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[2022] EWCA Crim 614

IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202200106/A2



Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 28 April 2022

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE TURNER

MR JUSTICE EYRE

REGINA

V

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MS P BRIAN appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE TURNER: The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. Under these provisions, where a sexual offence has been committed against a person no matter relating to that person shall, during that person's lifetime, be included in any publication if it is likely to lead members of the public to identify that person as the victim of that offence. This prohibition applies unless waived or lifted in accordance with section 3 of the Act.

On 15 October 2021 in the Crown Court at Norwich the appellant (then aged 39) was convicted after trial of three offences of rape under counts 1, 2 and 6 of the indictment. He was acquitted on counts 3, 4, 5 and 7 which comprised three other counts of rape and one of making threats to kill. On 10 December 2021 he was sentenced to 10 years' imprisonment under counts 1 and 2, and 25 years' imprisonment under count 6. The three sentences were ordered to be served concurrently, making a total custodial sentence of 25 years.

He now appeals against his sentence with the leave of the single judge. We note in passing that there was some short-lived confusion below because the judge in her sentencing remarks referred to count 6 as 'count 3'. Doubtless her intention was to refer to the third count upon which the appellant had actually been convicted and not the third count as it appeared on the indictment. This slip was subsequently rectified in the court record and log sheet. Furthermore, the judge wrongly informed the appellant that he would be released on licence having served half of his sentence. In fact by the operation of the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020, the relevant proportion is and will remain two-thirds.

The facts are these. The appellant is a Romanian national who arrived in the UK in May 2019 and went to stay with his sister and her family. He was 37 years old and shared a bedroom with his 14-year-old niece who was to be his victim. He slept in the bed and she

slept on the sofa.

The first offence occurred when the appellant's sister and brother-in-law were at work. At some point in the afternoon the appellant raped his victim. She tried, unsuccessfully, to resist. The appellant did not use a condom, penetrated her painfully, before withdrawing his penis and ejaculating on her body. Thus it was that she lost her virginity. Approximately a week later the appellant raped her in a similar manner. His victim's family then moved house. One day the appellant turned up at this property when his niece was the only other person in the house. Once again he raped her without using a condom and ejaculated on her body.

On all three occasions the appellant was under the influence of alcohol. The offences came to light at a family party when an argument started between the appellant and his victim. The appellant was asked to leave and she summoned the courage to tell her family about the rapes. Although the jury had acquitted him of making threats to kill, the judge was satisfied that nonetheless his niece lived in fear of him hence her reluctance to report what had happened immediately after the rapes.

In her victim impact statement the appellant's victim tells how, as a result of what had happened to her, she struggled to concentrate at school and had become uncharacteristically emotional and dependent upon the support of others.

The appellant has a bad criminal record. In 2006, in Romania, he was sentenced to a term of 7½ years' imprisonment for a robbery which occurred at night and during the course of which he disguised himself with a mask. Even more chillingly, in 2015 he was sentenced (again in Romania) for two offences of recruiting, transporting, transferring, hosting or receiving a minor for exploitation. The sentence imposed was one of 7 years and 8 months' imprisonment. He was banned from ever becoming a guardian or custodian of a minor in

Romania. It was shortly after his release that he came to the United Kingdom and set about raping his niece within a month or so of his arrival.

In commendably succinct grounds of appeal it is contended that the sentence of 25 years on count 6 fell outside the Sentencing Guidelines for the offence and the judge had failed to adhere to the Totality Guideline which requires the imposition of a just and proportionate sentence in respect of multiple offending. In cases of repeated rape it is appropriate to focus on the rubric at the top of the page in the Sexual Offences Guidelines and the statement:

"Offences may be of such severity, for example involving a campaign of rape, that sentences of 20 years and above may be appropriate."

It is to be noted that the reference to a *campaign of rape* is merely as an example of the sort of case of such severity as may attract a sentence of 20 years or above. It is thus unnecessary to consider whether or not a case of this kind is properly described as involving a *campaign of rape*. Perhaps rather than a campaign, this can simply be described as a case of 'repeat, very serious offending against a young victim of sufficient severity in itself to justify the imposition of a sentence longer than that which would normally fall within the range of sentences appropriate for a single offence'.

We take the view that the judge was entitled to reach the conclusion that the course of the appellant's conduct was such as to fall comfortably into such a category. Nevertheless the issue of totality still falls to be considered. Although the sentence of 25 years was undoubtedly somewhat lower than the total would have been reached by simply adding the appropriate sentence for each individual offence together, we are satisfied that, despite the seriously aggravating features, the term exceeded that which was just and proportionate in all the circumstances. We therefore reduce the sentence to one of 21 years' imprisonment. To that limited extent we allow this appeal.

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

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