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No: 2019 00408 A3

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday 17th April 2019

B e f o r e:

LORD JUSTICE HADDON-CAVE

MR JUSTICE GOSS

THE RECORDER OF GREENWICH

HIS HONOUR JUDGE KINCH QC

R E G I N A

v

YASIR JIBRAN

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Mr Nick Lane appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. LORD JUSTICE HADDON-CAVE:

2. On 22nd October 2018 in the Crown Court at Newcastle Upon Tyne the appellant, Yasir Jibrán (now aged 35), changed his plea on the first day of trial to guilty before His Honour Judge Spencer. He was charged with one count of attempting to meet a child following sexual grooming, contrary to section 1(1) of the Criminal Attempts Act 1981.

3. On 14th January 2019, he was sentenced by another judge, Her Honour Judge Moreland, at Newcastle Upon Tyne, to 21 months' imprisonment for this offence. Having been convicted of an offence of this sort, various other standard orders were made.

4. A co-accused, Ashfaq Ahmed, was charged with a similar offence (count 5) together with various other offences of a similar nature. He received eighteen months' detention on count 5 consecutive to concurrent sentences of six months' detention on the other counts (counts 1-4). He was aged 19.

5. The appellant, Mr Jibrán, appeals against sentence with leave of the Single Judge.

6. The facts can be briefly stated. This case involved a group called Guardians of the North, who are a vigilant group who set up fake profiles of children online with a view to catching adults who attempt to sexually groom and incite children to engage in sexual activity or to meet children following sexual grooming.

7. Between 21st February and 15th April 2017, the appellant's co-accused, Mr Ahmed, had been in communication with various decoy profiles set up by Guardians of the North on Grindr. These decoy profiles purported to be boys aged 13-15 years old. Ahmed sent images to the decoy profiles of his erect penis, and asked for nude pictures from the decoys and attempted to get contact numbers. He also engaged in sexualised conversations on Grindr with these profiles.

8. Between 17th June and 19th April 2018, Ahmed was in contact with the appellant on Grindr. They had not previously met. On 19th April Ahmed sent a message to the appellant saying, "Speak to the 14-year-old I told you about. I want to know what he is but watch your tracks as don't want you to get caught." Ahmed sent two images from one of the decoy profiles.

9. On 22nd April 2017 the Guardians of the North set up another fake profile. On 23rd April the decoy profile received a message from Ahmed. He said, "Hey, where are you?" The decoy replied, "Newcastle. You?" Ahmed responded, "Age?" The decoy replied, "15". Ahmed asked for "Pics". The decoy said, "I live with my mum still". Ahmed said, "Okay. I accom [presumed to mean 'accommodate you']. Got cock okay. What fun you after?" A picture of a young teenage male was then sent to the decoy profile.

10. Shortly afterwards, Ahmed sent a photo of an erect penis saying, "Are you after fun? Suck cock or anything?" Later, he sent a message saying, "If you want to come and meet I won't force you into anything you don't want to do." The decoy replied giving a location at Kirkdale Green. When the decoy asked, "What are we gonna do?" Ahmed replied, "What do you wanna do? Fuck, suck anything." At 9 pm Ahmed sent a message, "Meet now. My house. Can pick you up." A little later he messaged, "I'm coming with my mate."

11. There was further contact between Ahmed and the appellant, details of some of which the police were not able to recover. Ahmed sent the profile image of the decoy to the appellant and told him, "Message this lad. He is 15." The appellant asked, "What did he say to you?" and Ahmed replied, "Think he might meet".

12. There was direct contact between the appellant and the decoy profile. At 8.30 pm on 23rd April the appellant sent a message, "Up for fun?" The decoy responded, "Hi. Yeah. I'm 15 though." The appellant said, "That's fine if you're up for it. Meet now. I try." The decoy responded, "What we gonna do?" The appellant replied, "Kiss, suck, wank. Cock pic or whatever you want to do." The appellant then sent further messages about meeting up, and the decoy replied, "10 when my mam goes to bed".

13. There was further contact between Ahmed and the appellant on Grindr. At 8.30 pm that evening the appellant messaged Ahmed, "Wanna go with me. He is from Gateshead." Ahmed asked, "Is he saying yes? What if he is fake?" The appellant replied, "Well, said yes". Ahmed warned the appellant, "Remember, he might be fake or Dark Justice, so cover your steps". At around 9 pm the appellant messaged, "He just replied to come at 10. He said, 'Then my mum will be in bed'."

14. The appellant and Ahmed then travelled to Kirkdale Green. They arrived at 10.05 pm. Representatives of the Guardians of the North were waiting for them and detained them, pending the arrival of the police. Officers then arrived and both defendants were arrested. Officers recovered a bag from the defendants' vehicle. Inside were condoms and lubrication sachets.

15. In interview, the appellant said he was just dropping off his friend Ahmed, who was meeting an unknown person. He said he and Ahmed met through Grindr the previous week and had been involved in a sexual relationship. He had picked up Ahmed earlier that evening and they had agreed to go cruising and engage in sexual acts with each other. He had no idea who Ahmed was meeting. Ahmed had sent him an image of a male asking him to have a look at the profile to see if he could establish if he were genuine. He was told by the profile that he was 15, but did not tell Ahmed that until they met up. He had no intention of doing anything with a child and he did not know that Ahmed intended to meet the child that night. He admitted asking the child to send images, but said that was in order to establish if the account was fake.

16. The appellant is now aged 35, as we have said. He has not previously appeared before the courts.

17. In his pre-sentence report the author said that as the appellant was a Muslim in the Islamic community he had been unable to come out as gay and said he felt inhibited in his choice of sexual and emotional partner. He said that he had connected with his co-accused Ahmed online and thought that there was a possibility of a long-term relationship. He said his motivation was simply going along with the co-accused's suggestions to appear like he was colluding with the co-accused rather than a manifestation of his being sexually attracted to children. He was a highly qualified man with two Masters degrees and intended to begin a PhD. He said he provided financial support to his ailing parents in Pakistan. He had never had a long-term relationship. He was assessed as posing a low risk of serious recidivism and of general reoffending. The assessment of the risk of him being a sexual recidivist was medium. He was assessed as posing a medium risk of causing sexual harm to male children. Given that this was his first offence, the author of the pre-sentence report said the court might consider an alternative to a custodial sentence. A 24-month order with 20 days RAR and a requirement to attend the Horizon accredited programme was proposed.

18. In her careful sentencing remarks, the sentencing judge said in respect of the offence of attempting to meet a child following sexual grooming that she had in mind the observations of the Court of Appeal in *R v Solanki [2018] 1 Cr App R (S) 34* and the culpability of the defendant charged with the offence. There were no factors indicating raised harm because no child was or could have been harmed. Culpability was raised for two reasons: Ahmed and the appellant intended that penetrative sexual activity should occur and they were acting together; and they both intended to engage in penetrative sexual activity with a 15-year-old boy. The starting point was two years, with a range of one to four years. It was common ground before the judge that this was a Category 2 offence under the guidelines.

19. Her Honour Judge Moreland, having sentenced first of all Ahmed for counts 1-5, then turned to the appellant, Mr Jibrán, and said this:

"So far as you are concerned, Jibrán, you met your co-accused on Grindr in the week before 23rd April. Within a day or two you were discussing with him a 14-year-old boy whom he had contacted and who forms part of the counts on this indictment, at least the decoy profile, and discussing with him other underage profiles. It was clear from the conversations recovered that you both had a common interest in finding partners for sex and that included underage boys.

I repeat what I said to your co-accused: I appreciate that you may have had difficulties in understanding and expressing your sexuality, but that provides no explanation or excuse for acting together with your co-accused to find underage boys for sex. Your contact with Ahmed culminated in your trip with him to Kirkdale Green. I am satisfied you believed that you were going to meet a 15-year-old boy, and that you and Ahmed both intended that you should both engage in penetrative sexual activity with that boy.

I bear in mind that I am sentencing you for a single offence. You are a mature man, and I take into account what I have heard about your abilities and good qualities spoken of in the pre-sentence report and in the reference provided to me. I will not repeat what I have said about the categorisation of this offence.”

Judge Moreland then went on to take a starting point of two years and to give the appellant 10% credit for plea, arriving at a net sentence of 21 months.

20. We have read carefully all the papers in this case and have been very much assisted by the able and succinct submissions of Mr Lane of counsel on behalf of the appellant. With admirable clarity Mr Lane puts forward two grounds of appeal: first, he submits that the judge adopted a starting point of two years which was manifestly excessive; and secondly, that the judge erred in not suspending the sentence in this case.

21. As regards the first ground of appeal, Mr Lane makes four submissions: first, that the actual direct contact between the appellant and the decoy (in this case, on the web) was less than 30 minutes; second, that whilst images were sent by the appellant, there was no evidence of any sexual images; third, there was no evidence that the appellant sought to mislead the decoy about his age; and fourth, there was no offer of a gift or financial inducement as part of the grooming.

22. As regards the second ground of appeal, Mr Lane makes the following submissions: first, the appellant has no previous convictions; secondly, the appellant was assessed as of low risk of reoffending; thirdly, the appellant has been assessed as suitable for the Horizon programme; and fourthly, the appellant has personal mitigation, in particular the financial support that he gives to his aged parents in Pakistan.

23. We have listened carefully to Mr Lane’s submissions on behalf of the appellant. The indictment in this case was framed in the terms of an *attempt* to meet a child following sexual grooming, contrary to section 1(1) of the Criminal Attempts Act. It is common ground, and rightly accepted by Mr Lane, that the offence charged is the equivalent of the offence under section 15 of the Sexual Offences Act 2003, which provides, in material part, as follows:

”15 Meeting a child following sexual grooming etc.

(1) A person aged 18 or over (A) commits an offence if-

(a) A has met or communicated with another person (B) [on one or more occasions] and subsequently-

(i) A intentionally meets B,

(ii) A travels with the intention of meeting B in any part of the world or arranges to meet B in any part of the world,

or

(iii) B travels with the intention of meeting A in any part of the world,

(b) A intends to do anything to or in respect of B, during or after the meeting mentioned in paragraph.

(a)(i) to (iii) and in any part of the world, which if done will involve the commission by A of a relevant offence,

(c) B is under 16, and

(d) A does not reasonably believe that B is 16 or over.”

The offence could have been charged as a section 15 offence. It was rightly treated by the judge and counsel as the equivalent to a section 15 offence.

24. It was also, as we have observed, common ground that this was a Category 2 offence. Whilst there was no question of actual harm because the victim in this case was a decoy, the offence fell into Category 2 because the statutory factor indicating raised culpability of offenders acting together with others to commit the offence was here present. The starting point for a Category 2 offence was two years' custody, with a category range of one to four years.

25. Mr Lane's primary submission was that this was a case which was going to remain inchoate because the victim in this case was, as we have described, not a child but a decoy.

26. This submission was squarely dealt with by the Court of Appeal, Criminal Division, in the case of Solankito which the judge referred. In paragraph 20 of Solanki, Treacy LJ said as follows:

”The section 15 offence is not concerned with sexual activity which in fact takes place after a meeting. The *actus reus* is present if the offender travels to meet with the intention of committing a sexual offence. The absence of a live victim in this case is reflected by the fact that there are no raised harm factors. That does not, however, impact on a finding of raised culpability. Thus, it seems to us that the absence of a live victim is already largely reflected by placing the case within Category 2. For these reasons the points made do not greatly avail the

appellant.”

Similar, if not identical, reasoning applies in this case to the submission of Mr Lane.

27. The key point in this case as far as the judge was concerned was the fact that it was clear that the appellant and Ahmed were intent on having penetrative sex with the putative underage boy; there was little doubt about this in view of the fact that a bag was found in Mr Ahmed’s car containing condoms and lubricants, and there had been exchanges on the web which made this clear. That factor was, to the judge’s mind, a significant feature going to culpability.

28. Whilst the other points made by Mr Lane have some force, the question which this Court has to determine is whether or not the starting point taken by the judge, which was the designated starting point on Category 2 in the guidelines, was manifestly excessive. In our judgment it was not. Indeed, the judge is to be congratulated on the clarity and succinctness of her sentencing remarks, which reflected very clearly the logic of her analysis, which, as we have said, fitted exactly within the purview of Solanki. We do not think we can improve on the remarks which we have quoted above of the sentencing judge. We therefore reject the first ground of appeal.

29. Turning to the second ground, in view of the seriousness of this offence, the fact that it was conducted in concert with another adult and the age of this appellant, who was a mature man of 35, all those factors, in our view, militate against the suspension of the sentence. We see nothing wrong with the judge’s decision either in principle or in fact in concluding that only an immediate custodial sentence would have reflected the gravity of this offence. We therefore reject the second ground of appeal.

30. Accordingly, this appeal is dismissed.

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

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