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IN THE COURT OF APPEAL

CRIMINAL DIVISION

IN THE COURT-MARTIAL APPEAL COURT

CASE NO 202103314/B5

NCN [2022] EWCA Crim 266

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 16 February 2022

LORD JUSTICE HOLROYDE

MR JUSTICE PEPPERALL

MR JUSTICE SWEETING

REGINA

v

ADAM SINEY

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NON-COUNSEL APPLICATION

**J U D G M E N T**

(Approved)

1. LORD JUSTICE HOLROYDE: This is a renewed application for leave to appeal against sentence in a case involving sexual offences. The victim of the offences (to whom we shall refer as "C") is entitled to the lifetime protection of the provisions of the Sexual Offences (Amendment) Act 1992. Accordingly, during her lifetime no matter may be included in any publication if it is likely to lead members of the public to identify her as the victim of these offences.
2. On 1 October 2021, in the Military Court Centre at Bulford, this applicant, then a Lance Corporal in the Princess of Wales's Royal Regiment, pleaded guilty to an offence of misconduct through alcohol, contrary to section 20(1)(b) of the Armed Forces Act 2006. He was convicted following a trial of three offences, contrary to section 42 of that Act, of committing a criminal offence namely sexual assault, contrary to section 3 of the Sexual Offences Act 2003. The third of those offences was a multiple offence charge relating to at least five occasions other than those mentioned in the other charges. The applicant was sentenced to a total term of 180 days' Service detention, comprising 180 days on the third charge and 30 days concurrent on each of the other charges. He was further sentenced on charge 3 to be reduced in rank to Private. As a result of his convictions he became subject to the notification requirements in Part 2 of the Sexual Offences Act 2003.
3. For present purposes the relevant facts can be stated very briefly. All of the offences were committed in the course of one night in early 2020. C was a private soldier in the same regiment. She had previously got on well with the applicant. On the night in question, however, he behaved wholly inappropriately towards her at an informal party. He complimented her on her bottom, made unwelcome comments about her appearance and repeatedly groped, hit and slapped her buttocks. When she left the party she told him not to follow her, but he did so, and made persistent attempts to enter her room, asking her for a kiss.
4. The applicant was 33 years old at the time of his sentence. The Court-Martial took into account his 6 years of service and a testimonial from his senior officer who described the offending as being "out of character". The court agreed with the submission of both advocates that the sexual assaults fell into category 3B of the relevant sentencing guideline, with a starting point of a high-level community order and a range from a medium-level community order to 26 weeks' custody. The repeated nature of the offending, the fact that it was committed in front of others and the applicant's intoxication were aggravating factors. There was limited personal mitigation.
5. The court indicated that the offences have had a significant effect on C, and took the view that it was necessary to deter anyone who thought that such behaviour would be tolerated. It indicated that the applicant could consider himself lucky not to be dismissed from Her Majesty's service. They said that his conduct had shown a complete lack of respect for a fellow soldier and was unacceptable, particularly for a junior NCO who was expected to set an example to others.
6. In his grounds of appeal the applicant submits that the sentence was unduly harsh when compared to other, unspecified, cases. He particularly appeals against the notification requirements, which he submits may result in his being discharged from the service even though the Court-Martial did not order his dismissal.
7. In refusing leave to appeal on the papers, the single judge referred to the paragraph 5.10.3 of the Judge Advocate-General's Guidance on sentencing in the Court Martial, Version 5

which states:

"Minor sexual assaults are more serious in a Service context than in civilian life because they can cause resentment and undermine unit cohesion. Where the offender is superior to the victim the rank differential is an aggravating feature. Normally a short period of custody is appropriate, even for very minor offences and reduction in rank is almost inevitable."

8. We must make clear that we are concerned at this stage only with the renewed application for leave to appeal against sentence. We understand that the applicant also wishes to appeal against his conviction, but that is a separate matter which is not before this court.
9. In our judgment, the Court-Martial correctly identified the aggravating and mitigating factors and was entitled to conclude that a total term of 180 days' Service detention was appropriate. Offending of this nature is particularly serious in the military context, and the Court-Martial was entitled to take the view that an element of deterrence was necessary. No case has been drawn to our attention in support of the suggestion that the sentence was excessive by comparison with other cases. Like the single judge, we can see no arguable ground for challenging the sentence.
10. Notification requirements under Part 2 of the 2003 Act are an automatic consequence of conviction of certain sexual offences. They are not a separate part of the punishment. The effect of the relevant provisions of the Act, namely sections 80, 82 and 137 and paragraphs 18 and 93A of schedule 3 to that Act, is that a person who is convicted by a Court-Martial of an offence of committing a criminal offence of sexual assault, and is sentenced to more than 112 days' Service detention, automatically becomes subject to those requirements. It would not have been proper for the Court-Martial to reduce the lowest sentence which it regarded as appropriate, namely 180 days, in order to avoid that statutory consequence. There can therefore be no successful appeal against the notification requirements.
11. We note that paragraph 3.4.15 of the Guidance indicates that the Court-Martial has no power to forbid or prohibit the subsequent administrative discharge of a serviceman, but adds that in fairness the Services ought not to discharge subsequent to a decision of the court not to dismiss unless there are other relevant factors which were not before the court.
12. For those reasons, which are essentially the same as those given by the single judge, this renewed application fails and is refused.

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

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