IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT ISLEWORTH

HIS HONOUR JUDGE SIMON DAVIS T20201169

CASE NO 202401469/A2

NCN [2024] EWCA Crim 1641

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 27 November 2024

Before:

LORD JUSTICE DINGEMANS
MRS JUSTICE MAY DBE
THE RECORDER OF BRISTOL
HIS HONOUR JUDGE BLAIR KC
(Sitting as a Judge of the CACD)

REX
V
ALBAB MONNAN

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MR A HORSFALL appeared on behalf of the Appellant

J U D G M E N T

MRS JUSTICE MAY:

1. On 22 February 2024 in the Crown Court at Isleworth, the appellant, then aged 44, was convicted of two counts of indecent assault, contrary to section 14(1) of the Sexual Offences Act 1956. On 22 March 2024 he was sentenced to a total of eight years and six months' imprisonment. He appeals that sentence with leave of the single judge.

2. Reporting restrictions

   The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. No matter relating to the complainant shall, during their lifetime, be included in any publication if it is likely to lead members of the public to identify them as the victim of these offences. This prohibition applies unless waived or lifted by this Court. We shall refer to the complainant as C1.

3. Facts of the offending

   C1 moved to England from Germany in 1995 with her mother and siblings whilst her father remained in Germany. Initially they lived with an aunt in east London. The appellant's family lived in Twickenham, west London and were part of C1's extended family. The complainant and her sisters referred to the appellant as "uncle" and thought of him as such, although he was not in fact their uncle.

4. The girls subsequently attended a primary school in Twickenham which was near the appellant's family home. The girls would spend time after school at that home until their mother had finished work and was able to collect them.

5. On at least three occasions when C1 was aged about seven and the appellant was 17 he called her into his bedroom under the pretence of receiving treats. On each occasion he would lock the door. C1 would be told to shut her eyes and not look before the appellant placed his penis inside her mouth. On the last occasion that this occurred one of the appellant's siblings tried to open the locked bedroom door and C1 opened her eyes to discover what the appellant was doing. She left upset, tried to tell one of the appellant's older sisters but was rebuked and told not to say such things.

6. C1 eventually disclosed the abuse to her sisters in January 2019, stating that she needed some help to come to terms with what had happened to her. The abuse was reported to the police. The appellant was arrested on 25 January 2019. He denied the offences in interview and subsequently at trial.

7. The offending occurred between 1 September 1996 and 30 April 1997. The judge accepted the submission that the appellant was aged 17 at the time.
8. Sentence

   Both the prosecution and defence produced sentencing notes in the lower court which we have seen. There were two victim personal statements from C1 which we have also read carefully. It is apparent from the transcript of the sentencing hearing that the judge was referred to and discussed at some length with counsel the case of *Ahmed* [2023] EWCA Crim 281 and its proper application to the facts of this case. There was also lengthy consideration of where the offending fell in the adult guideline applicable to the present day offence under section 5 of the Sexual Offences Act 2003 of rape of a child under 13, the nature of the indecent assault under the 1956 Act being penile penetration of C1's mouth.
9. The prosecution had argued that the offending, had it been committed by an adult, fell into Category 2A of the Sentencing Council Guideline on the basis that C1 was particularly vulnerable by reason of age or personal circumstances and that the offending involved breach of trust and grooming. The defence contended that it fell into Category 3B.
10. The judge found neither severe psychological harm nor particular vulnerability for the purposes of culpability. In relation to harm, having considered submissions made to him about the circumstances which would give rise to a breach of trust discussed in the case of *Forbes*, he found no element of breach of trust. Although it had not been suggested by the prosecution, the judge found that C1 had been deliberately isolated and referring to the need for what he termed "checks and balances" he rejected the defence suggestion that the offending fell into Category 3B of the adult guideline. He did not identify into which category the offending fell but said that he would take a starting point of "somewhere around 10 years" with a range of "somewhere around eight to 13 years". He went on to observe that there were no real aggravating factors, though noting that there were "somewhere between two and five offences".
11. The judge reminded himself that the appellant fell to be sentenced as a 17-year-old and that the indicted offences carried a maximum of 10 years as opposed to the maximum sentence for the section 5 offence under the 2003 Act, that being life imprisonment. He

next referred to the appellant's lack of further offending into adulthood and to the positive testimonials from his family and friends which we have also seen.

12. Having indicated that he would pass concurrent sentences on both counts to reflect the overall offending, the judge went on indicate that the adult sentence would be one of somewhere in the region of 13 to 14 years, before going on to pass concurrent sentences of eight-and-a-half years on each of the two counts.

13. Grounds of appeal

We are grateful to Miss Eleanor Laws KC (trial counsel) for her helpful and succinct grounds of appeal and advice and to Mr Horsfall who developed the grounds before us at the hearing today. It is said that the offending fell squarely within Category 3B of the equivalent adult guideline and that the judge erred in taking a different starting point. The facts, it is said, did not justify a finding that C1 had been deliberately isolated. It is further submitted that the judge failed to take totality sufficiently into account and that he likewise gave insufficient weight to the mitigation afforded by the appellant's positive good character during his adult life.

14. Discussion and decision

Historic sexual offending cases almost invariably present a complex and difficult sentencing exercise. Whilst following *Ahmed* the principles are now clear, the application of those principles in individual cases is rarely straightforward. The present case was no exception. In *Ahmed*, having reviewed all the relevant authorities, the Lord Chief Justice giving the judgment of the court said this under the heading "The proper approach":

> "21. We have reflected on those submissions. In our judgment, the applicable principles are clear. Those who are under the age of 18 when they offend have long been treated by Parliament, and by the courts, differently from those who are adults. That is because of a recognition that, in general, children are less culpable, and less morally responsible for their acts than adults. They require a different approach to sentencing and are not to be treated as if they were just cut-down versions of adult offenders. The statutory provisions in force from time to time have frequently restricted the

availability of custodial sentences for child offenders, whether by prohibiting them altogether for those below a certain age or, more commonly, by restricting on a basis of age the type and maximum length of custody in all but grave cases. All such provisions are in themselves a recognition by Parliament of the differing levels of culpability as between a child and an adult offender: that is one of the reasons why we are respectfully unable to agree with the distinction drawn in Forbes between cases where no custody would have been available, and cases where some form of custody (however far removed from modern sentencing powers) would have been available. There is, in our view, no reason why the distinction in levels of culpability should be lost merely because there has been an elapse of time which means that the offender is an adult when sentenced for offences committed as a child.

22. Section 59(1) of the Sentencing Code requires every court, when sentencing or dealing with an offender who was under the age of 18 at the time of the offending, to follow the Children guideline except in the rare case when the court considers it would be contrary to the interests of justice to do so. Paragraphs 6.1 to 6.3 of that guideline are relevant in such circumstances, and we are unable to see any justification in logic or principle for the submission that those paragraphs should only be followed where the offender has only recently attained adulthood. They remain relevant, and therefore to be followed, however many years have elapsed between the offending and the sentencing. That is because the passage of time does not alter the fact of the offender's young age at the time of the offending. It does not increase the culpability which he bore at that time. We naturally hesitate to differ from the decisions in H(J) and Forbes; But insofar as those cases adopted a different approach, it is our respectful view that the court did not have regard to the passages in the SGC Youth guideline which

> were to substantially the same effect as paragraphs 6.1 to 6.3 in the current Children guideline. In our view, the application of the Children guideline requires sentencers to adopt a different approach between sentencing for historical offending committed as a child and sentencing for historical offending committed as an adult. That difference, and the resultant difference (which may be substantial) in the respective sentences, is in accordance with principle and reflects the special approach to the sentencing of child offenders."

15. Before turning to particular considerations which arise in the present case, we note that the judge did not have before him a pre-sentence report. He observed that none had been asked for and that he had learnt all that he needed to know about the appellant during the course of the trial. We have considered the provisions of section 33 of the Sentencing Act 2020 in this respect and agree that a report was not and is not necessary.
16. The judge accepted in terms that the appellant fell to be sentenced as a 17-year-old. Thereafter the approach is not entirely clear from his remarks. The approach adopted in the various cases before the court in *Ahmed* was to look first at what sentences would have been available to a court sentencing the appellant at the age he was when the offences were committed. At the relevant time in 1997 long term detention was available for an offence of section 14 indecent assault under section 53(2) of the Children and Young Persons Act 1933 which subsequently became section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 and is now section 250 of the Sentencing Act 2020, which would have allowed the court to pass a sentence up to the 10-year maximum. However at age 17 the appellant had no previous convictions or cautions. A court would at that time have been obliged to focus on welfare and the prevention of future offending, with custody as a sentence of last resort for a child. The current Sentencing Council Guideline, Sexual Offences - Sentencing Children and Young People to which the judge here does not appear to have been referred, sets out at Step 1 aspects of the particular offending behaviour which would call for consideration of custody in an individual case:

> "Any penetrative activity involving coercion, exploitation or pressure
>
> Use or threats of violence against the victim or someone known to the victim
>
> Prolonged detention/sustained incident
>
> Severe psychological or physical harm caused to the victim."

17. None of these factors applied to the appellant's offending against C1 when he was 17 and she was seven. We do not mean to imply that the judge was wrong to impose a custodial sentence here but the above serves to demonstrate the very different considerations which apply to the sentencing of children for sexual offences and, by extension, to the sentencing of adults for offences committed when they were children. The child sexual offences guideline indicates that where the court has worked through the various matters to be considered and having done so has satisfied itself that custody is the only appropriate disposal for a child then:

> "Where a custodial sentence is **unavoidable** the length of custody imposed must be the shortest commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence. If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. The individual factors relating to the offence and the child or young person are of the greatest importance and may present good reason

to impose a sentence outside of this range."

18. This guidance mirrors that found at paragraph 6.46 of the Sentencing Council Over-arching Guideline, Sentencing Children and Young People.
19. Given the disparity in age between the appellant and C1 and the fact that there were three occasions of offending (we take this from the way in which the jury were directed on the multiple incident count 8) we believe that a court would have concluded that a sentence of detention under section 53(2) of the Children and Young Persons Act 1933 was required in the appellant's case. Arriving at the correct assessment of the level of sentence which would have been passed on this appellant as a 17-year-old is by no means straightforward. We think the judge was correct in declining to find severe harm or particular vulnerability on the facts of this case for the reasons advanced by the defence in its sentencing note and at the hearing.
20. We note that in the course of the hearing the judge said that he could not be sure that there had been grooming. Having heard argument on the point and having considered the observations made by the court in the case cited to us of *Attorney General's Reference No 32 of 2016* we consider that the judge was entitled to find that the locking of the bedroom door comprised an element of deliberate isolation within the meaning of that term in the guideline. That being so, then the correct categorisation of this offending for an adult as at today's date would be Category 3A where there is a starting point of 10 years with a range of eight to 13 years. The notional adult sentence would of course be aggravated by the further incidents of offending. The judge was not entirely clear on how many occasions he took for these purposes but we are sure that it should not be more than a total of three occasions given the directions on the multiple-incident count allowing the jury to find the appellant guilty if they were sure that the offending happened at least twice.
21. Account must also be taken of the lower statutory maximum applicable to the offences under the 1956 Act, also of the mitigation which the judge rightly identified. In our view a court faced with sentencing a 17-year-old appearing before it for the first time for these offences would have accorded his mitigation very great weight before making any additional reduction for youth.

22. Taking all this into account, we conclude that an appropriate adult sentence for the offences would have been 11 years before mitigation. Reducing for the appellant's mitigation and youth results in a sentence of five years and four months.
23. Accordingly, we allow the appeal, quash the concurrent sentences of eight years and six months and replace them with sentences on each count of five years and four months. All other orders remain the same.

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

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