Neutral Citation Number: [2010] EWCA Crim 2589
No: 201002214/A6
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 14th October 2010

B e f o r e:
LORD JUSTICE AIKENS

MR JUSTICE OPENSHAW

RECORDER OF NORWICH
(HIS HONOUR JUDGE PETER JACOBS)
(Sitting as a Judge of the CACD)

R E G I N A

v

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(Official Shorthand Writers to the Court)

Mr W Grier appeared on behalf of the **Appellant**
Mr C thomasson appeared on behalf of the **Crown**

J U D G M E N T
(As Approved by the Court)

19. LORD JUSTICE AIKENS: This is an appeal against sentence with the leave of the single judge.

19. The appellant, who is now aged 39, changed his plea to guilty to two counts of rape on the second day of the trial in the Crown Court at Newcastle-upon-Tyne on 24th February 2010. The prosecution had opened the case and had played the video of the complainant's evidence in-chief before the change of plea was made.

19. On 29th March 2010 the appellant was sentenced to an extended sentence which comprised a custodial term of 8 years and an extension period of 7 years. Those sentences were passed on each of the two counts of rape. Each sentence to run concurrently the one with the other.

19. The facts giving rise to the offences are as follows: the appellant and the complainant, who we will call JG, were in a relationship. JG had two children, aged six and two, from a previous relationship. The appellant thought JG was having an affair with another man. On Friday 2nd October 2009, the appellant came home and accused the complainant of having an affair and he then used such violence upon her that she thought she was going to be killed that night. The appellant punched her in the throat, the face and the head.

19. That violence continued on the Saturday morning until the appellant left the address for his work. When he did so, he took with him the complainant's bank card and he withdrew money from her account with the card without her consent or authority.

19. When the appellant returned to the address where both he and the complainant lived on the evening of Saturday 3rd October 2009, he was abusive and violent again to the complainant. He jumped and stamped on her and threatened her with a metal ball which he had placed in a sock and then used as a weapon, swinging it around. The appellant threatened to shoot the complainant in the face. Bizarrely, he also threatened to turn her into a prostitute.

19. The appellant then forced the complainant to perform oral sex on him and then required her to have vaginal sex with him. The complainant did so in fear of what he might do to her. She was genuinely concerned that the appellant would kill her.

19. The appellant eventually left the house. When he did so he told the complainant to tell people that another man had assaulted her. The complainant's two children were upstairs in the house at the time of the attacks and offences we have just described.

19. A pre-sentence report was prepared for the sentencing hearing. The report states (at paragraph 2.4) that the appellant recognised that his use of illicit drugs, particularly amphetamines, increased his propensity to paranoia and violence, although the appellant attempted to justify his behaviour towards the complainant by claiming that she had admitted to having an affair with another man.

19. The same paragraph in the report notes that there are photographs in the police documentation showing the kitchen wall of the complainant's home on which the

appellant had written what the report describes as "bizarre" statements. These included "power", "betrayed", "lied", "hated" and "violent". The report says that these statements "would seem to confirm the level of his paranoia". The writer of the report concludes that the appellant's actions were those "of a man preoccupied by control and aroused by sexualised violence." The report then states: "It is of note that he admits to being violent towards previous partners."

19. Paragraph 3.2 of the PSR also refers to the appellant's "admitted history of violence towards previous partners". The writer says that the circumstances of the current offence, together with these admissions and the appellant's minimisation of his offences, all lead him to the conclusion that the appellant presented a medium risk of re-offending.

19. Paragraph 3.3 of the PSR states that the appellant admitted he had been violent towards each of previous partners and that his aggressive behaviour contributed to the breakdown on of those relationships. The report then refers to County Durham police records which the report says Police Constable McKenna confirmed showed that there had been six domestic violence related call outs in respect of the appellant and two of his previous partners. Paragraph 5.2 of the report concludes that the appellant presented a "significant risk" of harm to the public in the context of violence, both physical and sexual.

19. At the sentencing hearing the appellant, through his counsel, denied that he had admitted to the probation officer that he had been violent towards previous partners. It was submitted to the judge, on the appellant's behalf, that material produced by the police did not contradict that assertion by the appellant.

19. When the judge passed sentence he described the appellant as a man who controlled women. The judge's sentencing remarks continue, on page 2:

> "It is perfectly clear from what is set out and I am satisfied, despite what you say, that the [PSR] writer would not have written a report that was written if these allegations had not been admitted by you. I take that into account when considering what should be done."

Later on his remarks the judge said that he considered the appellant was "a danger to woman who become associated with you". Therefore he concluded that there must be an extended sentence in the form that we have already described.

19. The sole ground of appeal is that the judge should not have imposed an extension as long as 7 years in addition to the custodial element of the sentence of 8 years. It is submitted that judge should not have based his assessment of the extension period upon the admissions recorded in the PSR. It is, however, accepted by Mr Grier that when considering the issue of "dangerousness", a sentencing judge is entitled to take into account all information before him, not simply evidence: see R v Considine and Davis [2008] 1 WLR 414, 1 Cr App R(S) 41. Mr Grier accepts, for the purposes of this appeal, that the "dangerousness" conclusion was correct and that the judge was entitled to pass an extended sentence. His only complaint is about the length of the extension

period.

19. We have seen a report from the Northumbria police dated 9th March 2010, which Mr Grier has confirmed was before the judge at the time of the sentencing hearing. On the third page of that document, there is a reference to three incidents of domestic violence, two of which occurred in June 2004, on one previous partner of the appellant and the third of which occurred on 2nd July 2005, concurring another partner of the appellant. The report does not set out any details of actual physical violence by the appellant on those partners.

19. It seems to us that the judge was entitled to conclude that the appellant had indeed made the admissions referred to in the PSR in the course of the interview which took place between him and the probation officer, in the presence of Police Constable McKenna on Wednesday 10th March 2010, and on which the PSR was partly based. He was entitled to come to that view. Even if the appellant did subsequently retract those admissions. However, even if the judge were to have disregarded those admissions, there was, in our view, ample evidence before him, both in the form of the Northumbria Police Report, and in the circumstances leading up to and during the commission of the two offences of rape to conclude that the appellant was indeed dangerous.

19. As we have said it is not suggested that an extended sentence period was wrong in principle. Section 228(4) of the Criminal Justice Act 2003 permit the court to impose an extension period of up to 8 years in the case of sexual offences. In our view, in all the circumstances of this case, the extension period imposed by the judge cannot possibly be called manifestly excessive. We think it was, in fact, fully justified.

19. Accordingly this appeal is dismissed.