencing judge had wrongly failed to impose a sentence under section 236A Criminal Justice Act 2003 (a special custodial sentence for offenders of particular concern). Following conviction after a retrial the judge felt bound to impose a sentence under section 236A, and the appellant successfully appealed the custodial term on the basis that he had been sentenced more severely following the retrial. This court indicated that in these circumstances it is necessary to consider the differing release regimes, as an exception to the general rule that the court should not normally do so when determining the appropriate sentence (see [32] above). In the result, the judge in the Crown Court, when re-sentencing an offender convicted after a retrial ordered by this court following a successful appeal against conviction, is required to consider the differing release regimes when assessing whether the sentence it is considering imposing is of greater severity than the previous sentence (see *KPR* at [44]). As regards the unlawful sentence, Jeremy Baker J had earlier explained:

> "37. As this court made clear in *Thompson*, where an unlawful sentence has been imposed as a result of a judge in the Crown Court having failed to comply with (the) mandatory sentencing provisions it is open to this court on appeal against sentence to restructure a sentence and impose a special custodial sentence under s.236A, providing of course that the offender is not more severely dealt with on appeal than he was in the lower court. Likewise, in our judgement, following a conviction after a retrial ordered by this court at the conclusion of a successful appeal against conviction, provided that the subsequent sentence imposed by the judge is not of greater severity than that originally imposed, not only do we see no reason in principle as to why the judge should not also be entitled to impose a special sentence

for certain offenders of particular concern, but in view of the mandatory nature of s.236A of the CJA 2003, we consider that the judge is obliged to do so."

35. On the basis of these authorities, following a retrial the judge should apply the following approach:

    i) He or she should consider what is the appropriate total sentence for the offence(s) of which the defendant has been convicted at his retrial. This provisional sentence is to be determined in the usual way, following any relevant guideline and without regard to the original sentence.

    ii) The total provisional sentence and the corresponding total sentence for the same offence(s) at the first trial should be compared.

    iii) If the defendant pleaded guilty at one of his trials, but not at the other, it will be necessary, when making the relevant comparison, to take into account any reduction made for the guilty plea (see [36] below).

    iv) It will be necessary to consider the effect of the application of the principle of totality by the judge who imposed the original sentence (see [39] below). For this purpose, the judge at retrial should, wherever possible, have regard to the sentencing remarks of the judge who imposed the original sentence.

    v) If the provisional sentence is of a different kind from that imposed at the original trial, or attracts different release provisions, a careful assessment will be needed before deciding whether the provisional sentence is more severe than the original sentence for the corresponding offences. The judge must consider the overall impact of the provisional sentence, which must involve considering any entitlement to automatic release, parole eligibility and licence.

    vi) The judge should assess the punitive effect of non-custodial orders (such as disqualification from driving or sexual offences prevention orders) which were not imposed after the original trial but which it is necessary or appropriate to impose after the retrial.

    vii) If the result of this comparison is that the provisional total sentence is more severe than the corresponding original total sentence, it must be reduced accordingly.

36. It follows the judge should consider with care the circumstances of what occurred on the two occasions when the accused was convicted. In this context, we agree with the *obiter* remarks of Simon J in *Skanes* that the words of the schedule do not preclude a "*longer*" sentence – they instead prohibit a "*sentence of greater severity*". If, for instance, on a conviction following a retrial the defendant does not have the benefit of an earlier guilty plea, the court is entitled to pass a longer sentence than at the conclusion of the first trial, taking into account the lack of credit for a guilty plea.

37. Applying these principles to the circumstances of the present case, we have had regard to two principal factors. First, the totality of the matters in respect of which the appellant was originally sentenced are to be contrasted with the more limited indictment when he came to be resentenced. It was necessary to reflect the fact – as the judge did – that the original sentence of 14 years' imprisonment was the result of offending against CB and BM, rather than BM alone. The totality of the matters in respect of which the appellant was dealt with when originally sentenced and when resentenced were, therefore, markedly different and it would have been overly simplistic and wrong to suggest that a sentence of 7 years 9 months' imprisonment was "*less severe*" in these circumstances than a sentence of 14 years' imprisonment for the purposes of paragraph 2 (1) schedule 2 CAA.

38. Second, as Judge Hammerton observed, he was "*satisfied that when HHJ Kamill passed sentence she had regard to the principle of totality and that she therefore reduced the aggregate sentences for the* (BM) *and* (CB) *offences by an appropriate amount to reflect that principle*". Indeed, Judge Kamill expressly stated that for the sentences for BM and CB she had made a reduction to reflect the principle of totality:

> "*The most important feature about the sentencing exercise is that I must bear in mind totality. I say that is the most important thing because it is never right to send anybody to prison for a longer period just because there are many occasions or more than one victim to consider. I must also take into account your position and what would be right for you by way of totality. In the circumstances, that is what I have at the back of my mind throughout all of this.*"
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> […]
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> "*It is my intention, since there are two ladies, to treat these as consecutive, the two groups of offending. That, too, will be appraised within the principle of totality*".

39. With those two factors in mind, when considering the detailed circumstances of the two sentencing hearings, the critical change was that on the first occasion the sentence which otherwise would have been imposed for the offences concerning BM was ameliorated to ensure that the overall sentence was proportionate, since those sentences were imposed as part of the same exercise for the offences concerning CB. In contrast, the sentence of 7 years 9 months' imprisonment did not need to be reduced for totality reasons because the Crown did not pursue the counts regard CB. This was undoubtedly a "*longer*" sentence, but it was not a sentence of "*greater severity*" than that passed on the original conviction because a sentence at least of this length would undoubtedly have been imposed at the first sentencing hearing had it not been for considerations of totality. The later sentence was not, therefore, of greater severity because it had not required adjustment to ensure the overall sentence imposed for the two victims was proportionate. It follows that this is not just a question of simple arithmetic; instead, the entirety of the circumstances at the two sentencing hearings and any differences between them must be borne in mind. We note additionally that the lack of a conviction on count 3 is of no material significance, given it resulted in a short concurrent sentence of 2 years' imprisonment.

40. It is important to observe, given the approach we have set out above at [35], that we are unpersuaded by Mr Collings' somewhat adventurous submission that all prison sentences are of equal severity in this context, wholly regardless of length. We note that none of the authorities support this proposition.

Ground 2

41. As set out at [21] above, an additional ground of appeal was abandoned at the hearing. It had been submitted that the sentence was unlawful because the applicant would be required to serve two-thirds of that sentence, rather than one-half, pursuant to Article 3 of the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 SI No 168. That provision is as follows:

> "**Reference in section 244 of the 2003 Act**
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> 3. In section 244 of the 2003 Act (duty to release prisoners), the reference to one-half in subsection (3)(a) is to be read, in relation to a prisoner sentenced to a term of imprisonment of 7 years or more for a relevant violent or sexual offence, as a reference to two-thirds."

42. Following receipt of a note from the Criminal Appeal Office (for which we express our thanks), Mr Siddle accepted that the provisions of the 2020 Order and the sections of the 2003 Act to which it refers apply to individual sentences for individual offences rather than the totality of the term imposed. The Explanatory Note to the 2020 Order confirms that this is the intended construction of Article 4:

> "Article 4 of this Order makes consequential provision for modification of the application of section 264(6)(d), which affects prisoners serving consecutive sentences. Where the sentence is for a term of seven years or more and is imposed for a relevant violent or sexual offence the proportion of that sentence that must be served will be two thirds of the sentence. Any sentence served consecutively which is not imposed for a term of seven years or more and for a relevant violent or sexual offence will retain the half way release point."

43. The Sentence Calculation Policy Lead at the Ministry of Justice has confirmed that the applicant's present release date has been calculated by the Prison Service based on the requirement that he serve half the term imposed since "*the individual sentences are less than 7 years, (and) the provisions (of the 2020 Order) do not apply in this case and AB retains the half way automatic release provision as per section 244(3)(a) of the CJA 2003*". Inevitably, given those circumstances, Mr Siddle was correct to abandon this ground of appeal.

44. We note that the 2020 Order would have applied if any one sentence had been 7 years or more, because the judge would have to consider the release provisions as at the date of the retrial (and not as at the date of the original sentence). The increase in the custodial term by Article 5 of the 2020 Order does not apply to a sentence <u>imposed</u> before the relevant date. Schedule 2 paragraph 2(3) states when the sentence after a retrial is deemed to have begun, but it does not have the effect that the sentence is deemed to have been imposed at that earlier date.

Conclusion

45. It is unnecessary to consider Judge Hammerton's approach otherwise to this sentencing exercise because no other submissions are pursued. We would wish to pay tribute, however, to his careful and comprehensive explanation as regards the approach he adopted to paragraph 2 (1) schedule 2 CAA, together with the structured way in which he arrived at the overall term of 7 years 9 months' imprisonment. It was of considerable assistance to this court to have his detailed reasons.

46. The principal ground of appeal merited consideration by this court. We grant leave and dismiss the appeal.

Postscript

47. We suggest that whenever a retrial is ordered by this court, the Registrar should secure a transcript of the original sentencing remarks, to be available to the judge conducting the further trial to assist, if relevant, when passing sentence. This is a necessary step to enable the approach set out at [35] to be followed.