Judicial Communications Office

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COURT AFFIRMS SENTENCE FOR "SEXTORTION" OFFENCES AGAINST SCHOOLGIRLS

Summary of Judgment

The Court of Appeal[1] today affirmed the sentence imposed on Jonathan Playfair who pleaded guilty to multiple "sextortion" offences of sexual offending and related counts including blackmail against three teenage schoolgirls. It said the facts grounding the offences in this case are important for educators and influencers of the young, and young people themselves as real-life examples of the type of social media contact that will offend the criminal law and the serious consequences that can ensue for perpetrator and victim.

Jonathan Playfair ("the applicant") pleaded guilty to the offences contained in three Bills of Indictment:

- The first Bill relates to 15 specimen counts. The applicant was found to have 138 images and 21 videos of a 16-year-old girl, V1, on his phone following a search of his address on 4 May 2020.
- The second Bill concerns a threat made in August 2018 by the applicant to V2, aged 17, who had previously sent him an image of her breasts, that he would upload this image to Facebook unless further explicit images were sent. The applicant uploaded the image, tagging V2.
- The third Bill arises out of offences committed between June and November 2018. The victim was V3, who was aged 13 or 14 at the time. The applicant had arranged to meet V3 at a leisure centre. The applicant had sexual intercourse with her in a room at the leisure centre and subsequently threatened to tell her mother what had happened unless she sent explicit images to him, which she then did. In a subsequent incident, the applicant covertly recorded V3 performing oral sex on him. This video was sent to V3's mother and sister and also came into the possession of her classmates.

The 2020 offending described in the first Bill occurred whilst the applicant was on bail for the other offences. Also, the evidence revealed that the applicant continued to attempt to contact V3 whilst on bail.

The methodology adopted by the trial judge in constructing the overall sentence was to identify the headline offence(s), examine the totality of the offending to take account of the scale of the offending and consider all the aggravating and mitigating factors (excluding discount for the plea). By this process he arrived at a starting point of nine years. He then allowed full discount for the plea and reduced the sentence to one of six years. Having made a determination of dangerousness, he imposed an ECS with a custodial period of six years and four years extended licence. He also imposed a Sexual Offences Prevention Order ("SOPO") for 10 years.

The trial judge identified the blackmail offences as the headline offences. It was accepted by both the prosecution and the defence that he did not have the power to impose an ECS in respect of the

[1] The panel was Keegan LCJ, Treacy LJ and Horner LJ. Treacy LJ delivered the judgment of the court.

'headline' blackmail offences because blackmail is *not* a specified offence under Article 14 of the Criminal Justice (NI) Order 2008 and an ECS cannot therefore attach to it. However, most of the other counts on the indictment are for specified offences. Once the finding of dangerousness was made the trial judge was obliged to impose an ECS.

No issue was taken with the finding of dangerousness or the imposition of an ECS, nor with the discount allowed for the plea. This appeal therefore focussed principally on the starting point of nine years with the applicant contending that the overall sentence was manifestly excessive. The applicant sought leave to appeal against the sentence on the following grounds:

- The starting point was wholly excessive;
- The four-year extension period was wholly excessive;
- The SOPO was unnecessary and contrary to principle.

The applicant contended that the starting point of nine years failed to reflect his age, learning difficulties and problems in his background. The applicant also criticised the trial judge for failing to identify what weight he gave to the identified mitigating factors (save for the plea of guilty). As a result, it was argued, the judge erred in allowing the case to stray into an impermissibly high sentencing bracket particularly when one takes into account the youth of the applicant.

Discussion

The court said that none of the points advanced by the applicant carry much weight:

> "Plainly the judge had read, considered and referenced the pre-sentence and expert reports. He also expressly addressed the applicant's age, maturity, learning difficulties and the problems in his background. Detailed submissions were made before him on these very points. The judge did not attribute particular weight to individual factors, nor was he obliged to do so. It was always quite clear what the main points in mitigation were and no one is suggesting that the judge overlooked them. Subject to rationality and the overall assessment of whether, looked at globally, the sentence was manifestly excessive, the impact of the mitigation involves an evaluative assessment by the sentencing judge taking into account all the expert reports, the relevant caselaw, sentencing guidance where available and the oral and written submissions of the parties. Where, as here, that has been faithfully done it will ordinarily be very difficult to surmount the high threshold required to condemn a sentence as not just excessive but 'manifestly excessive.' Nor do we consider that there has been any material error of principle or otherwise in the approach he took."

The court said it was clear that had the judge not identified any mitigating factors the starting point of nine years would have been well into double figures. Therefore, he must have given significant discount for mitigation to arrive at a starting point in single figures. The judge then gave full discount of one third for the plea reducing the custodial sentence to one of six years. No issue was taken by either the defence or the prosecution to the discount for the plea.

The court then considered the scale of the offending and the aggravating and mitigating factors. It said the decision of a sentencing judge to impose concurrent sentences, rather than consecutive sentences, in this multi-offence sentencing exercise, was a matter of discretion provided it resulted

in a just and proportionate sentence. Such a sentence necessarily entails taking full and proper account of the scale of the offending to include all the aggravating and mitigating factors to arrive at the starting point and then to make the appropriate adjustment for the plea. The judge then has to stand back and satisfy himself that the overall sentence he has arrived at is just and proportionate. If not, he should adjust it accordingly to ensure he arrives at such an outcome.

Usually, in arriving at the starting point, the judge will have had regard to the sentencing ranges for the specific type of offending, laid down by the Court of Appeal. Even where such guidance as exists is not directly applicable it may depending on the circumstances of the case, provide some assistance on the road to arriving at the appropriate sentence in otherwise relatively uncharted territory. In some cases, and this was very definitely one, there will be little difficulty in recognising that it is a case where a significant period of imprisonment is required to achieve the requisite punishment and deterrence. Equally, this was a case where the dangerousness provisions were in play as was apparent from the pre-sentence report, and this was confirmed by the acceptance across the board that there was no basis for challenging that assessment by the trial judge.

The court noted however that the trial judge had imposed sentences which for important, but essentially technical reasons, he was not empowered to impose. It said it was clear what the judge was trying to do and why. The recognition of all these factors meant that an ECS is the necessary sentence. Since that outcome was not available for blackmail the court said the sentences will have to be rearranged in a manner that keeps jurisdictional faith with the statute. If the judge intended to arrive at the same sentencing result whichever offence was selected as the 'headline' offence within the package, but in a manner consistent with the 2008 Order, then the central question for the court became whether a starting point of nine years is manifestly excessive for the totality of the offending in this case.

Conclusions

The court said there was no doubt that in this case the custody threshold is passed, that a deterrent sentence was required and that the finding of dangerousness excludes a determinate custodial sentence as an option in respect of offences which are specified under the 2008 Order. It considered that the applicant's culpability is high, and the harm suffered is high. For that reason, realistically, the only option was an ECS with the length of the custodial element being the crucial matter that the court must determine. It proposed to adopt a concurrent approach to the sentencing in this case, having identified the headline offences.

The sentencing court must take into account, the scale of offending, the number of victims, the high culpability and the high harm that the applicant has caused to his victims. His serious sexual offending against the youngest and most vulnerable girl who was only 13 when he started is reflected in the three counts of sexual activity involving penetration by an adult with a child aged 13-16 and the two counts of an adult causing/inciting a child aged 13-16 to engage in sexual activity of the third Bill. The court said that each of those offences, like the blackmail offences, are regarded as so serious that the maximum sentence they carry is 14 years' imprisonment. It noted that viewed globally, the scale and seriousness of the offending is such as to require a significant period of imprisonment to punish the seriousness of the offending and, importantly, to deter others from committing further offences.

The aggravating factors in this case include:

- Targeting and grooming of vulnerable victims.
- Three separate victims.
- The persistence of the offending.
- The use of coercive and controlling behaviours.
- A degree of planning.
- The dissemination of material to the victim's family and school to cause maximum distress and disruption of every important feature of the youngest victim's life.
- Unprotected sex with his youngest victim thereby exposing her to obvious risks.

Culpability and harm

In terms of culpability, the applicant was fully aware of the victim's distress because she told him that she could not continue to live like this and was contemplating suicide. His response was that he did not care. The court said his subsequent actions were clearly intended to cause her maximum distress and humiliation. His planning of these activities involved the use of fake profiles and his contact of the victim's mother and sister:

> "He did cause the victim significant harm; it was obvious that such harm would result, and it appears that his actions were intended to cause as much harm as possible to this vulnerable young girl. The harm was inevitable and clearly foreseeable, and the applicant exploited the victim's distress and shame to carry out the offences. Where, as here, the threat is implemented in the most callous, calculating manner to inflict real harm on a vulnerable child, rendered suicidal by the threat of such exposure, this constitutes an exceptionally significant aggravating factor both in terms of culpability and harm. In the case of V3, in an act of incomprehensible wickedness, he disseminated the video to her mother, her sister and a school colleague thus ensuring maximum exposure amongst those closest to her, where the humiliation was likely to be overwhelmingly crushing. This offender's culpability is high. The harm is also high. She suffered humiliation, distress and harm. His actions caused her to be bullied at school, resulting in her having to leave her school for her own safety. Her education was impacted by the disruption to her schooling. She also suffered serious physical and psychological harm as is clear from her victim impact report. … For a period of time this applicant's behaviour wrecked this young girl's life."

The Court of Appeal identified the headline offences to be the penetrative sexual offences charged at Counts 1-3 of the third Bill of Indictment. It said that in view of the aggravating features it had identified a starting point of nine years was entirely appropriate having regard to the scale and gravity of the offending in this case. No issue was taken with the reduction of three years given by the trial judge for the plea. Finally, in relation to the extended sentence, the court agreed with the trial judge that a four-year extension is appropriate given the determination, persistence, maliciousness, victim blaming and limited insight of the applicant:

> "We consider that there can be no doubt that in all but exceptional cases, significant deterrent custodial sentences should be imposed upon those who engage in blackmail and overlapping or related offending, particularly where the victim is young, vulnerable or both."

The court stated that an increasingly significant number of blackmail cases are being dealt with in the Crown Court in Northern Ireland where the blackmail takes place online or through social media. So called "sextortion" ranges from the use of social media where the offender and victim know each other in real life through to organised online gangs in so-called "troll farms" who stalk the internet accessing computers and devices of the often vulnerable to then exploit those victims to send intimate images which are then used to blackmail them. The court said there have been a number of such cases, where confronted with humiliation, young people have taken their own lives: "The online threat to a victim that they will stand humiliated or embarrassed indefinitely, given the near permanent nature of online publication, is a serious threat."

The court affirmed the overall sentence of six years' imprisonment and four years extended licence.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://www.judiciaryni.uk/).

ENDS

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