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No: 201902314/A4

**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 22 October 2019

**B e f o r e**:

**LORD JUSTICE LEGGATT**

**MRS JUSTICE CARR DBE**

**HIS HONOUR JUDGE THOMAS QC**

(Sitting as a Judge of the CACD)

**R E G I N A**

v

**PHILIP CHRISTOPHER COLE**

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**Ms R Nieto** appeared on behalf of the **Appellant**

**J U D G M E N T**

(Approved)

MRS JUSTICE CARR:

1. This 36-year-old appellant pleaded guilty to three counts of making indecent images of a child, contrary to section 1(1)(a) of the Protection of Children Act 1978. The offending involved 51 category A images, 14 category B images and 50 category C images. An example of a category A image was a video involving a 4 or 5-year-old child, the child being compelled to wear a balaclava and showing clear signs of distress, as she was being restrained by her attacker as he committed oral, digital and penile rape upon her.

2. The appellant was sentenced at Wood Green Crown Court on 6 March 2019 to a total term of 12 months' imprisonment suspended for 24 months. He was ordered to comply with 150 hours of unpaid work requirement, an accredited programme requirement (The Horizon Programme) and a rehabilitation activity requirement. As a result of that sentence he was made automatically subject to the notification provisions in Part 2 of the Sexual Offences Act 2003 ("the Act") for 10 years. Having been convicted of an offence specified in the schedule in the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 he was also to be included in the relevant list by the Independent Safeguarding Authority.

3. There is no appeal against the custodial element of this sentence. Rather, the target of this appeal is the sexual harm prevention order ("SHPO") to which the appellant was made subject under section 103A of the Act until further order. No issue was taken on behalf of the appellant with the terms of that order; the only challenge is to its length. It is suggested by Ms Nieto, who appears on behalf of the appellant, that an order of that length was both disproportionate and unnecessary and, amongst other things, by virtue of section 103G of the Act, that had the effect of extending the notification period indefinitely. She submits that an order of 10 years in length would have been sufficient to protect the public from serious sexual harm from the appellant for the purpose of section 104 of the Act.

4. The short facts of the case can be stated as follows. On 23 August 2018 the police executed a search warrant at the appellant's home address in Enfield and seized five devices. The appellant was at home with his partner and 22-month-old daughter. He immediately acknowledged why the police were there and made the following admission: "Yes, it is me. I have been doing it for years. I know it is wrong. I have been waiting for this day".

5. In interview he gave a very full account of his activities. He acknowledged that he had a problem. He described it as a compulsion and an addiction to downloading images. He explained that he would delete the files once they had been viewed and then a few weeks later download them again. It was therefore likely that the images found on the devices seized as a result of the warrant did not represent the totality of the images that he had accessed over the years.

6. The appellant was assessed as a low risk of immediate re-offending and medium risk of re-offending overall. He was of previous good character apart from an incident arising out of what was a troubled domestic relationship. The Judge made the SHPO in the terms and for a duration as requested by the prosecution. The SHPO controls and restricts his use of computers, storage facilities and access to the

Internet and clearly has a significant impact on the appellant's day-to-day life.

7. Serious though this offending was, we agree that the making of an indefinite order was not necessary for the purpose of public protection. The appellant was of effective good character, immediately admitted his guilt and subsequently took voluntary steps to address his offending. He was co-operative with the authorities and the order imposed required him to undergo extensive treatment and the rehabilitation. In addition, by reason of section 103G of the Act, the imposition and unlimited order carried with it the apparently unintended consequence of extending the notification requirement for a limited period. This is not consistent with the 10-period of notification that the judge expressly had in mind.

8. A SHPO should not be made for longer than is necessary and should not be made for an indefinite period unless the court is satisfied of the need to do so. An indefinite order should not be made without careful consideration, nor should it be a default option. Ordinarily as a matter of good practice a court should explain, however briefly, the justification for making an indefinite SHPO though there are cases where that justification will be obvious. There is no requirement of principle that the duration of a SHPO should not exceed the duration of the applicable notification requirements; it all depends on the circumstances. However, the parties should be alert to the fact that the effect of an SHPO longer than the statutory notification requirements will be to extend the operation of those notification requirements. An inadvertent extension is to be avoided. (See in particular *R v McLellan [2017] EWCA Crim 1464* at [25] and *R v Nigel Wilkinson [2019] EWCA Crim 641* at [7] and [8]).

9. Here, there appears to have been just such an inadvertent extension. No reasons for the indefinite length of the SHPO were given; the court simply accepted the prosecution invitation to make the order sought. Justification for an indefinite order was not obvious. The appellant's admissions and readiness to engage, his good character and the views expressed in the pre-sentence report material were all factors pointing to the suitability of a determinate order.

10. In our judgment, a SHPO of 10 years was sufficient to protect the public from serious sexual harm from the appellant, and the Judge should so have ordered. For these reasons and to this extent, the appeal will be allowed.