NCN [2019] EWCA Crim 1590
No: 2019/00062/A2
IN THE COURT OF APPEAL CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT AT LEWES
(HHJ Rennie)

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 30th July 2019

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE EDIS

and

HIS HONOUR JUDGE MARSON QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

JOHN MICHAEL WEBBER

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Miss P McAtasney QC appeared on behalf of the Appellant

Miss J Knight appeared on behalf of the Crown

J U D G M E N T
(Approved)

Tuesday 30th July 2019

LORD JUSTICE MALES:

1. This is an appeal against sentence brought with the leave of the single judge.

2. On 28th November 2018, following a trial in the Crown Court at Lewes before His Honour Judge Rennie and a jury, the appellant, John Webber, who is now 79 years of age, was convicted of 26 counts of sexual offending. On 4th December 2018, he was sentenced by the trial judge to a total of 32 years' imprisonment. That sentence was broken down in a way which is set out in full in the appendix to this judgment. The principal sentences were imposed on counts 8, 12 and 16. Counts 8 and 2 were counts of buggery, contrary to section 12 of the Sexual Offences Act 1956, for which terms of twelve years' imprisonment were imposed, which were ordered to run concurrently with each other but consecutively to the sentence on count 16 (also a count of buggery, contrary to section 12 of the Sexual Offences Act 1956), for which the sentence was 20 years' imprisonment. The lesser sentences imposed on the remaining counts were ordered to run concurrently and therefore did not affect the overall total.

3. This is a case to which the provisions of the Sexual Offences (Amendment) Act 1992 apply. Nothing must be published during the lifetime of the victims which is likely to lead members of the public to identify them as the victim of the offences in question.

4. Because all of these offences occurred well before the Sexual Offences Act 2003 came into force, they were offences under the 1956 Act. Hence the indictment uses the terminology of that Act, although the principal offences would now be charged as rape under the 2003 Act.

5. The appellant began to run children's care homes in 1970 when he took over a short-term residential home called Kingsthorpe in Woodford Green, London. He then moved briefly to a home in Bethnal Green and then to another in Chessington between 1973 and 1976. In 1976 he and his wife bought The Old Rectory in Singleton, West Sussex. This was a long-term residential care home for nearly 30 children aged between 5 and 20 years. He remained in charge there until March 1988. He lived in a private apartment attached to the main house with his wife and children. Most of the children accommodated at The Old Rectory came from the London area and all had been in care from a very young age. We will refer to the victims by initials.

6. VZ was taken into care at the age of 3. When he was 4, he was placed into Kingsthorpe with one of his sisters. The appellant ran Kingsthorpe when VZ was aged between 7 and 9. VZ and his sister were upset when the appellant left Kingsthorpe and used to go and stay with him at Bethnal Green and Chessington. VZ first recalled being touched sexually by the appellant during a camping holiday to a farm in Devon for a number of children from Kingsthorpe. VZ shared a tent with the appellant. One night the appellant put his hand into VZ's sleeping bag and touched his penis, rubbing and massaging the top of it. VZ stayed absolutely still and after a while the appellant stopped. That gave rise to count 1 on the indictment (indecent assault on a male).

7. There were two further occasions on which the appellant touched VZ sexually. Both took place at Chessington House when VZ was aged between 11 and 12. VZ and his sister would sleep in bunk beds during their visits to Chessington. On both occasions the appellant came into the room at night, stood by the bed and put his hands under the sheets and into VZ's

pyjamas, touching his penis in the same way as he had done previously on the camping trip. That gave rise to count 2 (indecent assault on a male). Nothing was said by VZ on either occasion, but VZ stopped going to visit the appellant and his wife.

8. SO was placed in care at the age of 2 and went to live at The Old Rectory in 1977, when he was aged 10. He was touched sexually by the appellant during a number of camping trips when he was between 11 and 16 years old. He shared a tent with the appellant or sometimes with the appellant and WO. The appellant slept in the middle of the two boys. On the first occasion the appellant came into the tent some time after the boys had gone to bed. The appellant got into his sleeping bag, then reached into SO's sleeping bag, pushed his hand down into SO's underwear, rubbed his penis and touched his testicles. SO lay completely still. After a while the appellant stopped. That was count 3 (indecent assault on a male).

9. This was followed by several more similar incidents on other camping trips. The appellant would behave in the same way, reaching into SO's sleeping bag during the night to touch and masturbate his penis. SO recalled this happening on a camping trip that took place in 1979. He was able to place that date because it was the week of the European Cup Final that year, which they had watched at the camp site. It also occurred on trips to Sark in the Channel Islands and Brittany, and continued until SO was about 16 years old. That gave rise to counts 4 and 5 (indecent assault on a male).

10. WO was placed at The Old Rectory in September 1971 when he was aged 5. He was nearly 10 when the appellant took over the running of the home. The first occasion on which the appellant touched WO sexually was during a camping trip to the appellant's brother's farm in Devon when WO was 10. The appellant went to WO's tent during the night, unzipped his sleeping bag, removed his own clothes and lay next to WO, who was wearing only his underpants. The appellant cuddled WO and touched and kissed him, before he reached into his underpants and began to masturbate him. After a while the appellant removed his own underpants, took WO's hand and made WO masturbate him. The appellant told WO that he was special and that he would look after him as well as he could. He then lay to one side of WO and pushed his penis into WO's anus. WO protested that it hurt and the appellant stopped and said that he would not do it again. He then took WO's hand, making him masturbate him again until he ejaculated into a handkerchief. That gave rise to count 6 (indecent assault on a male), count 7 (indecency with a child) and count 8 (buggery).

11. WO recalled a number of other holidays, to Devon, Wales and the New Forest, during which the appellant behaved in the same way. He would touch him during the night before masturbating him and making WO masturbate the appellant.

12. The appellant had a workshop in the grounds of The Old Rectory. WO sometimes went there to borrow tools. The appellant would invite him in, take off his own clothes, kiss WO and tell him that he was special before masturbating WO and making WO masturbate him. That gave rise to count 9 (indecency with a child) and count 10 (indecent assault on a male). The same behaviour occurred in WO's attic bedroom when he was 14 years old (count 11, indecent assault on a male). WO also recalled one occasion when the appellant had tried to film WO masturbating him in the appellant's bedroom.

13. The appellant was involved in running a scout pack at West Dean, a village near The Old Rectory. As a teenager, WO would sometimes be paid to cut the grass outside the scout hut. On one such occasion the appellant was there and asked WO to come inside to give him a hand with something. The appellant made WO take off his clothes, then pushed him onto the ground and pushed his penis into WO's anus. The appellant removed his penis straightaway,

then masturbated WO and made WO masturbate him. That gave rise to count 12 (buggery) and count 13 (indecent assault on a male).

14. RR was placed at The Old Rectory with his three brothers when he was 5 years old in 1973. His first recollection of being sexually touched by the appellant was in 1976 when the appellant came into his bedroom in the night, sat close to his bed, put his hand underneath the bedding and touched his penis. The appellant masturbated RR for a period of time before leaving the room. This occurred in more than one room that RR slept in at The Old Rectory and happened eight or more times over a few years, when RR was aged between 9 and 13. Those matters gave rise to count 14 (indecent assault on a male). The appellant had also masturbated RR on occasions when he was in the bathroom (count 15), the study (count 17) and during camping trips (count 18). They were charged as indecent assault on a male. The cellar of The Old Rectory was used for storing camping and other equipment. The appellant anally penetrated RR in the cellar on several occasions when RR was aged between 12 and 15. The appellant would continue until he ejaculated and would often masturbate RR to the point of ejaculation. He would kiss RR whilst anally penetrating him and sometimes gave him money after having done so. RR recalled the penetration being painful and causing him to bleed on one occasion (count 16, buggery).

15. JM was put into care at the age of 2 and at the age of 8 was placed in a boarding school in Hertfordshire. From 1975 to 1980, when he was aged 9 to 14, he was sent to The Old Rectory for the school holidays. His early experiences there were happy ones, but things began to change when he was aged about 10. The appellant asked JM to help him in the barn. He closed the barn doors and asked JM if he knew what the extra pocket money he had been giving him was for. The appellant took down his trousers and underpants and exposed his erect penis. He made JM put both hands round his penis and masturbate him. He then spread a blanket on the floor, made JM lie on it and pulled his trousers and underwear down. The appellant tried to place his penis in JM's anus. When JM protested the appellant stopped. He asked JM to open his legs and pushed his penis between them, moving backwards and forwards to simulate sex. After a time, the appellant ejaculated. Those matters gave rise to counts 19 (indecent assault on a male), count 20 (attempted buggery) and count 21 (indecent assault on a male).

16. There followed a number of other occasions when the appellant abused JM in the barn at The Old Rectory by masturbating him, putting his penis into JM's mouth (count 22, indecent assault on a male) and digitally penetrating his anus (count 23, indecent assault on a male).

17. JM's school holidays would sometimes differ to those of the other children at The Old Rectory and he was frequently alone during the day. Sometimes the appellant would ask JM to join him on a car ride, often to the scout hut. The appellant would take JM to the back room, which had a mattress on the floor, and undress himself and JM. They lay on the mattress and the appellant touched JM all over his body and rubbed his penis before attempting to put his own penis in JM's anus. Again, JM objected and again the appellant simulated sex, pushing his penis between JM's legs until he ejaculated. He wiped the semen away with a handkerchief, then dressed and acted as if nothing had happened. This occurred on three or four occasions and gave rise to count 24 (attempted buggery) and count 25 (indecent assault on a male).

18. LS was placed at The Old Rectory when she was aged 14 in 1980. She lived there until she was aged 19 or 20. She was not a victim of the appellant. After she left, she kept in touch with the appellant and his wife and visited them regularly. The appellant's wife died in

1995. The following Christmas the appellant invited LS and her two sons, ZW and JW, to stay with him. LS was pregnant at the time and suffering with morning sickness and tiredness. The appellant offered to have ZW, aged 6, sleep in his room on an airbed and LS accepted this suggestion. The next morning ZW came into LS's room and immediately told her that the appellant had touched his penis. The police were contacted. ZW said that the appellant had touched his "privates" while he was on the mattress on the floor, having stretched his pants and pyjamas to do so. He said that the appellant had thought that he was asleep but he was just pretending to be. The police took no further action at that time, although this incident later gave rise to count 28 (indecent assault).

19. In March 2016, WO contacted the police through a counsellor with whom he was working. He was interviewed in April and May 2016. Following this the police contacted other people who had lived at The Old Rectory during the appellant's time there. As a result, the matters to which we have referred came to light.

20. In interviews the appellant denied ever engaging in any sexual acts with any of the complainants. He maintained that denial in his trial.

21. In the meanwhile, in 2001 the appellant was sentenced to nine months' imprisonment for ten offences of distributing indecent photographs of children and twelve offences of taking indecent photographs of children.

22. The judge had before him Victim Personal Statements from VZ, SO, WO and RR which describe the effect on them of this abuse during their childhood. The impact of the appellant's offending on WO and RR was particularly grave, although it is right to point out that they had also been abused while at the home by the appellant's deputy. It is not suggested, however, that the appellant and his deputy had acted together. Rather their offending was independent of each other. It is, however, hard to imagine a more grave and shocking situation for vulnerable youngsters to be in, suffering abuse from the two authority figures – indeed, almost father figures – responsible for their care.

23. In his Victim Personal Statement, WO described the emotional and psychological damage which he had suffered, including post-traumatic stress disorder for which he took strong medication. He described suffering from flashbacks, anxiety, panic attacks and breakdowns. He experiences the smell of the appellant and feels him licking his (WO's) face. He has twice been sectioned under the Mental Health Act for many months and has attempted suicide a number of times. He said that there were days when he could not leave his flat and has only just been able to do so. He has regular sex abuse counselling and was due to start counselling for his post-traumatic stress disorder. He said that he never feels safe and has a panic button in his flat. The abuse, which began when he was aged 9, had also had an impact on his education. Throughout his life his mental illness has caused him difficulties in obtaining any kind of fulfilling job. For much of the time, he was unable to work at all. He said that he takes strong medication to sleep and on some days he is unable to sleep at all.

24. In his Victim Personal Statement, RR said that he found it hard to express the way he felt about what had happened. He was robbed of his childhood and the abuse had affected many aspects of his life. He had never had a lasting relationship or been able to have a family of his own, or, indeed, to hold down a job. He said that the appellant was supposed to be like a father figure, but had exploited him. He had feelings of guilt and shame, even though he had only been a child at the time and was not to blame. There had been periods when he had turned to alcohol and drugs, and had been homeless. Only recently had he managed to remain sober for over a year, and this was one thing of which he felt that he could be proud.

25. In his sentencing remarks, the judge began by pointing out that the children under the appellant's care were amongst the most vulnerable of victims. They had nobody to whom they could turn in situations where they were suffering abuse from the appellant and indeed from his deputy. What appeared to be an attractive environment for them, in which activities such as archery, go-carting, building tree houses and so forth were available, turned into a place of abuse. The appellant had abused the children's trust, which was betrayed in appalling ways on numerous occasions with multiple victims. The appellant was not the kind and caring parental figure, which he portrayed, not only to the children but to the outside world; he had a much darker side as a predatory paedophile; he saw the boys as objects with which to satisfy his perverted desires with complete impunity.

26. The judge referred to the appellant's conviction, which was evidence of his ongoing paedophile obsession. The images viewed, downloaded and shared, had included some of the most extreme images. The appellant had participated in chat rooms in which he had discussed with fellow paedophiles the sexual things that he would enjoy doing to small children.

27. The judge acknowledged that not every difficulty experienced by the children could be laid at the appellant's door in view of the abuse by the appellant's deputy (who we understand had since died). The judge set out the trauma described by the victims in their personal statements.

28. Having set these matters out, the judge had regard to the relevant guidelines, which were identified by counsel in a sentencing note. He said that the offences fell within category A so far as culpability is concerned, because there was a significant degree of planning; there was grooming behaviour; and there was a massive abuse of trust. There is no challenge to that categorisation.

29. The judge then said that so far as harm is concerned, the majority of offences fell into category 2, but he was satisfied that WO and RR suffered severe psychological harm. In respect of them, he placed the offending in category 1. That categorisation is challenged. Category 2 of the guideline for rape specifies severe psychological harm as a factor which puts the harm into category 2. That was the expression which the judge used, although he nonetheless put those particular offences into category 1. Category 1 states that "the extreme nature of one or more category 2 factors, or the extreme impact caused by a combination of category 2 factors **<u>may</u>** elevate to category 1".

30. As is clear from, for example, *R v Forbes and Others* [2016] EWCA Crim 1388 and *R v Chall and Others* [2019] EWCA Crim 865, this kind of offending is inherently likely to cause a degree of psychological harm to victims who have to live with the consequences, often for the rest of their lives. Category 2 is concerned with severe psychological harm and judges must be careful not to double count. At [26] of *Forbes* that point is made as follows:

> "As is evident from many of the appeals, the effect on the victims can be devastating. Where the judge has heard evidence from the victims, then he will be well placed to make that assessment (see for example the case of *McCallen* at paragraph 97). However, it must be borne in mind, so that double counting is avoided, that the starting points and sentencing ranges provide for the effect on the victim which is the inevitable effect of this type of serious criminal behaviour. There has to be significantly more before

> harm is taken into account as a distinct and further aggravating factor and or before a judge makes a finding of extremely severe psychological or physical harm so as to justify placing the offence in the top category of harm."

Chall makes clear that a judge is entitled to make a finding of severe psychological harm, without the need to have psychological or medical evidence. That can properly be done from the judge's assessment where a victim has given evidence, and from the contents of a Victim Personal Statement.

31. Miss McAtasney QC, who appears for the appellant, does not dispute that the judge was entitled to place these offences in category 2, but she submits that there was no evidence of extremely severe psychological harm so as to justify the judge placing them into category 1, as he did.

32. However, Miss Knight, who appears for the prosecution, points out that category 1 may consist of either the extreme nature of one or more category 2 factors, or the extreme impact caused by a combination of the factors.

33. In our judgment, although it is perhaps not quite the way he expressed it, the judge was entitled in this case to regard the harm suffered at any rate by WO and RR as falling within category 1 due to a combination of the factors in play in their cases. Not only did they suffer severe psychological harm, which is apparent from the judge's assessment of them and the contents of their Victim Personal Statements, but also they were acutely vulnerable as young children with considerable educational and developmental needs, whose lives have been effectively destroyed by the appellant's conduct, even making allowances for the fact that he was not the only perpetrator of abuse upon them.

34. The judge then, as we have said, structured his sentence by imposing sentences of 20 years' imprisonment in relation to the buggery of RR and twelve years' imprisonment in relation to the two counts of buggery of WO. He ordered those sentences to run consecutively, and imposed concurrent sentences in relation to the other victims and the other counts in relation to WO and RR. He made it clear that those other sentences had been adjusted to take account of the two longer sentences imposed, making up the total of 32 years' imprisonment, in order to give effect to the principle of totality.

35. The single ground of appeal is that the overall sentence of 32 years' imprisonment was simply too long and thus manifestly excessive, and that the judge did not take sufficient account of totality.

36. Of course, a sentence of 32 years' imprisonment on a man of 79 years of age, who is, we understand, in infirm health and who is now registered blind, will have a serious impact on him. It will be more difficult for him to cope in prison than it would be for a younger or healthier man. Nevertheless, while his victims have been suffering in the way we have described, the appellant has had the benefit of living a life in the community for many years as a respected member of society. He threw that away, of course, in 2001 when he was convicted of the offences relating to the indecent images. But, even so, he has since then retained the love and support of his children and has had the benefit of life with a new partner.

37. It may be that the sentence overall could have been structured differently. There were three

victims of the most serious offending: WO and RR in relation to whom the buggery counts related, and JM, in relation to whom there was a count of attempted buggery, for which a sentence of nine years' imprisonment was imposed, but was ordered to run concurrently and therefore did not add to the overall total. It may be that it would have been preferable to structure the sentence in a way which reflected those three most serious charges and to have ordered them to run consecutively. That would have meant that the sentence of 20 years' imprisonment in relation to RR would have been somewhat less in order to arrive at the overall total. Nevertheless, the overall total of 32 years' imprisonment cannot, in our judgment, be regarded as manifestly excessive when account is taken of the scale of the appellant's offending overall. It may be that it is at the higher end of the appropriate range, taking account of all the factors, but it is not, in our judgment, a sentence which can be characterised as manifestly excessive.

38. Accordingly, we dismiss the appeal against sentence.

39. That means that we make no correction to one aspect of the sentence which is in error. It relates to count 20 (attempted buggery against a child under 13) which ought to have been treated as "an offence of particular concern", with a one year's licence period at the end of the custodial period. Because we are dismissing the appeal, we must leave that uncorrected. We suspect, however, that, given the appellant's age, it will make no practical difference in this case.

A P P E N D I X

Count/s on indictment *(victim)*	**Offence**	**Pleaded guilty or convicted**	**Sentence**	**Consecutive or Concurrent**	**Maximum**
1, 2,	Indecent assault	Convicted	7 years'	Concurrent	10 years'

(VZ) 3, 4, 5 *(SO)*	on a male, s.15 (1) Sexual Offences Act 1956		imprisonment		imprisonment
6, 10, 11, 13 *(WO)* 14, 15, 17, 18 *(RR)* 19, 21, 22, 23, 25 *(JM)*	Indecent assault on a male, s.15 (1) Sexual Offences Act 1956	Convicted	No Separate Penalty		10 years' imprisonment
7, 9 *(WO)*	Indecency with a child, s.1 (1) Indecency with Children Act 1960	Convicted	No Separate Penalty		2 years' imprisonment
8, 12 *(WO)*	Buggery, s.12 Sexual Offences Act 1956	Convicted	12 years' imprisonment	Concurrent on each but **consecutive** to Count 16	Life imprisonment
16 *(RR)*	Buggery, s.12 Sexual Offences Act 1956	Convicted	20 years' imprisonment		Life imprisonment
20, 24 *(JM)*	Attempted Buggery, Common law	Convicted	9 years' imprisonment	Concurrent	10 years' imprisonment
28 *(ZW)*	Indecent Assault, s.15 Sexual Offences Act 1956	Convicted	4 years' imprisonment	Concurrent	10 years' imprisonment
Total Sentence:		**32 years' imprisonment**			