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No: 2015/2093/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 6 November 2015

B e f o r e:

MR JUSTICE HICKINBOTTOM

THE RECORDER OF WESTMINSTER
HIS HONOUR JUDGE McCREATH
(Sitting as a Judge of the CACD)
R E G I N A

V

PAUL PERRY

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Miss A Fujita appeared on behalf of the **Appellant**
The **Crown** did not appear and was not represented

J U D G M E N T
(Approved)

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1. THE RECORDER: We start by paying tribute to Miss Fujita for the eloquence of her submissions on behalf of her client. She could have said no more.

2. This is an appeal against sentence brought with the leave of the single judge. On 9th April 2015 at the Crown Court at Maidstone the appellant was sentenced by His Honour Judge Joy on an indictment containing one count of sexual assault and one count of breach of a Sexual Offences Prevention Order. He had pleaded guilty to each count on an earlier occasion. He was sentenced on the first count to an extended sentence comprising a four year custodial term and an extension period of two years. On the second count he was sentenced to three years' imprisonment to run concurrently with the other sentence. A Sexual Harm Prevention Order was made until further order.

3. The circumstances of the offences can be stated briefly. On 30th December 2014 in the early evening the appellant was at a bus stop in Bexley Heath. It is abundantly clear that he was there for purposes other than merely catching a bus. The victim was also waiting for a bus. The appellant approached her and engaged in conversation with her. When she boarded the bus he made it his business to sit beside her. He told her that he gave hand massages and offered to give her one. She declined. He paid her compliments and enquired of her whether she had a boyfriend. He put his hands around her waist and pulled her towards him so that her head fell on his shoulder. He asked her to give him a hug, which she also declined. He took her by the hand and when she pulled away from him he took hold of her other hand and pulled it towards his leg. She again pulled her hand away, whereupon he put his hands on her upper thigh squeezing it. She reported the matter to the police who arrested the appellant on the following day. By the end of the interview which followed his arrest he had made full admissions and a regretful apology.

4. These offences need to be set in their context. Between 2002 and 2008 the appellant had committed a significant number of offences of dishonesty which ultimately led to some short sentences of imprisonment. On 17th October 2008 he appeared before the Bexley Magistrates and was convicted of an offence of sexual activity with a child, contrary to section 9 of the Sexual Offences Act 2003. He was made subject to a community order which it is to be noted he was later to breach, resulting in a sentence of 60 days' imprisonment in respect of the original offence. That sentence was imposed in February 2009.

5. On 12th July 2011 for an offence of sexual assault he was sentenced to 65 days' imprisonment which was suspended for two years. It was on that occasion that the Sexual Offences Prevention Order was made. The order had three prohibitions attached to it which may be summarised thus. He was prohibited from, first, sitting next to or directly opposite any female when travelling on any public transport if any other seat was available. Secondly, approaching any lone female save in the course of normal daily activities, and thirdly, entering any national railway network, bus station and so forth unless for a specific journey and then only with written permission from the appropriate authority. It follows that the activities in which he indulged on 30th

December 2014 constituted significant breaches of the order.

6. This was by no means the first breach of the order. In September 2011 he was sent to prison for 28 days for breaching the order, as well as being required to serve the suspended sentence to which we have referred. In October 2011 he was sentenced to a further suspended sentence for further breaches, three in number. In May 2012 he was again before the court for a further breach resulting in a community order. This community order was later varied to a sentence of immediate imprisonment when he breached its requirements. In October 2012 for two further breaches of the Sexual Offences Prevention Order, he was sentenced to 18 months' imprisonment. In August 2013 for two yet further breaches he was sentenced to concurrent terms of 12 months' imprisonment. In April 2014 he was sentenced to 14 months' imprisonment for yet another breach.

7. It appears that the circumstances of the breaches were similar to those of the current offences, involving him approaching young women in or around public transport. In so far as there was physical contact between him and these young women, it was not charged separately, the prosecution apparently taking the view that it was sufficient to proceed in respect of the breach of the order.

8. His persistent breaches of the order were an obvious aggravating feature of the offences for which he was sentenced in April 2015.

9. There is no doubt that the appellant has many difficulties in his life. He lives alone, but is supported by his loving parents. He has found it difficult to gain employment, not least because he has disability, both physical and psychological. He has friends but tends to attract people described in the pre-sentence report as being anti-social in their disposition. At the same time, however, he remains in denial of the true nature of his offending behaviour, insisting that it is not sexually motivated. Despite many interventions by the probation service and by others his attitude and behaviour have not improved.

10. The grounds of appeal complain of the length of the sentence passed in respect of the sexual assault and of the finding of dangerousness. No complaint is made, nor could it be, in respect of the sentences imposed for the breach of the order. His previous offending made it inevitable that a substantial sentence not far below the available maximum would be passed.

11. As to the length of the sentence for the sexual assault, the judge was taken to the Sentencing Council Definitive Guideline. He found that the offence fell within the harm Category 2. No complaint is made of this given the vulnerability of the victim and the period of time over which the incident took place. Nor is any complaint made of his placing the offence into culpability band A. There was a clear and significant degree of planning behind this offence. Accordingly, the starting point was one of two years' custody with a category range between one and four years. The fact that the offence was committed in breach of the order made it more serious, as did the

offending history in general.

12. It is submitted to us today that the judge must have decided that this offence would have merited a sentence of imprisonment of six years after trial. We accept that this must be the logic of the matter given that the appellant was entitled to and was given a discount of one-third to reflect his early guilty plea. Such a sentence would only be appropriate in respect of a category 1 offence and even then one of particular seriousness.

13. We are not to be taken to be saying for one moment that the ordeal of the victim in this case was anything less than extremely distressing for her. Nonetheless there are worse offences which call out for sentences of substantial length. It is the view of this court that this case fell at the top of the Category 2A range and that a sentence after trial in the order of four years or so would have been appropriate, discounting the sentence by one-third we think that the correct sentence would have been one of 32 months.

14. As to the other ground, given the way in which the sentencing hearing was conducted, it might be thought that the reduction of this sentence means that the question of dangerousness falls away. It does not. It was overlooked at the sentencing hearing that the conviction to which we have referred which was recorded on 17th October 2008 for an offence of sexual activity with a child is an offence to be found in schedule 15B of the Criminal Justice Act 2003 as amended. Accordingly, had the court applied section 226A of the Act correctly it would not have fallen into the error of believing that in order to qualify for an extended sentence the sentence passed upon this offender would have to have been four years or more. In other words this was, as it is put in the statute, a condition A case and not a condition B case.

15. In deciding whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences, in other words assessing dangerousness, the court is obliged (see section 229) to take into account information about the nature and circumstances of the offence, about the nature of previous offending, about any pattern of behaviour and about the offender. The court knew a good deal about the appellant. It had before it information about the current offence, about his previous offending which disclosed a worrying pattern of behaviour, and about him. There was a report by a clinical psychologist which we have read and which gave useful background information about him. There was also a carefully considered and helpful pre-sentence report which contained the following passage:

> "Mr Perry's offending is becoming more entrenched with each new offence, however he continues to take no responsibility for his behaviour. Over the past two years he has been on licence on three separate occasions and has committed a further offence on each of these occasions. He now has a pattern for sexual offending against children and an even clearer pattern for breaching SOPO and licence conditions. I therefore assess his risk of harm towards children as high, risk of harm towards

public as medium and risk of re-offending as high."

We recognise of course that it is one thing to predict further offending but another thing to predict serious harm arising from it.

16. Our attention has been drawn to a particular passage in the familiar case of Lang [2005] EWCA Crim. 2864, at paragraph 17(iv):

> "(iv) If the foreseen specified offence is not serious, there will be comparatively few cases in which a risk of serious harm will properly be regarded as significant. The huge variety of offences in Schedule 15, includes many which, in themselves, are not suggestive of serious harm. Repetitive violent or sexual offending at a relatively low level without serious harm does not of itself give rise to a significant risk of serious harm in the future. There may, in such cases, be some risk of future victims being more adversely affected than past victims but this, of itself, does not give rise to significant risk of serious harm."

We of course accept that as an accurate statement of the law, but we note that the information which we have about this offender goes far beyond information about his current and previous offending and is amplified in the way we have indicated already.

17. It is in those circumstances that we are wholly satisfied that the continuing and entrenched nature of his offending, coupled with those against whom it is directed, gives rise to a clear and significant risk to that section of the public if no one else of serious harm, whether physical or more likely psychological. It is important not to lose sight of the reality that this appellant on frequent occasions has accosted young and vulnerable women in a manner which is entirely random without any regard to or knowledge of their vulnerability. It would not require a particularly high degree of sensitivity on the part of the future victim for her to suffer serious psychological harm. We note that in relation to the current offence he made physical contact with his victim, as he has with others on other occasions. We have no doubt that he presents a risk of the kind contemplated by the statute, that is to say the risk that we have already identified arising from the commission of further specified offences. The judge was fully entitled to make the finding that he did.

18. It follows that we allow this appeal to the limited extent of quashing the sentence on count 1 of the indictment and substituting for it a sentence of five years' imprisonment, the custodial term of which is two years and eight months, with an extension period of two years and four months. All other sentences and orders remain undisturbed. To that extent and that extent only this appeal is allowed.

We add that we have substituted this sentence conscious that for a very short period of time the appellant will be subject to licence in respect of the offence of sexual assault while still serving his sentence for breach of the SOPO. The period will, however, be of

only a few weeks and in those circumstances this is a matter of no consequence.