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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT TEESIDE

MISS RECORDER TURNER T20200205

CASE NO 202402422/A5 [2024] EWCA Crim 1287

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 9 October 2024

Before:

LORD JUSTICE JEREMY BAKER
MRS JUSTICE FARBEY DBE
HIS HONOUR JUDGE DREW KC
(Sitting as a Judge of the CACD)

REX
V
SULEYMAAN AR'RAA-EE

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MISS P AHLUWALIA appeared on behalf of the Applicant
MR L HARRIS appeared on behalf of the Crown

J U D G M E N T

MRS JUSTICE FARBEY

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. No matter relating to the victim of the offences 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 the offences. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. On 4 January 2021 in the Crown Court at Teesside before His Honour Judge Carroll, the applicant pleaded guilty upon re-arraignment to two counts of sexual activity with a child (Counts 2 and 3 of the indictment). On 3 March 2021 before Miss Recorder Turner, the Prosecution offered no evidence on a further charge of sexual activity with a child (Count 1) and a not guilty verdict was entered. The Recorder imposed a 36-month community order with a rehabilitation activity requirement of 30 days on each of Counts 2 and 3 to run concurrently. In addition, she decided that the applicant should be the subject of notification requirements under Part 2 of the Sexual Offences Act 2003 ("the 2003 Act" or "the Act") for a 5-year period. The applicant was 17 years old at the date of the commission of the offences and 19 years old at the date he was sentenced.
3. Following referral to the Full Court by the Registrar, the applicant seeks an extension of time of 1,189 days in which to seek leave to appeal against sentence. On his behalf, Miss Paramjit Ahluwalia (who did not appear below) does not challenge the imposition of the community orders. The sole ground of appeal is that the Recorder had no power to impose the notification requirements. On behalf of the respondent, Mr Lyndon Harris (who likewise did not appear below) accepts that the Recorder had no power to do so and concedes that the notification requirements must be set aside.
4. In these circumstances, we deal with the facts of the offences in brief terms. The victim of both offences was aged 13. On 16 December 2018, she left home at 11.30 pm and went to meet the applicant at a public house. They went round to the back of the pub and started kissing and cuddling. A short while later they walked into a wooded area. They started kissing again. The applicant invited the victim to perform oral sex on him, which she did. They went on to have vaginal sexual intercourse. The applicant did not use a condom and the victim believed that he ejaculated inside her. Afterwards they walked home and did not see each other again. When she arrived home the victim admitted to her mother that she had had sex with the applicant. Her mother telephoned the police and the applicant was subsequently arrested.
5. As we have mentioned, the Recorder sentenced the applicant following his guilty pleas. Following the pronouncement of the sentence, the Recorder discussed with counsel whether the applicant was to be subject to the notification requirements. She decided that they did apply and made an order in the terms we have described, saying that if she were wrong the error could be corrected administratively. Pursuant to section 92 of the 2003 Act, certificates of conviction were drawn up by the Crown Court on 4 January 2021 (following conviction) and on 3 March 2021 (following sentence). It was certified that the applicant had been convicted of offences to which the notification requirements applied, and the substance of the requirements was set out.

6. The case has made its way to this court following the good sense of a Cleveland police officer who noticed that the notification requirements had been wrongly imposed and contacted the Crown Court.
7. We agree with the parties that the notification requirements were unlawfully imposed by the Recorder. By virtue of section 80 of the 2003 Act, a person is subject to the notification requirements of Part 2 of the Act if convicted of an offence listed in Schedule 3. Although section 9 of the Act makes it an offence for an adult to have sexual activity with a child, the applicant was prosecuted under section 13 of the Act which covers the same conduct as section 9 in circumstances where the defendant was a child. Section 13 is an offence listed in Schedule 3. However, by virtue of paragraph 22 of Schedule 3, a person who is under 18 at the time of the commission of a section 13 offence is not subject to notification requirements unless sentenced to a custodial term of more than 12 months. The applicant plainly fell within this exception so that the Recorder fell into error in concluding that the notification requirements applied.
8. As confirmed in *R v Allon* [2023] EWCA Crim 204, [2023] 1 WLR 2101, the notification requirements take effect (if at all) by operation of statute and not by virtue of a decision or order of a sentencing judge. The role of the court is only to state in open court that one of the eligibility criteria for notification has been satisfied and to certify that fact. An appeal does not lie against the statutory application of the notification requirements. Where a judge, as in the present case, goes further and purports to give a decision or make an order on the issue, this court has jurisdiction to entertain an appeal. We accept jurisdiction, extend time, grant leave to appeal and allow the appeal to the extent that we set aside the notification requirements.
9. Reconstituting ourselves as a Divisional Court of two judges (Jeremy Baker LJ and Farbey J), we turn to the section 92 certificates which are challenged on the grounds that the notification requirements could not lawfully have been certified as applying. Mr Harris accepts that the certificates are unlawful such that they must be quashed. Following the approach in *Allon* we treat the application for leave to appeal as including a claim for judicial review, we treat the Crown Prosecution Service as an interested party in the claim, we extend time for the claim to be made, we dispense with the need for a claim form, grant permission to apply for judicial review, abridge all times necessary, waive all other procedural requirements and allow the claim. The certificates are quashed.
10. For the avoidance of doubt, the reporting restrictions which we made at the beginning of this judgment apply to the claim for judicial review as they do to the criminal appeal.
11. We are grateful to counsel for their helpful submissions.