Regina v Peter John Howard Webb

Court of Appeal Criminal Division

27 February 2018

[2018] EWCA Crim 384

Judgment

Lord Justice Treacy:

1 This is an Attorney General's reference of a sentence he considers unduly lenient. The usual anonymity provisions relating to the victims of sexual crime apply.

2 This offender was sentenced at Lewes Crown Court on 15 December 2017 for a number of sexual offences against a number of victims. The offending can be described as historic, having taken place between 1974 and 1984. In all, the offender was sentenced to a total of four years' imprisonment. He had pleaded guilty at the PTPH hearing and was awarded 25 per cent credit for those pleas. There were 11 counts to which guilty pleas were tendered involving offences against four pubescent or pre-pubescent boys. The offender was a teacher at Christ's Hospital, a boarding school, between 1965 and 1984. In 1980, he had become a housemaster, a post which carries additional responsibility and trust.

3 We will deal with the offences chronologically rather than in indictment order. Counts 7 to 11 involved the victim J, and the offending took place between dates in 1974 and 1977, when J was aged 12 to 14. On four occasions when J was under 13, the offender went to his dormitory and touched his genitals beneath his nightwear. He fondled J's genitals for a minute or two in an attempt to stimulate him. J awoke on each occasion but was too frightened to react. J had lost his father when he was 5 and viewed the offender as a father figure, thus rendering the abuse of trust particularly acute. The counts also reflected at least two occasions when the offender, whilst in woodwork class, pressed his genitals into J's bottom or side. Both of them were fully clothed at the time. J was aged 13 or over when those offences occurred.

4 These counts were all charged as indecent assaults, as were the other counts on the indictment. In each case the maximum sentence available at the time was one of ten years' imprisonment.

5 There was then a gap after the offences against J of about five years, before the offender committed crimes against other boys. Counts 1 to 3 reflected indecent assaults on D, when he was 11 or 12, in the period between 1980 and

1982. There were three occasions where in the dormitory the offender touched D's genitals beneath his nightwear, cupping and caressing him. Again, at the time the offender was his housemaster.

6 Counts 4 and 5 related to T, who was aged 11 or 12. These offences occurred between 1982 and 1984, and were similar to the offences already outlined. Although the offender caused T to become erect, he did not ejaculate. On the second occasion, T told the offender to go away.

7 The last of the matters on the indictment, Count 12, related to victim A. In 1983/4, when A was aged 12, the offender came to the dormitory, placed his hand under the duvet, and tickled A's stomach under his pyjama top. He stopped when A turned over. On an occasion when the offender came to A's dormitory, A had seen him approaching the beds of T and another boy, R.

8 In April 2015, the offender had pleaded guilty at the Crown Court to three offences of indecent assault against R. These were committed in 1983, when R was of a similar age to the other boys. He was sentenced for those offences to concurrent terms of 18 months' imprisonment. The offending consisted of coming to the dormitory and interfering with R's genitals beneath his pyjamas. R reported those assaults at the time to senior staff, and the offender admitted what he had done. He also admitted having done similar things, apparently to one other boy. However it seems that no report was made to the police and that R resigned from his position at the school. He never worked with children again after that.

9 In 1985 he made admissions of what he had done to R to the Department for Education, and an admission of similar misconduct with one other child who was not identified by name. There is no suggestion that he admitted specific offending against any of the victims in the present case, or indeed in relation to any other named individual.

10 At the hearing below, consideration was given to the fact that the offender had served a sentence for offences against R in 2015. On that occasion, no admissions had been made of misconduct with any pupil other than R. The judge considered the decisions of this court in *Attorney General's Reference (No. 92 of 2009) (Steven Brett) [2010] EWCA Crim 524* and *R v Graham Smith [2013] EWCA Crim 2091* . The judge took the view that she was not required to adjust sentence in the present matters by asking herself what the overall sentence would have been had all the circumstances now known been known during the 2015 proceedings, when the offender had not at that stage disclosed the extent of his offending.

11 Counsel was given an opportunity at the hearing below to consider the above authorities. He did not submit that a different approach should be taken, although he did submit that the judge should have regard to the fact that a sentence had relatively recently been served in relation to R. It will undoubtedly

have been a feature in the mitigation in that case that disclosure had specifically been made in relation to R by this offender in the 1980s.

12 There was a pre-sentence report on this offender, who is now aged 75. The offender acknowledged his offending and his attraction to young boys. He had for a period of about five years been able to control that sexual attraction whilst working at the school, but had then been drinking to excess, and this had had a disinhibiting effect upon him. The author of the report thought that the offender showed greater insight since he had been convicted in 2015 into the impact of what he had done upon his victims, no doubt in consequence of work done with him through the probation service. He was not assessed as a dangerous offender. There was a report from a forensic psychosexual therapist, who shared the probation officer's assessment as to dangerousness. We have seen a short prison report which shows satisfactory behaviour.

13 There were victim personal statements from three of the victims, which we have considered. Two of them describe being affected by the abuse to some extent, manifested in periodic anxiety and sleeplessness.

14 On behalf of the Attorney General, Mr Jarvis submitted that the total sentence imposed was unduly lenient, having regard to the number of offences and the number of victims. All offences had the common feature of an abuse of trust. It was submitted that there was aggravation in the fact that the offences were committed at night, in the school dormitory, and in the presence of other children. In addition, some of them were committed whilst the offender was under the influence of alcohol. In total there were 11 offences committed against four victims spanning a period of about ten years, albeit with a break in the middle.

15 Having regard to the Sentencing Council's guidelines, Mr Jarvis argued that the sentences were too low and that the judge had failed sufficiently to take account of totality. It was recognised that there was available mitigation arising from the guilty pleas and the lack of previous convictions, coupled with the absence of offending since these offences ceased in the 1980s. The offender's counsel also relied on a degree of remorse and the admissions made to the school and then the Department for Education in the 1980s. That latter factor is alluded to at paragraph 10 of annex B to the Sentencing Council's definitive guideline.

16 It seems to us that whilst the offender's then admissions were non-specific, they were not investigated, as they undoubtedly would have been in modern times. We regard this factor as having some mitigatory weight, although considerably less than would have been the case had full specific admissions been made at the time. In this context we bear in mind that when he was prosecuted in 2015, the offender did not take the opportunity to make any admissions beyond the case of R.

17 Mr Ray on behalf of the offender argued that the sentence was not unduly lenient given the available mitigation, and in particular the fact that the offender had not returned to teaching after a suspension imposed by the Department for Education had been completed. He argued that the judge had approached her task with care and had expressly stated that she was having regard to totality. In the circumstances, the court should not interfere.

18 On Counts 1 to 5 and Counts 7 to 10, the modern equivalent guideline relates to sexual assault of a child under 13. The guideline carries a maximum of 14 years rather than the 10 years available in the 1980s. Given the nature of the conduct, this would be a category 2A offence. The starting point for a single offence is 4 years' custody, with a range from 3 to 7 years. Count 12 falls within the same guideline, but is a category 3A offence, with a starting point of 1 year's imprisonment and a range from six months to 2 years. Count 11 involves a victim who was aged 13 or 14, and so falls within the section 3 sexual assaults guideline. It has a starting point of six months with a range from high level community order to 1 year.

19 The judge was aware of the principles relating to sentencing historic sexual cases, and the need to make measured reference to modern guidelines. She was also aware of the need to have regard to totality where multiple offences are involved. The judge had also considered, with reference to this offender's age, *R v Clarke & Cooper [2017] 2 Cr App R (S) 18* .

20 The sentences imposed were as follows: on Counts 1 to 3 (victim D), 30 months concurrent. On Counts 4 and 5 (victim T), 30 months concurrent. On Count 7 (victim J), 18 months consecutive. On Counts 8 to 10 (victim J), 18 months concurrent. On Count 11 (victim J), 10 months concurrent. On Count 12 (victim A) 7 months concurrent. That gives a total of 4 years. To put matters shortly, all counts were ordered to run concurrently with the 30 months imposed on Counts 1 to 3, with the exception of Count 7, where an 18 month term was ordered to run consecutively. In addition, an indefinite Sexual Harm Prevention Order was made.

21 It seems to us that the judge might have structured the sentence differently by approaching the matter chronologically, victim by victim, but the essential consideration for us is whether the overall sentence passed was unduly lenient. In that respect, we note that the starting point for a single offence against a single victim who was aged under 13 would have been 4 years. With credit for a guilty plea, and taking account of the available mitigation, it is hard to see how a single offence against a single victim on any count other than Count 12 could have attracted a sentence of less than 18 months to 2 years. As the totality guideline indicates, a court should step back and consider whether the overall sentence imposed is just and proportionate. That will relate not only to the offender, but also to the victims and the wider public interest.

22 In our judgment, a term of 4 years' imprisonment did not adequately reflect

the need for the total sentence to encompass all of the criminality involved. There were four victims, each of whom was vulnerable and abused in a serious breach of trust. There were multiple offences to be considered. Even with credit for guilty pleas, and even taking into account all of the mitigation advanced, we have come to the conclusion that the sentence imposed was simply too short.

23 In our view, the least sentence which should have been imposed was one of 5 and a half years. It follows that the sentence imposed was unduly lenient, and we give leave to the Attorney General. We give effect to our conclusion by substituting sentences of 18 months' imprisonment on Counts 4 and 5 and ordering them to run concurrently with one another, but consecutively to the sentences imposed on the other counts. This means that the offender's overall sentence is increased from 4 years to 5 and a half years.