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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202103919/A3

[2022] EWCA Crim 104

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 13 July 2022

Before:

LADY JUSTICE CARR DBE
MR JUSTICE FRASER
SIR NIGEL DAVIS

REGINA
V
SIMON LEDDINGTON

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MR J EVANS appeared on behalf of the Appellant

J U D G M E N T

Section 1 of the Sexual Offences (Amendment) Act 1992 applies in this case. No matter relating to any complainants shall be included in any publication during their lifetimes if it is likely to lead members of the public to identify them as the persons against whom offences were committed. Reporting restrictions therefore apply in this case.

MR JUSTICE FRASER:

1. This is an appeal against sentence brought with the permission of the single judge, who also made a representation order. Mr Evans appears for the appellant before us and we are very grateful to him for his submissions. Reporting restrictions apply in this case.
2. The appellant was sentenced in the Crown Court at Cardiff for two sets of two offences under the Sexual Offences Act, therefore four offences in total, to all of which he had pleaded guilty at the earliest opportunity. All of the offending related to child sex offences and were committed in what is sometimes called "online sting operations". This is where people pose online as underage children to expose and catch predatory paedophiles. Sometimes, as with some of these offences, the paedophile will turn up to a prearranged meeting point to meet someone they believe to be a child interested in sexual relations with them, where instead they will be confronted and arrested.
3. On 18 May 2021 having pleaded guilty before the magistrates, the appellant was committed for sentence pursuant to section 14 of the Sentencing Act 2020 in respect of the offences on committal number S20210357. These were for two offences, namely (1) of arranging or facilitating a child sex offence, contrary to section 14 of the Sexual Offences Act 2003 and (2) breach of a Sexual Offences Prevention Order, contrary to section 103I(1) and (3) of the Sexual Offences Act 2003.
4. On 24 August 2021, having pleaded guilty before the magistrates, the appellant was committed for sentence under the same statutory provision in respect of the offences on committal number S20210603. These two offences were also breach of a Sexual Offences Prevention Order, contrary to section 103I(1) and (3) of the Sexual Offences Act 2003 and attempting to send sexual communications to a child, contrary to section 15A of the Sexual Offences Act 2003.
5. The Sexual Offences Prevention Order ("SOPO") had been imposed upon the appellant when he had previously been convicted of three sexual offences on 22 December 2011. On that occasion he was sentenced to a community order of 36 months in duration and also made the subject of that SOPO for a period of 10 years, which would therefore have expired in December 2021. Amongst the prohibitions in that order were that he must not seek the company or be in the company of any child under the age of 16, that he must not have in his possession or control any device capable of accessing the internet that did not have installed a parental lock or operational history facility, that he must allow any person approved of by the Chief Constable of any police force to inspect the device and identify all websites visited by him within a period of no less than 30 days earlier, and that he must not prevent such access.
6. He breached this SOPO in 2021 which was in its final year of operation by means of contacting those, whom he thought were underage girls, by messaging their online profiles and starting conversations with them. Neither of these girls existed, as we have said. We shall refer to the first occasion using the false name of the profile, namely "Leona". Those offences were those contained on committal number 20210357. The other two related to the false name of "Rebecca" or "Bex" and were on committal number

20210603.

7. The proceedings did not have a smooth course to the Crown Court due to some problems with the magistrates attempting to re-commit the same offences under committal number 0357, even though they had no power to do so. There were also difficulties and delays caused in the Crown Court and a number of adjournments. However by the time the offences came to be sentenced all these issues had been resolved and we refer to this only for completeness.
8. For these offences he was sentenced in the Crown Court as follows (although we have received written and oral submissions from the appellant about the sentence for the section 14 offence which related to Leona to which we will shall return). For the section 14 offence which related to Leona he was sentenced to an extended sentence of eight years with a custodial element of four years and an extended licence period of four years; for the two breaches of the SOPO he was sentenced to 24 months' imprisonment on each, those sentences ultimately being ordered to run concurrently; and for the section 15A offence relating to Bex he was sentenced to six months' imprisonment, also to run concurrently. He also received ancillary orders including the imposition of a Sexual Harm Prevention Order ("SHPO") until further order and forfeiture of various electronic devices. That order was also made on 16 November 2021. The SHPO put restrictions on his use of the internet and social media and required the use of risk management software and placed other restrictions on his electronic devices. It also prohibited contact with those aged under sixteen, save for strict exceptions such with the express permission of the child's parent or guardian.
9. Although the Crown Court Record Sheet indicates that a SHPO was made pursuant to section 103 of the Sexual Offences Act 2003, in this case the correct provision should have been section 345 of the Sentencing Act 2020. The earlier legislative provision has been mis-recorded due to an inability on the Crown Court IT system to reflect the current changes brought about by the Sentencing Code. It does not affect the validity of the order itself which we re-confirm.
10. The facts of his offending are as follows. The offences relating to Leona resulted from a sting operation carried out by a group of paedophile hunters who set up a decoy profile of a child on an internet dating platform called Meet24. On 11 May 2021 the appellant responded to a profile on that platform. The decoy profile responded to his message giving her name as Leona and saying she was 12-years-old and was from Leeds. The conversation moved to WhatsApp and the appellant asked the girl to meet him at a car park in his home down of Monmouth in Wales. Although she mentioned her age on several occasions, he continued with the chats. He told her he would be her brother, that it would be okay for them to talk, and he said he talked to lots of other girls.
11. On 16 May 2021 the appellant attended the car park opposite the ambulance station in Monmouth where he had arranged to meet the girl. He was met by a number of men from the paedophile hunter group who approached him and challenged him. The men told him they were aware he had been engaging in sexual conversations with children and had been sending explicit photographs to children online. The appellant admitted doing what they accused him of. and the men contacted the police who attended and he was arrested. He answered no comment in interview. Police officers who searched his home seized 20 items including a laptop, mobile phones, PlayStations, a memory stick, a SIM card and a hard drive.

12. The other set of offences were also a sting operation set up by another group of paedophile hunters and the appellant was in contact with a decoy profile called "Bex" on a social media site called FastMeet. The appellant had originally made contact in around February 2021. They chatted on WhatsApp and the conversations included the appellant calling Bex "cute", "gorgeous", "honey" and "lush". Pictures were exchanged between them. The appellant sent emojis showing kissing and licking. He asked Bex for different pictures and told her that her legs were sexy. He said she was very special to him and that age did not matter. He said he fancied her and she should keep it a secret. He told her he would show her how to kiss and wanted to cuddle her in bed with him.
13. He sent a picture of him wearing pyjamas and one of him wearing boxer shorts. On 13 May 2021 he sent two pictures of a male penis and told her it was for her to see and they must promise each other not to tell anyone. He asked her for a picture of her chest. She replied she was scared to do that because they were private parts of her body. The next day he asked again for such pictures, said he would sneak into her house so they could cuddle in the same bed and he would kiss her from the feet all the way up. Throughout the conversations the decoy profile told the appellant she was 14 years old and made several references to school and she was scared and said that she did not want to get into trouble.
14. He was sentenced on a basis of plea which was accepted by the Crown regarding both sets of offences, namely that the activity contemplated was no more than kissing and cuddling. That basis of plea forms an important part of the substance of this appeal.
15. His previous convictions related both to the offending for which he received a SOPO in 2011 but also that offending had resulted in a community order of 36 months which he had completed. That offence had involved him ultimately lying on a bed with a girl under the age of 16, kissing and cuddling her and engaging in masturbatory activity online.
16. In terms of the offences to which this appeal relates, the Crown placed the breach offences in Category 1A of the relevant guideline. For the section 14 offence it is necessary to consider the guidelines for the substantive sexual offence, which in this case is said to be section 10 of the Sexual Offences Act, which is causing or inciting a child to engage in sexual activity. That offence together with section 9 (and the sentencing judge considered both at the same time) both had the same guideline matrix. The Crown placed that offence in Category 3A which has a starting point of 26 weeks and a range of a high level community order up to three years. There is no definitive guideline for a section 15A offence but the maximum sentence under that section is one of two years.
17. In sentencing him the judge, who had the benefit of a pre-sentence report, first went through what sentence he considered should be passed on each of the four offences individually. He then considered dangerousness and after finding that the appellant was dangerous passed an extended sentence of eight years which he undoubtedly imposed upon the section 14 offence relating to Leona. Both the Crown Court Record and accordingly the CAO summary, and in the final passage of his sentencing remarks he makes this clear and this is also recorded in the DCS system which state that the sentence of eight years was passed on the count in relation to section 14.
18. However counsel for the appellant has drawn our attention to what he submits is a different sentence, and he challenges the accuracy of that summary, and points out that in other passages of the sentencing remarks the sentencing judge explained that he had

reached a sentence of only six months on that count.

19. The reason for this difference in view in what sentence was actually passed at the Crown Court is a surprising one, but relates to what the sentencing judge actually said at different stages of the sentencing remarks. During stage one of the process which we have described, namely considering the differing sentences on each count, due to his choice of terminology and expression he explained the following:

> "Before considering any additional aggravating or mitigating factors or credit for plea, I adopt the start point provided by the applicable guidelines. In relation to attempt to communicate sexually with a child, I take a start of 6 months' imprisonment. In relation to each of the breaches of the Sexual Offences Prevention Order, 3 years. In relation to the offence against section 14, 6 months."

20. That passage is consistent with another to similar effect, and when they are read together the meaning appears clear. At page 4C of the transcript of the remarks the judge says he is increasing sentences on each of the other offences by three months to nine months, by which he means the non-breach counts, which include the section 14 offence. He then gives credit for guilty pleas on those two same counts and says the reduction would be "in relation to each of the other offences by 3 months to 6 months." This suggests he was giving a sentence of six months on each of the section 14 and section 15A offences. That is the only sensible explanation for his use of the plural "offences".

21. In respect of totality he said:

> "First, the offences in relation to Bex must be concurrent with each other. Second, the offences in relation to Leona must be concurrent with each other but consecutive to those passed in relation to Bex because they are different victims and separate harm must be considered."

22. He increased the sentences for the breach offences from a starting point of 36 months up to 42 months for aggravating factors, and then reduced them down for the pleas of guilty to arrive at 28 months, which he reduced further down to 24 months for totality because he was ordering them to run consecutively. That reached an aggregate of four years. In considering dangerousness he said the following:

> "In these circumstances both conditions of section 280, subsection 1(e) of the Sentencing Act 2020 apply. That is, the earlier offence condition and the custodial term condition.
>
> I consider the question of dangerousness. Despite the overwhelming evidence to the contrary, you told the probation officer writing the Pre-Sentence Report that you are not sexually attracted to children. That report identifies that there is an evident pattern of sexually motivated offending towards children and you both lured Leona to Monmouth and set out to meet her, indicating that this was not an offence where you are confined to obtaining sexual gratification online. You intended to have physical contact with a child."

23. However, having considered and found the appellant dangerous, he then returned to the sentence on the section 14 count and stated:

> "I follow the totality guideline as it applies in these circumstances and sentence you to an extended sentence of imprisonment in relation to the charge under section 14, which comprises a 4 year custodial term and an extended licence period of 4 years, 8 years in all ... In light of this, I impose concurrent determinate sentences as follows..."

24. He then imposed the other sentences: two for the breach offences and the section 15A offence which he ordered to be served concurrently.
25. We are clear, as is demonstrated by the Crown Court Record itself that the sentence ultimately passed upon the section 14 offence was one of eight years, namely an extended sentence of four years' custody and a four year extended licence. Given the maximum sentence under the relevant substantive offence for offences under section 10 is 14 years, that is not an unlawful sentence. Although in the circumstances we understand the confusion on the part of the appellant as to the sentenc he in fact received on this count and this could have been explained more clearly, we are of the view that the eight-year sentence was lawfully imposed. That does not however mean that it is not capable of challenge upon appeal and the test for this court is whether the resulting sentence in all the circumstances was manifestly excessive.
26. First we turn to the issue of dangerousness and the imposition of an extended sentence on this appellant. We return to the basis of plea. This was the only activity intended by the appellant, which was kissing and cuddling. This was the same activity as he had been engaged in during 2011. We do not wish to undermine the seriousness of sexual contact of any type with children below the age of 16 and we do not wish our judgment in this case to suggest that this type of activity could never in any circumstances constitute serious harm. However where a basis of plea has been accepted by the Crown and no Newton hearing has been held a defendant must be sentenced on that basis. Where, as here, that basis involved only relatively limited sexual activity, with the same limited sexual activity having occurred in 2011, we do not consider in all the circumstances that it is justified on the facts of this particular case to conclude that there is a significant risk of the appellant causing serious harm to members of the public by the commission of further specified offences. This is required by section 280 of the Sentencing Act 2020, which was formerly section 226A of the Criminal Justice Act.
27. It follows therefore that we are persuaded that passing an extended sentence of eight years on the section 14 offence resulted in a sentence that was manifestly excessive.
28. We turn therefore to the correct sentence and categorisation of the offence under section 14. We are of the view that it is indeed an offence that should be categorised under Category 3A and it was correctly considered and analysed by the sentencing judge in arriving at the sentence that he discussed in the earlier part of his sentencing remarks when he concluded that a sentence of six months' imprisonment for that count alone was justified.
29. In considering therefore what sentence should be passed on the section 14 offence, we agree with and adopt his reasoning and calculation in the first part of his sentencing

remarks and arrive, as he did, at a figure of six months' imprisonment, having adjusted it down from nine months to reflect the appellant's guilty plea. That is the correct sentence that ought to be imposed for the section 14 offence. The other sentence of six months for the section 15A offence is not manifestly excessive taken in isolation.

30. However, turning to the two breach offences, the judge imposed a sentence on each after credit for plea of 24 months assessing those offences as Category 1A. Mr Evans has urged upon us a categorisation of Category 2B. We consider that the sentences passed by the sentencing judge for the two breach offences were indeed manifestly excessive. In our judgment the two breach offences are on the cusp of category 1A only, taking account of harm, or at the very top of the category range 2B. This means that a figure prior to discount for plea should be either at the bottom of the range for Category 1A (which is two years, because the range for that offence is two to four-and-a-half years) or at the top of Category 2B (which is also two years). There is therefore the same figure of two years regardless of whether one takes the very top of Category 2B or the very bottom of Category 1A. Applying the discount for plea that figure becomes reduced by one-third and goes to one of 16 months' imprisonment on each count for breach of the SOPO.
31. We therefore need to consider how to structure these four sentences. We are unpersuaded that the judge was wrong in principle or failed to have sufficient regard to the important principle of totality in the passage of his sentencing remarks where he concludes that the offences in relation to Leona should be ordered to run consecutively to those in relation to Bex. That was his clear conclusion prior to his coming on to consider dangerousness, and before his ultimate conclusion on the section 14 offence, which is that it should have attracted the extended sentence which we have explained.
32. We consider that imposing the two sets of sentences consecutively was the correct approach. Both sets of offences were each in a pair, they were separate and were committed against different victims, albeit fictitious ones. They therefore represent separate criminality. They were both separate breaches against the existing SOPO. The overall criminality of the appellant is properly reflected by dealing with each pair with concurrent sentences for the offences against each fictitious victim, but consecutive to the other sentence for the other fictitious victim. We take account of totality.
33. Therefore we impose sentences as follows, keeping the sentences for the two breach offences consecutive to one another. We allow the appeal, quash the extended sentence of eight years on the count under section 14 of the Sexual Offences Act 2003 and we quash the sentences of 24 months on each of the two counts for breach of the SOPO. We leave the sentence of six months on the section 15A offence undisturbed. We quash the order that the three determinate sentences be served concurrently. We substitute a sentence of six months’ imprisonment on the section 14 offence and substitute sentences of 16 months on each count of breaching the SOPO. We order that the two sentences under committal 20210357 be served concurrently with one another and those under committal number 20210603 be served concurrently with one another under that same committal number, but that the sentences under each committal number be served consecutively to one another.
34. The result of this is that the total period of imprisonment becomes one of 32 months’ imprisonment, governed by the longest sentence under committal number 0357 of 16 months, being served consecutively to the longest sentence also of 16 months under

committal number 0603.

35. The appellant will be entitled to release after one-half of that overall term, that is as a result of the operation of section 244 of the Criminal Justice Act 2003 in calculation of the requisite custodial period under section 244(3). All other ancillary orders, including the imposition of the Sexual Harm Prevention Order remain undisturbed. It therefore follows that the appeal against sentence is allowed on that basis.

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

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