

Neutral Citation Number: [2019] EWCA Crim 1446

No: 2018 02824 A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 28th February 2019

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE STUART-SMITH

THE COMMON SERJEANT OF LONDON
HIS HONOUR JUDGE MARKS QC

R E G I N A

v

D.H.

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Ms Beth O'Reilly appeared on behalf of the **Appellant**

J U D G M E N T
(As approved)

1. **THE COMMON SERJEANT:** On 3rd May 2018, before His Honour Judge Lodge sitting in the Crown Court at Basildon, this appellant pleaded guilty to a total of thirteen offences: namely, one offence of administering a substance with intent contrary to section 61 of the Sexual Offences Act 2003, one offence of rape of a child under the age of 13, one offence of assault by penetration of a child under the age of 13, two offences of sexual assault of a child under the age of 13, one offence of distributing indecent photographs of a child, one offence of voyeurism, three offences of taking indecent photographs of a child and three offences of making indecent photographs of a child. In relation to the offence of rape of a child under 13 (count 2 of the indictment), he received an extended sentence of 26 years' imprisonment, of which eighteen years was the custodial element with an eight-year extended licence. With regard to the remaining offences, he received concurrent determinate sentences ranging from eighteen months to twelve years. He now appeals against sentence with the leave of the Single Judge.
2. The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences and no matter may be reported in relation to the case if it is likely to lead to any member of the public identifying the victims of these offences.
3. The offences almost all involved the appellant's 10-year-old daughter. In short, one evening on 14th October 2017, when the child's mother was away from the family home, he drugged her with Nytol and then raped her and indecently assaulted her manually and orally, at the same time videoing this activity. He later distributed the footage taken during the course of these events.
4. Subsequently a variety of indecent images of Category A, B and C of both his daughter and other children aged between 6 and 13 were recovered from a hard drive and an iPhone found at his home.
5. The count of voyeurism related to a covert recording that he had made of his daughter having a shower in the bathroom, the film being done on a camera which he had concealed in that room.
6. Without going into more detail in relation to these offences, which for the purposes of this appeal is unnecessary, it suffices to say that it is difficult to imagine a worse case of its type. The appellant's behaviour in relation to these events was so utterly depraved as to be almost beyond belief.
7. The appeal gives rise to a single discrete point, namely the amount of credit to which the appellant was entitled for his guilty pleas. The judge allowed a discount of 25%, whereas it is maintained on behalf of the appellant that he should have allowed the maximum of one-third. Indeed, following the sentence hearing on 14th June last, Ms O'Reilly, who appeared then for the defence as she does today, applied for the case to be relisted before Judge Lodge under the slip rule, in order that she could argue that the judge had fallen into error in not according the defendant (as he then was) full credit. The case was so listed and argued on 2nd July last, but the judge declined to accede to the submissions made to him.

8. The issue as to the credit to which the appellant was entitled arises in the following way.
9. The appellant was arrested on 26th January 2018. His home was searched and various items were removed. He was interviewed and then bailed.
10. He was rearrested on 4th February and reinterviewed the following day.
11. The next day, 6th February, he appeared before the magistrates' court and was charged with three counts of making indecent photographs of a child and one count of voyeurism. He indicated through his solicitor that he would not be contesting these charges.
12. On 6th March last, he appeared for the first time at the Crown Court at Basildon when a PTPH was due to take place. An indictment had been uploaded on to the digital system the previous day, but it did not include allegations of rape, sexual assault or administering a substance with intent. That same day an application was made to transfer the legal aid, which was granted. Thereafter a joint application was made for the case to be adjourned so that the defendant's new lawyers could take instructions and the prosecution could review the material in the case - no doubt with a view to determining what additional counts should be included in the indictment.
13. In the event, on 6th April, an amended indictment was uploaded on to the system to include the new counts that had by now been added.
14. On 20th April a telephone hearing took place, at which of course the appellant was not present.
15. On 3rd May the appellant appeared at the adjourned PTPH and pleaded guilty to all thirteen counts in the indictment.
16. As the Sentencing Council Guidelines in relation to Sentence for a Guilty Plea make clear, in the ordinary course of events where a guilty plea is indicated at the first stage of proceedings a reduction of one-third should be made. The first stage would normally be by the first hearing at which a plea or indication of plea is sought and recorded by the court. As will be clear from the history of proceedings in this case which we have outlined, the only reason why prior to 3rd May the appellant did not plead guilty to nor indicate such a plea to the counts of administering a substance with intent, rape, assault by penetration, sexual assault and distributing and taking indecent photographs is because it was not until then that he had any opportunity to do so. Thus it is that he could not have indicated at the magistrates' court that he intended to plead guilty to those offences with which he was not then charged. That being the case, it would be wrong to deprive him of the full one-third discount to which in our judgment, given the circumstances, he was entitled.
17. Accordingly, we propose to allow the appeal by quashing the sentence on count 2 and replacing it with a sentence of 24 years, of which sixteen years will be the custodial element with the eight-year extended licence remaining in place. That being the lead sentence, it is unnecessary for us to take any steps with regard to the sentences imposed in

relation to the other offences. To that limited extent, this appeal is allowed.

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165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400

Email: Rcj@epiqglobal.co.uk