IN THE COURT OF APPEAL

CRIMINAL DIVISION

Case No. 202301880 A2

Neutral Citation Number: [2024] EWCA Crim 211

Royal Courts of Justice

Thursday, 18 January 2024

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE CHOUDHURY
HER HONOUR JUDGE ANGELA RAFFERTY KC

REX
V
LEON ROACH

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MR P BARNETT appeared on behalf of the Appellant.

A P P R O V E D J U D G M E N T

(Transcript prepared using poor quality audio recording)

MR JUSTICE CHOUDHURY:

1 On 12 May 2023, in the Crown Court at Liverpool (before Mr Recorder Harris), the appellant, then aged 28, was sentenced to an extended sentence of 8 years (comprising a custodial period of 4 years and an extended licence period of 4 years) for the offence of attempting to cause a boy, aged 13 to 15, to engage in a non-penetrative sexual activity. He was also sentenced to 18 months concurrent for two offences of engaging in a barred activity contrary to s.7 of the *Safeguarding Vulnerable Groups Act 2006* ("the 2006 Act") and made subject to a Sexual Harm Prevention Order. The appellant appeals against those sentences of imprisonment with the leave of the single judge.

2 The background to this matter may be briefly stated as follows. By reason of a previous conviction in 2022 for causing or inciting a boy under 13 to engage in sexual activity, the appellant was barred from working within activities regulated by the 2006 Act.

3 At around 1.30 in the morning on 19 February 2022, the police stopped a vehicle occupied by the appellant and two colleagues. The occupants were all dressed in green paramedic uniforms with the word "Ambulance" written on the back. Upon inquiry, one of the colleagues stated they were part of a registered charity called "Rapid Response Northwest" and that the appellant was an observer in training. That was not true.

4 A couple of days later, on 21 February 2022, an application was made for a DBS certificate for the appellant to be a first responder for the charity. The charity works with children and vulnerable adults, and its activity is a regulated activity within the meaning of the 2006 Act. That application was made with the appellant's knowledge and consent. The appellant pleaded guilty to the two offences, that is engaging in a barred activity and making a DBS application, before the Magistrates on the first day of the trial.

5 Between 1 March and 6 April 2022, whilst the appellant was being investigated for the offences under the 2006 Act, the appellant communicated online with a boy that he believed to be aged 13. These communications were originally through Facebook but, at the appellant's request, the communications moved onto Snapchat because it was "safer". The appellant said in conversation with the boy that he thought the boy was "cute" and that he "fancied" him. The conversation then took a sexual turn, whereby the appellant asked to see the boy's penis and invited the boy to send him a "willy pic", which he promised to keep secret. It was clear from these texts that the appellant wished to keep the conversation secret and that he was trying to initiate a meeting with the child for sexual purposes.

6 What the appellant did not know was that he had, in fact, been communicating with an adult who, as part of the activities of a paedophile hunter group, had set up a fake profile as a 13-year-old boy. Eventually, a meeting was set up, apparently with an adult who gave his name and age. That meeting was arranged for 6 April 2022. On that occasion, the appellant was detained by three members of the group and police were called.

7 The appellant was arrested but he gave a no comment interview. His mobile phone contained pictures of the boy in the fake profile. The appellant pleaded guilty before the Magistrates at the first opportunity. He was committed to the Crown Court for sentence.

8 In careful and considered sentencing remarks, the judge noted that the safeguarding offences were aggravated by the appellant's previous convictions. On 8 December 2015, the appellant was convicted of an offence of arising out of contact between himself and an 11-year-old boy over social media. The appellant had asked the boy to send pictures of himself in his pants and the boy hard in his pants. The content of some of the messages was sexual. On that occasion, the appellant received a community order and was subject to a SHPO for 5 years. On 9 January 2016, the appellant received a community order for two breaches of the

SHPO. On 19 December 2016, he received a hospital order for two further breaches of the SHPO and served up to 2 years in prison, subject to a s.37 Mental Health Act 1983 Order. On 30 July 2020, he received a community order for breach of the SHPO and on 7 January 2021 an unpaid work requirement was added for failure to comply with the terms of the community order. The appellant was still subject to the community order at the time of the current offences.

9 The judge referred to the guidance in *Reed & Anor v The Queen* [2021] EWCA Crim 572 in relation to cases where there was no actual child victim. This states that the harm should be assessed on the basis of the intended harm, with a small downward adjustment within the category range usually being appropriate to account for the absence of a real victim. It was agreed that the relevant substantive offence was that under s.10 of the *Sexual Offences Act 2003* ("the 2003 Act"), causing or inciting a child to engage in sexual activity, and that the appropriate categorisation under the relevant guidelines was Category 2A. That has a starting point of 3 years and a range of 2 to 6 years. The judge took account of the aggravating factors, including the previous convictions and the fact the offence was committed whilst subject to a community order. The judge also referred to a psychiatric report which contained no recommendation for a mental health disposal and a pre-sentence report which considered that the appellant's pattern of offending placed him at "high risk of serious harm to children and, in particular, males under the age of 16". The judge assessed the appellant to be dangerous. Giving full credit for plea, the judge considered that a sentence of 4 years' imprisonment was appropriate, with a sentence of 18 months for the safeguarding offences, to run concurrently. The judge also imposed an extended licence period of 4 years.

10 The sentence is said to be manifestly excessive for three reasons:

1) the judge failed to adjust the sentence to reflect that this was an attempt and/or the absence of an actual victim;

2) that he failed to take account of the fact the appellant was unaware he was being investigated for the safeguarding offence;

3) that the sentence of 20 months before discount for the safeguarding offences was excessive; and

4) the judge failed to take account of the appellant's vulnerability and borderline personality disorder or his ADHD.

11 The appellant was represented by Mr Barnett, who also appeared below. We are grateful to him for his submissions.

12 It must be inferred from the custodial term of 4 years for the 2003 Act offence that the judge fixed upon a notional sentence before discount for plea of 6 years. Mr Barnett submits that that is manifestly excessive because it fails to make a downward adjustment for the fact that there was no actual victim. It is also submitted that the term of 18 months for the safeguarding offence is too great and that any uplift to account for the overall criminality involved across all the offending was too great.

13 We agree with those submissions. The starting point of 3 years is correct. The aggravating features are the previous convictions and the fact that the offending occurred while subject to a community order, although not that the appellant knew he was under investigation for safeguarding offences at the time. It appears that he was not aware of that. These features are offset to some extent by the mitigating features arising from the appellant's mental

health conditions. The result is that a significant uplift from the starting point is warranted. However, as stated in *Reed*, there needs to also be a modest downward adjustment to the sentence to account for the lack of any actual victim. Paragraph 24 of *Reed* states as follows:

> "The extent of downward adjustment will depend on the facts of the case. Where an offender is only prevented from carrying out the offence at a late stage, or when the child victim did not exist and otherwise the offender would have carried out the offence, a small reduction within the category range will usually be appropriate. Where relevant, no additional reduction should be made for the fact that the offending is an attempt."

14 Whilst the judge did refer to *Reed*, it does not appear from his sentencing remarks that any such adjustment was made in this case. If there had been such an adjustment, that would suggest that the aggravating features and uplift for totality in this case took the notional sentence to well above 6 years. Serious as it was, we cannot see any justification for treating this offence as one that warranted anything outside the category range.

15 In our judgment, having regard to all the circumstances, applying a small downward adjustment as per the principles in *Reed*, the appropriate notional sentence before plea is one of not more than 42 months. Applying the one-third discount for plea, we reduce that further to 28 months.

16 As to the safeguarding offence, the judge noted in the course of the prosecution's opening that there were no guidelines. However, the nature of the breach, namely, taking steps to engage in a prohibited activity, is comparable to that involved in a breach of the terms of a SHPO. The guidelines for breach of such an order, which can be no more than an indication of the appropriate approach for the present offence, would suggest a categorisation of 2B, which has a starting point of 1 year, with a range from a high-level community order to 2 years' custody. Although the previous convictions and the fact of the continuing

community order are aggravating features, they would already have been taken into account in aggravating the sexual offence and would not aggravate to the same extent. There was, it would appear, a significant period of compliance as the barring order was made in 2016. However, no credit can be given for that in circumstances of repeated breaches of other orders. Accordingly, the appropriate sentence before discount for plea is 12 months. The judge appears to have applied a ten per cent discount for plea on the first day of the trial. Taking the same approach here would result in a sentence of 10 months after rounding down. In those circumstances, the judge's notional sentence before discount of 20 months, reduced to 18 months after discount, is manifestly excessive.

17 Applying totality principle, the judge imposed concurrent sentences, but with an uplift to account for the overall criminality involved. Allowing for totality, the sentence for the sexual offence could be increased to no more than 3 years. As such, the sentence of 4 years imposed by the judge is manifestly excessive.

18 In summary, therefore, the sentence for the sexual offence is reduced to 3 years and for the safeguarding offence the sentence is reduced to 10 months concurrent. The sentences are otherwise unchanged. We make no change to the extended licence period. The judge was clearly correct in concluding the appellant was dangerous. We see no reason to interfere with the judge's assessment of the necessary period of extension.

19 Accordingly, the custodial element of 4 years is set aside as being manifestly excessive. It is replaced with one of 3 years. The overall sentence is therefore an extended sentence of 7 years, comprising a 3-year custodial period and 4-year extended licence period. To that extent, this appeal is allowed.

CERTIFICATE

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Approved by Mr Justice Choudhury