

Neutral Citation Number: [2018] EWCA Crim 530

Case No: 201800231/A2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 14 March 2018

B e f o r e:

LORD JUSTICE TREACY

MR JUSTICE JULIAN KNOWLES

SIR PETER OPENSHAW

R E G I N A

v

JACOB COOK

Computer Aided Transcript of the Stenograph Notes of
WordWave International Ltd trading as DTI,
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(Official Shorthand Writers to the Court)

Mr M Goldwater appeared on behalf of the **Appellant**

J U D G M E N T LORD JUSTICE TREACY:

1. This is an appeal against sentence brought by leave of the single judge. The offender was sentenced on 30th March 2017 at Lincoln Crown Court having previously tendered early guilty pleas. There are five counts on the indictment. Count 1 alleged attempting to cause or to incite a child to engage in sexual activity for which a sentence of three years' imprisonment was imposed. Counts 2 to 4 involved making indecent photographs of a

child. Count 5 involved possession of an extreme pornographic image. For those offences, which involved separate offending to that on count 1, the appellant was sentenced to shorter concurrent terms of imprisonment. In addition, he was made the subject of a Sexual Harm Prevention Order for a period of seven years.

2. The facts show that between December 2015 and the end of March 2016, a police officer posing as a 13-year-old female was approached online by this appellant. The appellant sought to gain the trust of what he thought was a young girl of 13 and began to steer the conversations in a sexual direction. He began by asking her what sexual experience she had had and gradually became more explicit. He reached a stage in which he offered to help the fictitious child through her first experience of masturbation and later asked if she would allow him to take her virginity. There were repeated requests for a picture of her and on one occasion he sent a picture of himself with an obvious bulge in his underwear.
3. When it became clear that the appellant was not going to receive the images he was asking for, the tone of his messages changed, and he brought them to an end at the end of March 2016. Prior to that, the picture which emerges is one of repeated and progressively insistent messaging of a sexual nature eventually inciting the girl to agree to full sexual intercourse.
4. This offender was arrested. At the time he was in the process of applying for a DBS check as he wanted to work with children as a sports coach. He was not frank in police interview. His mobile phone was examined and images at various levels were found, including 32 stills at category A and 74 at category B. In addition, there were two extreme images relating to bestiality between a female and a dog. The category A and B images related to girls aged eight to ten.
5. The appellant is now aged 31. He was of previous good character. There was a

pre-sentence report which contained full admissions of his offending and an acknowledgement of an attraction to underage females.

6. In the light of the appellant's openness, the author of the report considered that the appellant was capable of being managed in the community and proposed either a suspended sentence order with requirements specific to addressing the appellant's offending or in the alternative a community order with a similar programme.
7. When the judge passed sentence he considered the guideline for an offence contrary to section 10 of the Sexual Offences Act 2003. Because penetrative activity had been incited, he put the case into harm Category 1 and assessed culpability at Level A on the basis of grooming behaviour. For that level of offending a starting point for the full offence is five years with a range of four to 10 years.
8. The grounds of appeal urge that the judge fell into error in putting the case into Category 1A when the case should have been classified as Category 3A. Counsel had initially advised that there were no tenable grounds of appeal, but about nine months later he had become aware of the decision of this court in *R v Gustafsson* [2017] EWCA Crim. 1078. That decision was merely one of a series made in recent years holding that where the case involves inciting rather than causing sexual activity and where there was no physical contact with or any communication with a real child, Category 3A is the correct category. Those decisions include *R v Buchanan* [2015] 2 Cr.App.R (S) 13, *Attorney General's Reference No 94 of 2014* (Baker) [2014] EWCA Crim. 2752 and *Attorney General's Reference No 94 of 2015* [2015] EWCA Crim. 2384.
9. In the light of those authorities, Mr Goldwater's submission as to mis-categorisation is correct. A case falling within Category 3A has a starting point of 26 weeks and a range between a high-level community order and three years' custody. In the present case, we

think that the custody threshold was crossed given the period of time over which this appellant persisted, the fact that what he incited was full sexual intercourse with a girl he knew to be well under age (as he believed to be the case), and the period of time over which he offended. In addition, the matter is aggravated by the counts alleging possession of indecent images of children or of extreme pornography. We also have regard to a significant disparity in age between this offender and his intended victim.

10. In those circumstances, we conclude that a sentence of 21 months would have been appropriate prior to credit for guilty plea, for which a full one-third reduction is due. We are now in the position that this offender has on any view served more time than a correct application of the guideline would have mandated. In the circumstances we allow the appeal by substituting a term of 14 months on count 1 in place of the three years imposed below. The other sentences remain unaffected. The effect of our order will result in this offender's immediate release.

WordWave International Ltd trading as DTI hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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