

Neutral Citation Number: [2019] EWCA Crim 1234

No: 201901872/A3

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday 28 June 2019

Before:

LORD JUSTICE LEGGATT

MR JUSTICE NICOL

MR JUSTICE BUTCHER

R E G I N A

v

JOHN HOGG

This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Mr L Kerr appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. MR JUSTICE BUTCHER: The appellant John Hogg having pleaded guilty in front of the magistrates was committed for sentence to the Crown Court. On 10 May 2019 Mr Recorder Doig sentenced him as follows. For an offence of making indecent photographs of a child, the images being in Category A, to 16 months' imprisonment; for an offence of making indecent photographs of a child, the images being in Category B, to six months' imprisonment concurrent; and for an offence of making indecent images of a child in Category C to three months' imprisonment concurrent. A victim surcharge was also imposed.

2. The Registrar of Criminal Appeals has drawn to our attention that no victim surcharge order should have been made, as in relation to offences committed between 1 April 2007 and 30 September 2012 a surcharge was to be imposed only if the sentence included a fine, which this did not. the regime under the Criminal Justice Act 2003 Surcharge Order 2012 only applies when all the offending was committed after 1 October 2012. That was not the case here. Accordingly no victim surcharge ought to have been imposed.

3. In relation to the sentence of imprisonment which the Recorder imposed, the appellant appeals to this court with the leave of the single judge.

4. The facts may be simply stated. On 16 October 2018 police officers executed a warrant at the appellant's address. He was arrested and a laptop seized. The laptop was examined: 67 Category A indecent images of children, 11 of which were moving images, were recovered; 27 Category B images of children, two of which were moving images, were found; and 28 Category C images, one of which was a moving image, were also found. It was also observed that there was evidence of searches for indicative titles relating to indecent material which had been deleted, along with access to videos with paedophilic titles which had also been deleted. There were live and accessible images available to view, some of which had been created by the use of peer to peer software. A video file was recovered with a warning from European police which is used as a deterrent for those using peer to peer software to search for such indecent images. That was date stamped on the day before the appellant's arrest.

5. Sample images showed male and female children between the ages of five and 12 being penetrated by adult males and sex toys. One of the children was in distress. Another was bound. In total there was one hour 13 minutes of Category A moving images.

6. The appellant accepted in interview that he had viewed indecent images and got sexual gratification from them. He said that he had started viewing such images when he was living in Dubai in 2012. He was ashamed of his behaviour.

7. In sentencing the appellant, the Recorder noted that the appellant was aged 69. The period in which he had been using internet images of children was one of some six years. He described the offending. He said that he bore in mind the appellant's age and good character. He said that the starting point was one year's custody for possession of Category A images. Here there were a number of Category A images but also images in Categories B and C. He said that there were a number of aggravating features, including the age and vulnerability of the children, that they included children bound and distressed, the length of the offending, that there were different children involved and the use of peer to peer software. The Recorder said that he had accepted the appellant was extremely remorseful. He noted the content of the pre-sentence report, including that the appellant had had a good career and that he had caring responsibilities for his son and stepdaughter. He said that the offending passed the custody threshold and that the starting point should be two years. That was reduced after credit for plea to the sentences we have already set out.

8. We consider that the appellant cannot complain about the length of the term imposed. The Recorder was sentencing for three offences concurrently. There were various aggravating factors which were identified by the Recorder correctly. The Recorder took into account the mitigating factors.

9. Mr Kerr has today submitted to us, however, that the sentence of imprisonment, although its length cannot be complained about, should have been suspended. The Recorder gave little consideration to whether the sentence should be suspended or at least no detailed consideration of that issue appears from his sentencing remarks. We consider that the sentence ought to have been suspended. We have had regard to the appellant's age, his previous good character and the assessment in the pre-sentence report that he had a low risk of re-offending and a low risk of sexual re-conviction. Applying the guideline as to the circumstances when a sentence of imprisonment may be suspended, we consider that this was not a case in which it can be said that the appellant now poses a risk to the public, especially as there will be a Sexual Harm Prevention Order in place. He has no record of poor compliance with court orders, there is strong personal mitigation, and his being in custody will have an adverse effect on others. We do not consider that appropriate punishment can only be achieved by immediate custody and the Recorder did not give any reasons why that was so. On that basis we consider that the sentence should have been suspended for a period of two years. There should however be a rehabilitation activity requirement of 30 days to be performed in the next 12 months. Accordingly, we will vary the sentence imposed such that it is one of 16 months' imprisonment suspended for two years. We impose a rehabilitation activity requirement of 30 days. There should be no victim surcharge. To this extent the appeal is allowed.

10. Mr Kerr, do we need to explain to Mr Hogg the consequences of that?

11. MR KERR: My Lord, no. I will do so. Thank you.

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

Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk

Crown copyright