

ENGLAND AND WALES / JUDGMENT

R v Billy-Joe Wilson

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Neutral Citation Number: [2026] EWCA Crim 427 Case No: 202504608 A2 IN THE COURT OF APPEAL (CRIMINAL DIVISION) ON APPEAL FROM THE CROWN COURT AT LEWES His Honour Judge Stephen Mooney 47NC6495420 Royal Courts of Justice Strand, London, WC2A 2LL Date: 15 April 2026 Before: LORD JUSTICE STUART-SMITH SIR ROBIN SPENCER and HIS HONOUR JUDGE MARKS KC (Common Serjeant of London)

- ----- REFERENCE BY THE ATTORNEY GENERAL UNDER s.36 CRIMINAL JUSTICE ACT 1988
- ----- Between: REX
- and – Appellant BILLY-JOE WILSON Respondent
- ----- Charlotte Hole appeared on behalf of the Attorney General Richard Elliott appeared on behalf of the Respondent
- ----- Hearing date: 1 April 2026
- ----- The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. Under those 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.
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 15 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

[2026] EWCA Crim 427 R v Wilson Lord Justice Stuart-Smith: 1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. Under those provisions, where an allegation has been made that 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. For the avoidance of any doubt, we do not waive or lift the prohibition.

2. His Majesty's Solicitor General applies for leave to refer a sentence which she regards as unduly lenient. The sentence was imposed by HHJ Stephen Mooney sitting in the Crown Court at Lewes and was in respect of a single count of Controlling or Coercive Behaviour. On his conviction by the jury, the sentence was one of 18 months custody suspended for 18 months with an unpaid work requirement of 150 hours and 35 days of rehabilitation activity requirement. The offender had been acquitted by the jury of three counts of rape, the acquittal on one of those counts having been at the direction of the Judge.
3. We give leave. The facts
4. We shall refer to the victim in this case as V. The Solicitor General brings the reference on the basis of a summary of facts largely drawn from the Pre-Sentence Report (PSR) that reflects the case as opened by prosecution and as led in evidence. However, we do not set out that account in full here because, as we explain below, the unacceptable course that the case has taken leaves us uncertain about what aspects of the account should be relied upon. For present purposes it is sufficient to record that, at its highest, the prosecution case asserted persistent and serious controlling and coercive behaviour between 2016 and 2019, during which time the offender and V were in an intimate family relationship. V was 17 when the relationship started; the offender was about 10 years older. 5. In his response to the Reference, in submissions that were all the more impressive for being concise and frank, Mr Elliott has traced the development of the case up to the point of sentence. Despite a specific direction from HHJ Laing KC at the PTPH in September 2024, no case summary was provided by the prosecution. The indictment merely states as particulars of the offence that "at a time when he was personally connected to V [he] engaged in behaviour towards V that was controlling or coercive which had a serious effect on V, namely that it caused V to fear, on at least two occasions, that violence will be used against her, at a time when he knew or ought to have known that the behaviour will have a serious effect on V."
6. We are told by Mr Elliott and accept that the prosecution did not provide a note of opening in advance of the trial. While much of the detail on which the prosecution appears to have relied appears in the MG5 summary, that was not formally adopted or advanced as the basis on which the prosecution was brought. On the other hand, Mr Elliott accepts that he did not ask for further particulars of the case that was being brought against his client; and no particulars beyond those set out in the indictment were provided by the prosecution.

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7. V had made her first statement alleging controlling and coercive behaviour in June 2019. These proceedings were finally instituted and the offender first appeared in the Magistrates' Court some five years later, on 14 August 2024, when the case was sent to the Crown Court. The trial began on 23 September 2025, over six years after the end of the coercive and controlling conduct in question. On 30 September 2025, one count on the indictment having been dismissed at half time, the offender was acquitted of the two remaining counts of rape and convicted of the offence with which we are concerned. 8. Thus it was that the Judge

came to be sentencing the offender in late November 2025. Ms Hole, who appears for the Solicitor General, accepts that no explanation can be put forward to justify the delay that has occurred in instituting proceedings and bringing the case to trial. The sentencing hearing

9. V made two victim personal statements. The first was made in June 2019, just at the end of their relationship. In it she spoke of severe flashbacks and constant flinching and constantly looking over his shoulder when going out to the town. In her second, made shortly before the sentencing hearing, she said that the offender had stolen her youth and her innocence and her chance of having a happy and healthy pregnancy; and she spoke of her and her daughter having lived in fear of the offender's outbursts and volatile ways. Her self-confidence was "in the gutter" with her dreams in tatters. She described herself as a scared and lost girl who felt that she had let her own child down.
 10. The offender was 35 when sentenced by the Judge and is 36 now. He had three convictions from when he had been a youth. There was no evidence to suggest that he had committed any further similar offences since the end of his relationship with V. Such evidence as there was pointed in the opposite direction.
 11. The Judge had the benefit of a PSR, which provided a detailed account of the history of the relationship. The offender continued to maintain his innocence. He informed the writer that he had been diagnosed with a Borderline Personality Disorder in about 2019. While providing some information (which was acknowledged to be speculative) about Borderline Personality Disorder, the writer offered the opinion that it would not excuse the offender's behaviour. He had now been in a relationship with his current partner for 5 ½ years. She has written a supportive letter to the Court, describing him as a fantastic partner who has to take responsibility for their shared young babe and his partner's older daughter as well as supporting her more substantially since she suffered the misfortune to suffer four herniated discs that prevent her from caring for the home or the children without help. In the assessment of the PSR writer he posed a low risk of reconviction and a low risk of causing harm to the public. There was assessed to be a high residual risk of serious harm to existing and future partners despite the longevity and successful nature of his present relationship.
 12. The writer of the PSR considered that the offender could be appropriately managed in the community with appropriate restrictions and restraining orders. 13. In a letter to the Judge, the offender expressed his apologies to V. He said that he had bettered himself in the years since his offending, including by anger management and finding ways to release stress and anger. He referred to diagnoses of mixed anxiety and depression and his borderline personality disorder and to working hard to learn how to
- [2026] EWCA Crim 427 R v Wilson manage his conditions and live a stable life. He referred to his six-year relationship with his current partner and his role in looking after their home and family.

14. The prosecution submitted a note for sentence in which it made clear that it relied on the facts as summarised in the PSR. During submissions, the prosecution submitted that the case fell into category A1, which would indicate a Starting Point of 2 years 6 months' custody and a Category Range of 1 to 4 years custody.
15. Mr Elliott, who represented the offender in the court below as he has before us, accepted that it was category A culpability "because it was persistent" but submitted his culpability was reduced because of neuro-divergence. That said, though he criticised V's reliability, he also accepted that it was a case of category 1 harm. The judge then said that he would have some regard to the offender's neurodiversity but that the main mitigation was the delay, which during submissions he described as "frankly a disgrace.". During counsel's submissions the Judge noted that the Jury had made no findings of fact and so it was "down to me". He identified as aggravating features the offender's previous convictions, and that there were two mitigating features, his neurodiversity and the delay in bringing the matter to trial.
16. The relevant part of the Judge's sentencing remarks was extremely short: "Mr Wilson, stand up. As you've heard, the sentence I am imposing does not mean you are going to prison straightaway. A sentence of 18 months suspended for 18 months. You'll carry out
 - I think it was 150 hours of unpaid work and do up to 35 RAR days."
17. The Judge then offered the offender some advice, which he prefaced by saying: "If this trial had been heard when it should have been I'd be sending you straight to prison." The Solicitor General's Submissions
18. The Solicitor General submits that the sentence passed by the Judge was unduly lenient because he:
 - i) made no uplift to the starting point to account for the multiple factors indicative of both higher culpability and greater harm; ii) allowed too great a reduction from the starting point for delay; and iii) suspended the sentence without proper application of the Imposition Guideline and in circumstances where appropriate punishment for this criminality could only be achieved by immediate custody.
19. Taking the first of those submissions, and noting that it was common ground that this was a category A1 case with an SP of 2 years 6 months custody and a range from 1 to 4 years, the Solicitor General submits that the prosecution identified four factors indicative of higher culpability, namely (a) conduct intended to maximise fear or distress, (b) persistent action over a prolonged period (c) use of multiple methods of controlling or coercive behaviour, and (d) conduct intended to humiliate and degrade V . The existence of multiple factors should have driven the Judge to make a significant upward adjustment to the starting point. The conduct of the offender covered a wider range of coercive and

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20. Second, the overall reduction for delay and the offender's borderline personality disorder was 1 year - a 40% reduction from the starting point. The basis for such a large reduction is not explained. The Solicitor General submits that there was no evidence that the offender's borderline disorder affected his ability to exercise appropriate judgment or to make rational choices or to understand the nature of what he was doing. Furthermore, while the delay was considerable, there was no evidence that the delay had had a detrimental effect on the offender. On the contrary, it had enabled him to come to terms with his anger and to lead a normal family life for years.
21. Third, there was no reference to the Imposition Guideline. Had proper attention been paid to the application of the guideline, the Judge should have concluded that appropriate punishment could only be achieved by immediate custody. 22. It must be borne in mind that the Solicitor General's submissions are predicated on the view of the facts set out in the PSR, which set out the prosecution case at its highest. The offender's submissions
23. Mr Elliott points out that the judge made no express findings of fact and that the route to verdict only required the jury to be satisfied that the offender caused V to fear on at least 2 occasions that violence would be used against her. He makes cogent submissions about the demonstrable unreliability of V and submits that it cannot be assumed that the Judge accepted everything she said about the offender's controlling and coercive behaviour. Furthermore, the judge did not obviously give consideration to the Imposition Guideline: had he done so he might have provided some clue about the basis on which he was sentencing the offender as he did. Worse still, it can be seen from the transcript that Mr Elliott did try to elicit from the Judge the factual basis on which the Judge was proceeding; but he was rebuffed by the Judge, who essentially responded that, since the Jury had made no findings of fact it was "down to him". In these circumstances Mr Elliott submits that the Court cannot form a reliable view about what facts the Judge would have found had he not completely failed to provide any indication at all. Viewed overall, and given the inadequacy of the sentencing remarks, Mr Elliott submits that imposing a suspended sentence as the Judge did cannot be stigmatised as being unduly lenient because there is a view of the facts and the mitigation available to the offender that could reasonably justify it. For that reason, he submits that the Court should not intervene. Discussion and resolution
24. We find this reference both difficult and troubling. We should make it clear at the outset that the difficulties stem entirely from the inadequacy of the sentencing remarks. This was a case in which, because the Jury did not give a fact-specific verdict and there was a range of possible factual findings, it was essential for the Judge to make clear the factual basis on which he was sentencing the offender. He did not attempt to do so. Equally, if the Judge was contemplating suspending the sentence it is now axiomatic that it was necessary for him to address the terms of the Imposition Guideline in its application to the facts of the case. Again, the Judge did not attempt to do so. Mr Elliott had started his submissions to the Judge

by saying that it was difficult to say where the case “fitted”

- [2026] EWCA Crim 427 R v Wilson because of “the way the prosecution put their case and the ... confusion”, before he was cut short by the Judge saying that both he and counsel had heard the evidence. 25. It is highly regrettable that the judge did not let Mr Elliott make his submissions. It is equally regrettable that, when passing sentence, he did not make any findings of fact to explain the basis for his categorisation of the case as falling within category A1. While it is entirely possible and appears likely that the Judge harboured doubts about some of V’s evidence, he did not say so and did not either expressly or by necessary implication limit or define the scope of the conduct that he was bringing into account. It could have been done quite shortly; but it was essential that it was done.
26. Some guidance can be derived from the categorisation itself. The first three factors justifying a finding of Category A culpability are conduct intended to maximise fear or distress, persistent action over a prolonged period and use of multiple methods of controlling or coercive behaviour. Mr Elliott’s acceptance before the judge that the offender’s conduct was “persistent” can in context only have been a reference to a course of conduct that was “persistent action over a prolonged period”. Turning to his acceptance that it was category 1 harm, it is equally material to remember that the factors identified in the guideline for category 1 are fear of violence on many occasions, very serious alarm or distress which has a substantial adverse effect on the victim and significant psychological harm. However, that does not provide any precision about what facts the Judge would have found proved. Nor does it demonstrate whether the Judge was relying on one of the factors or more than one (and, in either event, which one or ones). The implications for sentencing are obviously different depending upon which and how many factors are established.
27. We are persuaded by Mr Elliott that, in the circumstances of this case, the Judge’s failures make it impossible for this court to reach a reliable judgment about what facts the Judge may have had in mind, or what questions raised by reference to the Imposition Guideline he may have had in contemplation.
28. What then can be said with any certainty? Mr Elliott expressly accepted that the case fell within culpability category A “because it was persistent.” And, in relation to harm, he said “I cannot go beyond the victim personal statements of V”. The gist of those statements was that she had been subject to consistent, persistent abuse which in aggregate had caused her the harm she described. When Mr Elliott tried to temper his concession by reference to the fact that the jury had found the offender not guilty of some charges, the Judge shut him down, acknowledging that the jury found the offender had not committed the act of rape and acknowledging that they made no findings as to the use of violence at all. He did not address Mr Elliott’s broader submission that V was unreliable, or the consequences for sentencing if that submission were to be accepted. 29. It can also be said with confidence that the Judge had in mind the A1 Starting Point of two years and six months and the Category Range from one to four years respectively, because he mentioned them. He then considered aggravating and mitigating features, apparently by reference to the starting point of two years and six

months before relying on the delay in the case which he said “further reduces the sentence to 18 months”.

30. Although the offender was not of previous good character his three convictions dated from 2004 to 2006, when he was aged 16-18. He had received a referral order in 2004 for an offence of common assault, an action plan order in July 2006 for an offence of
- [2026] EWCA Crim 427 R v Wilson theft, and a conditional discharge in September 2006 for an offence of property damage. On any view, they were of marginal relevance. Since his offending against V he had one driving conviction, which again was of marginal relevance.
31. Turning to mitigation, Mr Elliott told the Judge, and we accept, that in 2022 the offender was aware of his issues, went to his GP and undertook an anger management course. The Judge concentrated on his borderline personality disorder and the issue of delay. Although the PSR spent some time on the borderline personality disorder, much of the information was acknowledged by the writer to be speculation; there was no medical or other evidence to support a finding that his culpability was significantly reduced by the borderline personality disorder. The impact of his borderline personality disorder on any notional sentence was therefore necessarily limited.
32. That, in the Judge’s remarks, left delay. It is an inescapable conclusion that the Judge made a significant reduction for delay. The principles that are normally to be applied in relation to delay were summarised in R v Barrett [2025] EWCA Crim 840 at [25] : “The kind of detrimental effect envisaged by the guideline is where an offender suffers some genuine psychological or even physical harm due to the delay, or where, for instance, it is apparent that an offender has had to put his life on hold waiting for a decision on prosecution.” We also note and agree with the observation in R v Timpson [2023] EWCA Crim 453 that: “the reduction would be most unlikely to be as great as 25%, particularly where the offences were serious, but some reduction would follow.” 33. In the present case, it could not be said that the offender had suffered a detrimental effect as normally contemplated by the passage in Barrett that we have set out above. He had not suffered harm and could not be said to have put his life on hold waiting for a decision on prosecution. However, in our judgment, the delay had a different but equally material effect in the present case, namely that it enabled the offender to turn his life around. In the 6½ years since June 2019 (at the latest), he had committed no further relevant offences. More positively, there was evidence before the Judge that he had taken positive steps to improve himself, most particularly by seeking medical help for his anger-related issues; and the fact of his having managed to remain in a successful relationship for well over 6 years, combined with the clear and strong support from his present partner, was potent evidence of rehabilitation and lasting change. These, in our judgment, were consequences of the delay that provided significant mitigation, quite apart from the undesirability of grossly delayed imposition of a custodial sentence.

34. Viewed overall, on the material that was available to the Judge, we consider that the maximum allowance that could properly be made for the offender's borderline personality disorder, the delay, and his positive efforts to turn his life around, was in the region of 9 months.
35. Assessment of the appropriate sentence is not a strictly mathematical exercise, particularly in the context of a Reference. Acceptance that the case falls within category
- [2026] EWCA Crim 427 R v Wilson A1 of itself implies that the offending was serious, necessitating as it does the finding of one or more factors demonstrating higher culpability and assessing that all the factors in the case justify a finding of category 1 harm. We have no doubt at all that the offending in this case fully justified treating it as a category A1 offence. However, in the absence of any findings by the Judge and for the reasons we have outlined, we are quite unable to conclude with any degree of confidence that the facts of the case were so serious that the Judge was wrong not to make an upwards adjustment from the Starting Point of 2 years and 6 months. As we have said, the sole identified aggravating feature, namely his previous convictions, was of marginal relevance and would not, in our judgment, compel an upwards adjustment from the Starting Point. Turning to mitigation, on the material that was available to the Judge, he would have been entitled to make an overall downward adjustment of about 9 months. On this basis, therefore, it cannot be concluded with any confidence that the Judge was wrong not to impose a sentence in excess of 2 years.
36. We turn therefore to the question of suspension. Once again we are hampered by the failure of the Judge to explain his reasoning, which he should have done by reference to the Imposition Guideline. As with findings of fact, this could have been done shortly; but it should have been done. We shall therefore have to consider the question of suspension afresh, starting from the position that a custodial sentence is unavoidable and that it must be towards the top of the range of sentences which may be suspended. For the reasons we have given, the shortest term that, in our judgment, was commensurate with the seriousness of the offence was one of between about 21 and 24 months. 37. In addition to the materials that were before the Judge, we have the benefit of a witness statement from a paralegal at the offender's solicitors who recounts their very recent conversation with the offender's probation officer, as follows: "[The offender] has been engaging positively and has attended all scheduled appointment. He has completed 16 hours of unpaid work to date which only commenced recently, through no fault of [the offender]. [The probation officer] also reported that [the offender] has recently secured full-time paid employment as a landscaper. Probation is in the process of arranging further support, including programmes aimed at addressing [the offender's] depression and improving his emotional wellbeing. [The probation officer] expressed the view that a custodial sentence would be detrimental to [the offender] and would likely disrupt the progress he has made. Overall, he spoke positively about [the offender's] engagement and the constructive developments observed during supervision."

38. With this in mind we come to the Imposition Guideline, the relevant version being the one effective from 1 September 2025. We note in passing section 1 “Purposes of Sentencing”. In assessing whether the sentence can be suspended, we address first the factors indicating that it may be appropriate to suspend the sentence. First, it is plain that there is a realistic prospect of rehabilitation in the community. That is amply demonstrated by the terms of the PSR with its recommendation that the offender could be managed in the community and that Rehabilitation Activity Requirements were
- [2026] EWCA Crim 427 R v Wilson appropriate. His present probation officer’s report also supports the conclusion that rehabilitation in the community is a realistic prospect. Perhaps most importantly, the offender has demonstrated rehabilitation by taking proactive steps before trial to address his difficulties, his successful continuing relationship with his current partner, and the absence of further anti-social behaviour. Second, while we take note of the PSRs assessment that he poses a high risk of offending or harm to existing and potential partners, that assessment must now be tempered in the context of his successful and long- term relationship with his present partner, who describes him as a “fantastic” partner, explaining in detail how he provides support for her and the two children. Third, his mitigation may not be over-strong but the efforts he has made to turn his life round during the very long period of inexcusable delay in bringing the case to trial, are not to be underestimated. Fourth, immediate custody would result in significant harmful impact on his partner and the two children.
39. Turning to the factors indicating that it may not be appropriate to suspend the custodial sentence, first, we have addressed the PSR assessment that he presents a risk for present or future partners. In our judgment, it is plain that the risk profile he presents now is quite different, and less worrying, than what it was in 2019. Second, we would accept that (at any rate if the trial had happened years ago as it should) the seriousness of the offence could support a conclusion that appropriate punishment could only be achieved by immediate custody. We bear in mind, however, the guidance of this Court in R v Hussain [2019] EWCA Crim 1542 at [21] that “even if a judge takes the view that appropriate punishment would only be achievable by immediate custody, he or she still has a discretion to suspend if there are sufficient factors against such a course.” Third, there is no history of poor compliance with court orders and no obvious likelihood that the offender will fail to comply in the future: the report from his current probation officer suggests the opposite. 40. In our judgment, the balance of these factors falls decisively on the side of suspending the sentence, despite any assessment that appropriate punishment can only be achieved by immediate custody. We are substantially influenced in this assessment by the undesirability of imposing an immediate custodial sentence so long after the events in question, at a time when the evidence suggests that the offender has successfully changed and turned his life around.

41. Standing back, in our judgment the sentence imposed by the Judge was lenient: a reduction from 2 years 6 months to 18 months was at or beyond the outer reaches of proper judicial discretion. Arguably, it was unduly lenient in making a reduction for mitigation that was somewhat too long. However, for the reasons we have given, we are unable to be confident that the Judge should have imposed a sentence in excess of 2 years. Once it is accepted that it was open to the Judge to impose a sentence of 2 years or less or, more precisely, that we cannot be sure that the sentence should have been in excess of 2 years, we consider that the decision to suspend it was justified even though we are critical of the Judge for failing to explain his decision.
42. For these reasons, we have come to the conclusion that this court should not interfere with the sentence imposed by the Judge. Our decision should not be seen as setting any form of precedent. It is solely driven by the particularly unfortunate history of this case. 9
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