NCN [2019] EWCA Crim 1588
No: 201802348/B2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 31 July 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE JULIAN KNOWLES

SIR JOHN ROYCE
R E G I N A
v
JEFFREY L

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Mr G Underhill appeared on behalf of the **Appellant**

Mr I Wright appeared on behalf of the **Crown**

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

SIR JOHN ROYCE:

1. Jeffrey L is now aged 51.

2. On 5 March 2018, in the Crown Court at Swansea, he was convicted of various sexual offences. On 22 May 2018 he was sentenced as follows. On counts 1, 2 and 3, counts of indecent assault, he received 6 months' imprisonment. On counts 4 and 5, indecency with a child, he received 4 years' imprisonment concurrent. On counts 6 and 7, indecency with a child, he received a sentence of 11 years under section 236A of the Criminal Justice Act 2003, consisting of a custodial term of 10 years and an extended licence of 1 year. On counts 9, 10 and 11, counts of rape, he received a sentence of 19 years, under section 236A, consisting of a custodial term of 18 years and an extended licence of 1 year. On count 13, rape of a child under 13, he received a sentence of 19 years, under section 236A, consisting of a custodial term of 18 years and an extended licence of 1 year. Finally, on count 14, sexual assault, he received a sentence of 6 months' imprisonment. All those sentences were ordered to run concurrently. A sexual harm prevention order was made until further order. Also there was a restraining order imposed until further order.

3. He appeals by leave of the single judge.

4. The Registrar has noted that the sentences on counts 6 and 7 were unlawful in that there was a maximum sentence available to the judge of 10 years and the sentences that he passed on those counts were 10 years plus 1 year extended licence. Therefore, those sentences were unlawful. We indicate, at this stage, that we propose to allow the appeal on those counts by reducing the sentence to 9 years plus 1 year extended licence. There is no dispute between the Crown and the appellant that that is the appropriate course.

5. The usual reporting restrictions, under the Sexual Offences (Amendment) Act 1992, apply in relation to the prohibition of any publication which is likely to lead members of the public to identify the person as the victim of these offences.

6. The background facts were these. On 19 September 2016 police officers received a referral from Pembrokeshire Social Services after MH had disclosed to them that her daughter, HF, had been raped by the appellant (MH's ex-husband). The appellant sexually abused HF from when she was between 8 years and 15 years.

7. The appellant had begun a relationship with HF's mother in 1999 when HF was aged 7. The couple later married. The appellant groomed HF: he began to kiss and touch her from the age of 8. The offending progressed after the appellant moved into a house in Newport. He forced HF to masturbate him four or five times. The sexual abuse developed when the appellant forced his penis into HF's mouth on approximately six occasions. When HF was 9 they moved to Droitwich. Sexual offending escalated

further: the appellant performed oral sex upon HF and raped her repeatedly. Over a period, when HF was between 9 and 10, the appellant raped her approximately twice a week and ejaculated inside her each time. He told HF that no one would believe her and threatened to prevent her from seeing her father if she told anyone. The offending only stopped after HF moved in with her father. The appellant raped her again during the summer of 2007 when HF (then 12) went to visit her mother. He continued to assault her when she was 15 by touching her leg when they were in a car together.

8. He was interviewed by the police on 26 October and denied the offences.

9. There was before the court a victim personal statement from HF and it was clear that her life she said had been completely ruined by what had taken place.

10. The appellant was aged 50 at sentence. He had seven convictions for 15 offences between 1979 and 1989. None of them were relevant to the offences with which the Recorder had to deal.

11. When passing sentence, the Recorder pointed out that the appellant had committed these offences against HF when she was aged between 8 and 15, her victim personal statement described both childhood and her relationship with her mother as "completely ruined". She had had difficulty at school and had self-harmed. It was dreadful offending, said the Recorder, committed over a long period, against a child in the appellant's care.

12. In further sentencing remarks the Recorder referred to the guidelines as follows:

    i. "As to the Guidelines, I place Counts 1, 2, 3, 4, 5, 6 and 7 and 14 into category 3A. I place Count 8 into category 2A. As to the offences of rape in Counts 9, 10, 11 and 13, whilst each individually may fall within Category 3A, I have to reflect the fact that this was a course of conduct where you committed very many rapes over a period of time against a young child. I have no hesitation as a result in using category 2A as the basis for those sentences. Counts 6, 7, 9, 10, 11 and 13, qualify as offences of particular concern under Section 236A of the Criminal Justice Act 2003."

13. Mr Underhill, on behalf of the appellant, who has put forward his contentions boldly and succinctly, relies on a number of points. He maintains that counts 9 and 10, 11 and 13 should have been placed within category 3A of the guidelines, not category 2A, although he accepts that by reason of the volume of offences the Recorder would have been justified in going to 2A as he set out. However, maintains Mr Underhill, the resultant sentence exceeded the ceiling in category 2A and therefore was manifestly excessive.

14. Mr Wright, for the Crown, responds by pointing out that this was in effect "a campaign" of rape although the Recorder did not use that phrase during the sentencing process. The evidence that the Recorder apparently accepted was that these rape offences occurred approximately twice a week between the ages of 9 and 10. Rapes on that scale can, with justification, be described as "a campaign". In any event, in our judgment, the other offences of indecent assault and indecency with a child would themselves attract a substantial sentence of imprisonment.

15. We have to stand back and consider whether the total sentence here was wrong in principle or manifestly excessive. We have no hesitation in reaching the conclusion that it was neither.

16. We are grateful to counsel for their assistance. We have come to the firm conclusion that apart from the adjustment of the sentences on counts 6 and 7, this appeal must fail. The appeal however is allowed to the very limited extent, as indicated on counts 6 and 7, although it makes no difference to the total sentence.