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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202302299/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 29 February 2024

Before:

LORD JUSTICE LEWIS
MR JUSTICE GOOSE
THE RECORDER OF LIVERPOOL
HIS HONOUR JUDGE MENARY KC
(Sitting as a Judge of the CACD)

REX
V
STEVEN PALMER

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR M McMINN appeared on behalf of the Applicant
MR B IRWIN appeared on behalf of the Crown

J U D G M E N T

1. LORD JUSTICE LEWIS: The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under those provisions where a sexual offence has been committed against a person, no matter relating to that person 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 that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.
2. On 11 May 2023 in the Crown Court at Canterbury, the appellant Steven Palmer was sentenced to an extended determinate sentence of nine years, comprising a custodial element of six years and an extended licence period of three years for one offence of sexual assault. He applies for leave to appeal against sentence and for an extension of time of 33 days for doing so. The single judge referred the matter to the full court.
3. We grant the extension of time. We are satisfied that the appellant was seeking to resolve the matter that arose without the need for an appeal to this court by inviting the Recorder to deal with the matter under the slip rule. While that was not an appropriate avenue for dealing with the matter, it does explain the relatively short delay that occurred in this case. We therefore grant the extension of time. We grant leave to appeal.
4. We turn therefore to the appeal and the material facts are as follows. The victim was a young girl of 15 years. She was walking home from school at approximately 4.30 pm on 7 December 2022. She noticed a man (the appellant) sometimes following her and sometimes hiding behind trees. She was anxious. The appellant then ran at her and grabbed her from behind. The victim was screaming. The appellant strangled her with his arm on her neck and forced her onto the grass. He grabbed her breast and he pulled at her leggings and underwear exposing her vagina. He held the victim down. He touched

her breast under her bra and tried to lick her breast. The victim believed that she was going to be raped. Fortunately members of the public saw the incident and managed to intervene. They were able to stop the attack on the victim and they detained the appellant until the police were called. The appellant smelt of alcohol and had five wraps of cannabis in his pocket.

5. We have read the impact statements of the victim in this case. It is clear that this young girl has suffered severe psychological harm as a result of this offence.
6. The appellant is now aged 46. He has previous convictions for failing to provide a specimen of breath in 1997, two offences of driving with excess alcohol (one in 2002 and one in 2007) and in 2015 an offence of battery and being drunk whilst in charge of a child. He has no previous convictions for sexual offences.
7. There was a pre-sentence report. The author of that report considered that this offending was not a spontaneous and was not an impulsive act. The author noted that others and indeed the victim herself had noted that the appellant was hiding in the park and obviously preparing the assault before it occurred. The author of the pre-sentence report assessed the appellant as presenting a high risk of serious harm to children in the community, particularly teenage girls, and a high risk of harm to women, particularly lone females at night.
8. In his sentencing remarks the sentencing judge said, rightly, that being attacked by a stranger in a public place in this way was every woman's worst nightmare. The judge had no hesitation in concluding that the victim in this case had suffered significant, severe and long lasting psychological harm.
9. In terms of the Sentencing Council guidelines for sexual assault, he placed this assault therefore in Category 1 because of the severe psychological harm suffered and because of

the use of violence or threats of violence. In terms of culpability, the judge found that this was culpability A, higher culpability, because there was a significant degree of planning. In that regard the sentencing judge said this:

> "There is also evidence of you having been seen hiding in bushing in the days preceding this attack which points to the attack being planned. When this, and I note you dispute it, is combined with the obvious deliberate targeting of a young, lone female and the fact that you waited until it was getting dark to pounce, I find myself forced to the conclusion that this offence was not a spontaneous incident or drunken behaviour but an offence which involved a significant degree of planning and forethought on your part."

10. As a category 1A offence, the starting point for sentencing is four years' custody with a range of three to seven years' custody. If it had been a Category 1B offence, the starting point would have been two years and six months' custody, with a range of two to four years' custody.
11. The judge referred to the fact that the victim was only 15 years old and was specifically targeted as a particularly vulnerable victim. That was an aggravating factor, as was the timing of the offence and the public nature of the attack. Further, he noted that the offence was committed under the influence of alcohol and drugs and that was also an aggravating factor. The judge considered that there was some genuine remorse and the appellant had shown some insight into the pain and suffering he had caused. Those were mitigating factors which he reflected in the sentence.
12. The sentencing judge considered that, taking account of the aggravating factors and the fact that the appellant was only stopped by the physical intervention of others, this was one of the most serious offences of this type and justified moving outside the sentencing range for Category 1A offences.

13. He also found that the appellant was dangerous in the sense that that term is used in the Sentencing Code as the appellant presented a significant risk of causing serious harm to children and young women. He therefore considered that only an extended sentence was adequate.

14. In the circumstances therefore he considered that an appropriate custodial element of eight years' imprisonment would be appropriate, which he then reduced by 25 per cent to reflect the appellant's guilty plea. The total sentence therefore was an extended determinate sentence of nine years, comprised of a custodial element of six years and a three year extended licence period.

15. In his written and oral submissions, Mr McMinn for the appellant accepts that the level of harm meant that this offence was a Category 1 offence within the Sentencing Council Guidelines. He submitted however that the judge erred in categorising this offence as culpability A on the basis that it involved significant planning. He submitted that that view was based on the judge's view that the appellant had been seen hiding in the bushes in the days preceding the attack. That however, Mr McMinn submitted, was based on the observations of one witness who said that he had seen *someone* the previous day behaving strangely but he was not sure if it was the appellant. Mr McMinn submitted that the appellant denied that he had been in the park the day before and is particularly concerned that he is seen as somebody who has been found to be hiding in parks on a number of days planning an assault. Mr McMinn drew attention to the fact that there had been no Newton hearing in this case and the judge should not therefore have sentenced on the basis that the appellant had been in the park on previous occasions and he should not therefore have found there was significant planning.

16. We bear in mind that this was an extremely serious offence directed towards a lone vulnerable child when it was dark. The victim was attacked from behind, pushed to the ground and sexually assaulted. The victim understandably feared that she was about to be raped or suffer other violence. She has suffered severe long term psychological effects as a result of this offence. There are also a number of aggravating factors and limited mitigation. The question for us however is whether the sentence is manifestly excessive having regard to the Sentencing Council Guidelines on Sexual Assault.
17. Dealing with the guidelines, this is a Category 1 offence in terms of harm for two reasons. First, there was the severe psychological harm suffered by the victim; secondly, there was the use or threat of violence. Those placed the harm in the highest category, Category 1. Further, as the guidelines note, in a case of particular gravity reflected by multiple features of harm (and here there were two such features and it was a particularly grave case), that can merit an upward adjustment from the starting point.
18. Turning to the question of culpability, we consider that this offence undoubtedly involved planning, which the judge was entitled to see as significant planning. The appellant did not act impulsively. This was not a spontaneous act. It was not a case where the appellant happened to be coming out of a park and opportunistically attacked someone. Rather, there are factors present which enabled the judge to find that the appellant was planning an attack. The appellant was present in the park when it was getting dark. He followed his victim and was observed hiding behind trees to avoid being seen, preparing for an attack before he ultimately attacked the victim. Those factors suggest a clear element of planning which in the context of this offence the judge was entitled to regard as significant.
19. We do not consider that the judge was entitled to rely on any suggestion that the appellant

had been present in the park on previous days in the circumstances of this case. That allegation was disputed and the only witness could not be sure that the appellant was the man that he saw. Those factors must therefore be left out of account. Nonetheless, the other factors to which we have referred were capable of constituting significant planning in this case.

20. The judge therefore was entitled to place this in Category A in terms of culpability. The starting point then would be four years' custody. There were additional aggravating features, in particular and quite separate from the element of planning, the appellant specifically targeted a young vulnerable girl. That is a significant aggravating factor. The offence was carried out when it was getting dark and in a park where the victim might well be isolated. The appellant was under the influence of alcohol and drugs. Those aggravating factors would necessitate a very significant adjustment upwards from the four year custodial starting point. In addition, as this is a case of particular gravity with more than one harm factor, that would justify an upward adjustment to the sentence. The remorse gave rise to some mitigation but the judge was entitled to find that it was not of great significance in the circumstances of this case.

21. In all the circumstances, a custodial element towards the top of the range for a Category 1 offence would be appropriate given the particular circumstances of this offending. A custodial element in the region of six or seven years would clearly be appropriate. A custodial element of eight years, just outside the range and then reduced by 25 per cent to six years to reflect the guilty plea, was severe but we cannot say that it was manifestly excessive. The judge was entitled to find that the appellant was a dangerous offender within the meaning of the Sentencing Code. The nature of this offending and the pre-sentence report provided ample basis for that finding.

22. In the circumstances, an extended determinate sentence of nine years comprising a custodial element of six years and an extended licence period of three years whilst severe is not manifestly excessive. We therefore dismiss this appeal.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk