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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation Number:
[2024] EWCA Crim 757

CASE NO: 2023 03392 A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 25 June 2024

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE HOLGATE

MR JUSTICE HILLIARD

REX

v

JEMEL SOLOMAN HINES

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MS YIMI YANGYE appeared on behalf of the Applicant

J U D G M E N T

MR JUSTICE HILLIARD:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. 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 the offence. This prohibition applies unless waived or lifted in accordance with s.3 of the Act.
2. On 14 February 2023, in the Crown Court at Isleworth, the applicant (who was then aged 22) was convicted of rape.
3. On 30 August 2023, he was sentenced to 6 years and 6 months' imprisonment.
4. A co-accused, Abukar Abukar, was convicted of two counts of rape and sentenced to 7 years' imprisonment.
5. The applicant now renews his applications for an extension of time of 5 days in which to apply for leave to appeal against sentence and for a representation order after refusal by the Single Judge. We grant the extension of time. The delay was not the applicant's fault and we shall consider the application for leave to appeal on its merits.
6. On 2 April 2018, the victim (who was aged 15) was making her way from her care home to her mother's address. She was approached by a group, consisting mainly of boys, who invited her to "chill" with them and smoke cannabis and consume alcohol. The applicant (who was 17 years old at the time) and Abukar Abukar had not been part of this initial group. However, Abukar Abukar subsequently took the victim to some nearby garages, where he orally and vaginally raped her. Abukar Abukar and the victim subsequently returned to the group. The victim said that she was going home. The applicant and another male (who has never been identified) said that they would walk her to her mother's address. However, the unidentified male and the applicant took her through a park, where she was raped by the unidentified male, who wore a condom. The applicant had watched the unidentified male rape the victim. The applicant then dragged her into a field, where he raped her vaginally, ejaculating into her vagina. She then went to her mother's address, and

the offending was reported to the police the following morning.

7. The applicant was subsequently identified through DNA and was arrested in September 2018. When interviewed, he gave a prepared statement in which he denied any knowledge of the victim or of the events in question. Inevitably, there would have been some delay for a trial to take place but not of the order of magnitude which occurred here. At trial, his case was that what had happened was consensual.
8. The victim made a personal statement. She explained how frightened she had been by what had happened. She had moved to a different area and away from her foster carers. She had been affected by depression and anxiety. She was self-harming and cutting herself on a daily basis. She said she had made numerous attempts at suicide. She had had to move school, which had affected her preparation for her GCSEs and she did not in the event pass any of them. What happened, she said, had affected every area of her life.
9. The applicant was 22 years old at the time of sentence. He had convictions for a number of offences, although only one of them predated this offence. In September 2019, he had been sentenced to 54 months' detention for robbery, possession of a bladed article and possession of cannabis.
10. The applicant's maturity was assessed as low by the author of the pre-sentence report. It was said that his thinking and behaviour in relation to lifestyle, associates and drugs, and his lack of education, training and employment all contributed to the applicant's offending. He was assessed as posing a high risk of serious harm to the public.
11. A psychological report said that the applicant had described injuries to his arm, hand and thumb caused by weapons in an incident in 2018; and in 2019 he had been assaulted whilst in custody. He had been involved in fights on five occasions whilst in custody; there had been three disciplinary incidents with staff. It was thought that he met the criteria for a diagnosis of Post Traumatic Stress Disorder as a result of the incident in 2018.
12. There was material which spoke to a better side of the applicant. There were letters from members of his family and from his partner which described his desire to turn his life

around and efforts that he was making. He had done well on an employment programme in custody and had gained a number of certificates, evidencing his intention to make progress. He is to be commended for those efforts and we have considered this material very carefully. In addition, the applicant had written two letters to the judge. Amongst other things, he described some of the difficulties he had experienced whilst growing up, but also how he had taken part in education whilst in custody and had been a Wing Ambassador for the Open University. He apologised to the victim in the case; although he did not admit that he had committed the offence.

13. The judge's sentencing remarks were well structured and carefully considered. He said that the applicant had actively deceived the victim when he and the unidentified male had said that they were taking her home. The judge was satisfied that the applicant's approach to the victim had been premeditated and planned. He had watched whilst the other man had raped her. The applicant then moved in and prevented her getting away. He bit her neck, put her to the ground and raped her. The effect on the victim had been profound and extremely serious. There was severe psychological harm. She had been particularly vulnerable due to her personal circumstances. She was a child in care, under the influence of intoxicants, at night, without a phone, and feeling powerless within a strong group dynamic. There was a significant degree of planning and the applicant had been acting together with the unidentified male to commit the offence. For the purposes of the sentencing guidelines, the judge said culpability was in category A; harm was in category 2.
14. A category 2A offence has a starting point of 10 years' custody, with a range extending up to 13 years' custody for an adult offender. The judge said that there had been more than one factor present in relation to harm and to culpability. In addition, the victim had been taken to a secluded area and there was ejaculation. The applicant had been on a Referral Order at the time. He said that for an adult, the sentence would have been in excess of the 10-year starting point.
15. The judge also noted the delay which had occurred between the offence and sentence. He

said that the applicant's age was of paramount importance. His maturity was low. He took account of the reports, the references and the certificates. It was not suggested that PTSD was directly linked to the offending. He said that he would receive a reduction in the order of one-third from the adult sentence because of his age but said that he had also to take account of factors such as low maturity and delay. He said that the least sentence he could pass was one of 6 and a half years' imprisonment.

16. It is now argued on the applicant's behalf that the starting point of 10 years' imprisonment was too high and that the judge did not give sufficient weight to mitigating factors.

Ms Yangye on the applicant's behalf has advanced these grounds to best effect in submissions to us this morning and in her written grounds of appeal. It is said that there had not been significant planning and that there was not sufficient evidence to support a finding of severe psychological harm resulting from the offence. The trauma suffered by the victim could not be divorced from other elements in her background and it had in any event been aggravated by the delay in the case. In addition, insufficient weight had been given to the applicant's youth and immaturity, to the delay, to his PTSD, to efforts he had made to make progress whilst in custody and to the content of letters about him. We have given these submissions careful consideration.

17. The applicant was convicted after a trial and the judge was well placed to assess the facts of the case. He was, in our judgment, entitled to put the case into category 2 for harm. The victim was particularly vulnerable due to her personal circumstances, as outlined by the judge, and she had, after all, just been raped in the applicant's presence when the applicant then raped her for himself, and it was open to the judge to conclude that the consequences she described amounted to severe psychological harm. We acknowledge that her situation was already a difficult one, but it was made considerably worse by the applicant's offending. Expert evidence is not required: see *Chall* [2019] EWCA Crim 865. Culpability was properly assessed as falling within category A. The applicant had acted with the unidentified male; he had watched him rape her; there was certainly premeditation; and the

applicant and the unidentified male had deceived the victim by saying that they would take her home. They must have intended to take her to a location which was out of the way to enable them to commit their offences. Planning does not need to be sophisticated or lengthy to be significant: see Jones [2022] EWCA Crim 1066. In our judgment it was again open to the judge to conclude that there had been significant planning, involving the offender and the unidentified male, and that it was appropriate in all the circumstances to put the applicant into category A for culpability.

18. The judge then identified that the offence was aggravated because ejaculation had taken place; the offence was committed whilst the applicant was subject to a Referral Order; the offence was committed after dark; and the victim had been taken to a secluded place. These were references to the timing and location of the offence identified as potential aggravating features in the sentencing guidelines. The judge said that the overall effect was to move the case up from the 10-year starting point for an adult. In our judgment, his reasoning for this conclusion was sound.
19. It follows that the judge's final figure of 6-and-a-half years' imprisonment represented a considerable reduction from the term which he had initially identified. The Sentencing Guidelines for Children and Young Persons provide that where the court has considered a relevant adult sentencing guideline, it may be appropriate to apply a sentence broadly within the region of half to two-thirds of the adult sentence for those aged 15 to 17; although this is only a rough guide and it is not to be applied mechanistically. The judge referred to a reduction of one-third on account of age but then went on to say that he had also to take account of low maturity. He had the advantage of having seen the applicant during the trial. The overall reduction made by the judge for mitigating factors must have been greater than one-third and evidently took account of the applicant's personal circumstances and of the delay in bringing the case to a conclusion. The applicant had not, of course, helped himself in the intervening period and had committed further offences, some of which resulted in a custodial sentence.

20. The sentence passed upon the applicant was undoubtedly a severe one for a person of the applicant's age and maturity. However, in arriving at the sentence, the judge took account of all relevant matters and of the applicable sentencing guidelines. He was entitled to characterise the offence in the way that he did. He was well placed to balance the competing considerations, not least because he had heard all the evidence in the trial and had seen those involved. That is an advantage which we do not have. In these circumstances, and notwithstanding the able submissions of Ms Yangye, we are unable to identify any error by the judge or to find any arguable basis for saying that the sentence was in any way wrong in principle or manifestly excessive. Accordingly, these renewed applications must be refused.

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