



[2025] EWCA Crim 757

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT KINGSTON

HHJ TREGILGAS-DAVEY CP No: 01TW1032823

CASE NO 202500924/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 1 May 2025

Before:

LORD JUSTICE EDIS
MRS JUSTICE STACEY DBE
THE RECORDER OF SOUTHWARK
HER HONOUR JUDGE KARU
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX
V
CONOR MULHERN

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MR B LLOYD appeared on behalf of the Attorney General
MISS J MORRIS appeared on behalf of the Offender

J U D G M E N T

1. LORD JUSTICE EDIS: This is an application by His Majesty's Solicitor General for leave to refer a sentence to this court under section 36 of the Criminal Justice Act 1988 on the ground that the sentence was unduly lenient and with the intention that it should be increased by this court.
2. The offender, Conor Mulhern is now 51 years old. The offending was committed against a child. The Sexual Offences (Amendment) Act 1992 applies in this case. That means that no matter may be published during her lifetime which identifies her as a victim of this offending. We shall not name her in this judgment. That protection and prohibition lasts until and unless it is varied or changed by the court and there is no reason at all to suppose that it ever will be.
3. On 13 February 2025 the offender was sentenced to a total of 12 months' imprisonment. He had pleaded guilty to the offences for which that term was imposed before the Magistrates' Court and had been committed for sentence. He therefore received full credit against those sentences for that early acceptance of guilt. Those sentences therefore before that plea discount amounted to a total term of 18 months' imprisonment. The sentence was imposed by His Honour Judge Tregilgas-Davey sitting in the Crown Court at Kingston.
4. There were four charges which had been committed for sentence. Charge 1 was an offence of voyeurism, contrary to section 67 of the Sexual Offences Act 2003. That resulted in a term of 12 months' imprisonment. Charge 2 was an offence of possession of extreme pornography, contrary to section 63 of the Criminal Justice and Immigration Act

2008. That also resulted in a sentence of 12 months' imprisonment concurrently. Charge 3 was an offence of making indecent images of Category C, contrary to section 1 of the Protection of Children Act 1978. A further concurrent term of 12 months' imprisonment was imposed in respect of that. Charge 4 was a charge of possession of indecent photographs in Category C, contrary to section 160 of the Criminal Justice Act 1998. That also resulted in a term of 12 months' imprisonment. Those terms, as we have said, were all ordered to run concurrently and to be served immediately, the judge having considered whether they could be properly suspended and decided that appropriate punishment for the offences taken together could only be achieved by the imposition of an immediate custodial sentence, applying the relevant guideline.

The facts

5. The facts are striking. The victim is a child, a girl who was aged 11 at the time of the first incident of voyeurism and 16 when she discovered that she had been the victim of this offending.
6. On 19 February 2022 she attended the offender's address, as she had before, to have a shower following hockey practice. The offender was a friend of her father and he had known the child victim all her life. She saw him as an uncle. He had babysat her when she was small and was a frequent visitor to her home. On this occasion, in February 2022, after she had had her shower she noticed a wash bag with a hole in it. She saw that the bag contained a Go Pro camera which was angled directly towards the shower and switched on to record what she was doing. She told her parents who contacted the police who carried out an investigation.

7. The police recovered a laptop and a computer storage device which worked with it. That storage device contained one video of extreme pornography involving sexual activity between humans and animals. It also contained 1,284 still images of the victim, and three moving video images of her. These had been recorded in the offender's bathroom where the Go Pro camera was eventually discovered but also in the victim's own family bathroom at her home.
8. The collection of images had been curated carefully by the offender. There were captions attached to some of these collections. They showed her fully dressed and also naked in one or other of the bathrooms. One caption read:

"At just 14 years old she does not yet understand her value as a sex object, but thanks to hidden cameras those firm young tits and virgin pussy have already resulted in a ton of spilt cum!"

Other collections were captioned in similar terms.

9. Without going into any further detail, the collection of images showed that over a period of years and while she was maturing from a child into a young woman, this victim was subjected to intrusive covert surveillance because she was an object of sexual fascination for the offender. The intrusion into her dignity was massive. The impact upon her was explained in a victim personal statement to the judge from her and another such statement from her mother. Her ability to trust and to feel safe has been undermined to a very substantial degree. We must hope that she is able to make a recovery from the dreadful discovery which she made and the further discoveries which occurred because of the police investigation. The court has that hope but of course cannot be confident that there

will be no lasting damage. This kind of event, particularly at the age when it occurred, is likely to have unpredictable and long-lasting consequences. There is no doubt that this was a very serious course of sexual offending against a child. It did not involve any contact offending. At the time when it was happening she was of course unaware of what was happening. That as a mitigating factor is undermined by the fact that she knows about it now, with the consequences which we have explained.

10. The judge identified aggravating features which were plainly relevant for the purposes of sentence. We have touched on them in what we have already said. The child was young and vulnerable. She was subjected to this conduct over a period of years. There was a high volume of images which were produced and the collection of images included moving as well as still images. The victim was known to the offender and had previously trusted him. His conduct abused that trust grievously.

11. There was also mitigation to which the judge correctly referred. There was substantial evidence of remorse contained in a letter written by the offender to the court. There is some evidence that he suffers from some level of mental illness. He has no previous convictions. In fact he has led hitherto an industrious and successful life, having held employment which of course as a result of his imprisonment he has inevitably lost. He has also lost his social circle, his good name, his home, and he will be subject for many years to restrictions imposed by the judge and automatically following convictions of this kind which it is unnecessary to spell out but which are entirely appropriate and necessary restrictions on the offender.

12. The Solicitor General submits that the judge made an error of principle in treating this series of offences as essentially a conduct involving voyeurism over a period of years. That took the judge to the guideline for that offence which has a maximum sentence of two years. Quite obviously this was an offence of raised harm and raised culpability for the purposes of the guideline for all the reasons we have indicated. That suggests a sentence of 12 weeks to 18 months in custody as the category range, with a starting point of 26 weeks' custody.

13. In contrast, says the Solicitor General, if the judge had applied as his principal guidance the guideline for possession of indecent images of children, he would have approached it as a case of production of large numbers of Category C images. That would involve a starting point of 18 months' custody with a range of one to three years. The maximum sentence for that offence being longer than the two years which is available for the offence of voyeurism, namely five years' custody. The Solicitor General says, through Mr Lloyd, for whose submissions we are grateful, that that was a fundamental error by the judge who has failed to follow the guideline which was appropriate to the case with which he was dealing. The Solicitor General also submits that the offence of possession of extreme pornography should also have been factored in, either by a consecutive term or by an increased sentence of imprisonment specifically increased in order to reflect that offence.

14. In a nutshell, the Solicitor General acknowledges the mitigation which was available to this offender but submits that the sentence before credit for the plea should have been no less than the top of the category range for production of indecent images. That, as we

have said, is three years and that would result in a sentence of two years following the discount for plea, as opposed to the 12 months which was in fact imposed.

15. Miss Morris, who has appeared for the offender before us and made well-considered submissions on his behalf, submits that even if the judge had started with the indecent images guideline, he would necessarily not have imposed a sentence at the top of the guideline and may perhaps have arrived at a sentence somewhere in the region of two years or so. Having applied the one-third discount that would reduce the sentence to perhaps 16 months or thereabouts, which is so close to the sentence that was imposed by the judge that it is impossible to describe the judge's sentence as unduly lenient.

Discussion and conclusion

16. We consider that the offending in this case was extremely serious. The harm that has been done to this child may, as we have said, be irreparable, although we hope not. It was entirely right, in our judgment, for the judge to conclude that only an immediate prison sentence could be justified. But it is also right to observe that even if the Solicitor General's submissions are right and that the sentence before plea discount should have been three years, that would still have resulted after the discount in a sentence within a range which could lawfully be suspended.
17. Our conclusion is that notwithstanding the very serious offending which we have described, the judge's sentence cannot properly be described as one which is unduly lenient. We agree with the judge, as we have said, that immediate custody was necessary in this case. We accept that some judges may have imposed a term which was somewhat

longer. It may be that members of this court might themselves have done so if sentencing this case at first instance. But the difference between such a longer sentence and the sentence imposed by the judge must inevitably have been relatively modest and not, in our judgment, one which should lead to a finding of undue leniency.

18. The significant thing in this case was the imposition of an immediate prison sentence.

That was called for. It was a significant sentence and it will have significant consequences for this offender. That is all entirely right and as it should be. He has nothing to complain about here. But, in our judgment, the solicitor General's application is, with respect to him, misconceived and in those circumstances we refuse leave.

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

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