

ENGLAND AND WALES / JUDGMENT

R v Wayne Morgan

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Computer Aided Transcript of Epiq Europe Ltd, Lower Ground, 46 Chancery Lane, London WC2A 1JE Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR B LLOYD appeared on behalf of the Attorney General MR J SCOTT appeared on behalf of the Offender

J U D G M E N T (Approved) LORD JUSTICE SINGH:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this offence. 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. This judgment is anonymised accordingly.

Introduction

2. The respondent offender was born on 10 June 1985 and was aged 40 at the date of sentence. On 17 April 2025, in the Crown Court at Shrewsbury, the offender was convicted of the following offences. On 14 August 2025 he was sentenced by Mr Julian Taylor in the following way. On counts 1, 3 and 8, which were offences of sexual assault of a child under 13, contrary to section 7(1) of the Sexual Offences Act 2003, there were sentences of a 7 year extended sentence comprising a custodial term of 5 years and an extended licence period of 2 years. On counts 2, 4 and 9, which were similar offences under section 7, there was an 8-year extended sentence comprising a custodial term of 6 years and an extended licence period of 2 years. On count 5, which was an offence of inciting a child under 13 to engage in sexual activity, contrary to section 8(1) of the 2003 Act, there was a 7-year extended sentence comprising a custodial term of 5 years and an extended licence period of 2 years. There was a similar sentence on count 7, which was also an offence of inciting a child under 13 to engage in sexual activity, contrary to section 8. Finally, on count 6, which was an offence of causing a child under 13 to engage in sexual activity contrary to section 8, there was an extended sentence of 8 years comprising a custodial term of 6 years and an extended licence period of 2 years. Since all of the sentences were made concurrent, accordingly the total sentence was an 8-year extended determinate sentence, pursuant to section 279 of the Sentencing Act 2020 (or the Sentencing Code) comprising a custodial term of 6 years and an extended licence period of 2 years. An appropriate statutory surcharge order was imposed.
3. The offender was made subject to a sexual harm prevention order until further order and was made subject to restraining orders for 10 years. Since he had been convicted of an offence listed in schedule 3 to the Sexual Offences Act 2003, the offender was required to comply with the provisions of Part 2 of that Act indefinitely, that is notification to the police. Since he had been convicted of an offence specified in the schedule to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria Miscellaneous Provisions) Regulations 2009 the offender will or may be included in the relevant list by the disclosure and barring service.
4. Before this Court His Majesty's Solicitor General now applies, under section 36 of the Criminal Justice Act 1988 ("the 1988 Act"), for leave to refer those sentences as being unduly lenient. The Facts
5. The facts are not substantially in dispute and can be taken from the Final Reference before this Court. The victim was the offender's daughter ("TM") who was born in 2006. The sexual abuse which she suffered at her father's hands took place when she was between 8 and 12 years old, that is between August 2014 and August 2019. The offender was aged 28 at the start of that period. The abuse was reported to the police by TM's mother (the offender's partner) on 12 May 2022. TM was interviewed by the police on 22 June 2022.

6. The behaviour happened for years at the family's home but was not limited to that address. When the offender and his partner ended their relationship for a time the offender moved into a flat and some of the offending took place there. Count 1 related to the sexual assault of TM between 16 August 2014 and 15 August 2019. Count 2 was a like offence but reflected conduct on no fewer than two occasions other than those in count 1. Count 3 was a like offence but relating to the sofa at the family home. Count 4 was a like offence to count 3 but reflected conduct on no fewer than two occasions other than that in count 3. Count 8 was a like offence to count 1 but took place at the flat. Count 9 was a like offence to count 2, but took place at the flat and reflected conduct on no fewer than two occasions other than the occasion in count 8. Count 6 related to causing TM to engage in sexual activity, namely the offender placing her hand on his penis. The offender tried to take the abuse further. There was one incident where TM was alone with the offender in her bedroom at the family home. The offender came into her room and pulled down his trousers. He came close to her bed which was low and asked TM whether she should fit his penis in her mouth. She refused and he repeated his request. She repeated "no". To this the offender said she did not love him because she did not agree to his request. Count 5 was that encouraging of TM to engage in a sexual act, namely the penetration of her mouth with his penis.
7. There was a further incident which the victim referred to as the "pen incident". TM wanted a pen and asked the offender for one. His response was "If you show me down there", referring to her vagina. Her response was "No, you can just keep your pen then". The offender looked at her and she started crying. Feeling guilty the offender gave her the pen anyway. It made TM feel horrible. This was the subject of count 7. These sexual incidents occurred against a background of grooming and sexualised messages from the offender to his daughter.
8. Events came to a head in May 2022. TM finally felt that she was ready and able to tell people about what had been happening to her. In tears she told her mother that the offender had been abusing her. On 12 May 2022, her mother reported the abuse to the police. The offender was arrested on 23 June 2023. In subsequent police interviews he provided a prepared statement in which he denied the allegations, he then answered "no comment" to questions asked. In a further interview in February 2024, he was asked about messages found by police on his telephone between him and the victim.
9. The offender first appeared in the Magistrates' Court on 2 July 2024. His case was sent to the Crown Court. Not guilty pleas were entered on 31 July 2024 and a trial date was fixed. As we have mentioned, on 17 April 2025 the offender was convicted after trial. Sentence was adjourned for the preparation of a pre-sentence report. As we have mentioned, sentence then took place on 14 August 2025. The Sentencing Framework

10. The maximum penalty for causing or inciting a child under 13 to engage in sexual activity contrary to section 8 of the 2003 Act, is 14 years' custody in the case of a non-penetrative offence and life imprisonment in the case of a penetrative offence. The maximum penalty for sexual assault of a child under 13 contrary to section 7 of the 2003 Act is 14 years' custody.
11. There are relevant guidelines issued by the Sentencing Council in respect of these kinds of offence. In relation to counts 5, 6 and 7, the Sentencing Council's Definitive Guideline on Causing or Inciting a Child Under 13 to Engage in Sexual Activity requires a sentencing judge to go through various steps to identify the appropriate sentence. For present purposes it will suffice to mention the following matters. In a case which falls within category 2 harm and culpability A (a category 2A case), this guideline recommends a starting point of 8 years' custody with a category range of 5 to 10 years' custody. If this kind of offence falls within category 3 harm and culpability A, the guideline provides a starting point of 5 years' custody with a range of 3 to 8 years' custody. Category harm 2 will be where there is penile penetration of the mouth of the victim or severe psychological harm. Culpability A includes cases of grooming behaviour and abuse of trust.
12. In relation to counts 1, 2, 3, 4, 8 and 9 the Definitive Guideline on Sexual Assault of a Child Under 13 requires a sentencing judge to go through various steps set out in the guideline to identify the appropriate sentence. A category 1 harm case will be one where there is severe psychological harm. A category 2 harm case will be one where there is touching of the naked breast area. Culpability A is again where there is grooming behaviour and/or abuse of trust. The guideline recommends for a category 1A case a starting point of 6 years' custody with a category range of 4 to 9 years. For a category 2A case, the guideline recommends a starting point of 4 years' custody with a range of 3 to 7 years. The Sentencing Process
13. The offender had previous convictions. The most relevant for present purposes were in 2011, when a caution was given for voyeurism. The offender set up his mobile telephone in the family bathroom and recorded his sister undressing and having a shower. In December 2019 there was an offence of harassment. The offender pursued a course of conduct amounting to harassment against his ex-wife (the mother of the victim in the present offending). In February 2023 there was an offence of harassment. The offender pursued a course of conduct amounting to harassment against his daughter "TM". This offending postdated the index offending. On 15 March 2024 the Telford Magistrates' Court had imposed a sexual harm prevention order ("SHPO") that had been applied for by the police.
14. For the purposes of sentencing, the judge had two victim personal statements from the victim dated September 2023 and April 2025. In her first victim personal statement the victim mentioned that the offender would send her pictures and videos of him cutting himself. This made her feel like she was to blame and that it was her fault. The victim also described herself starting to self-harm. She mentioned that after his arrest the offender had tried to contact her a few times. That made her scared that she would see him or he would be hanging around her school on her way home. She said that she basically locked herself away in the house for about a year. It was affecting her whole life. In her second victim

personal statement the victim explained that she had been in contact with mental health services and was now seeing a psychiatrist. The psychiatrist had said that it was likely that she had PTSD, emotional dysregulation, anxiety and suicidal ideas. She had been prescribed medication to help her sleep. The judge also had a pre-sentence report which we too have read. We should also say that since the sentence in question, we have had the advantage of having seen a prison report.

15. The pre-sentence report said that the offender would remain a high risk of causing serious harm. He had a sexual interest in children and viewed them as sexual objects.
16. The prosecution filed a note for sentence. The prosecution submitted that as regards the offences of sexual assault of a child under 13 the offending fell into category 2A. Harm was category 2 because there had been touching of the naked breast area. Culpability was A because of grooming behaviour, abuse of trust and isolation of the victim specifically at the second property, and soliciting of images to see her breasts by sending her pictures of his penis.
17. So far as the offence of causing or inciting a child under 13 to engage in sexual activity is concerned, the prosecution submitted that the lead offence (touching of the offender's penis) was within category 3A because harm factors in category 1 or 2 are not present. Defence counsel did not take issue with the prosecution's approach to the guidelines, in that it was accepted that there was an abuse of trust. However the issue of whether there was grooming behaviour was a matter for the court. It was submitted that the previous convictions were of limited relevance. It was also submitted that there was some mitigation available to the offender because he had a difficult upbringing and there was a reliance on alcohol. It was submitted that the offender was not dangerous and emphasis was placed on the principle of totality.
18. In his sentencing remarks the Recorder noted that the abuse had started when the victim was 8 years of age and continued between the ages of 8 and 12. There was a background of grooming and sexualised messages from the offender to the victim asking to see her breasts. When she refused the offender would threaten that her mother would find out. The victim had come near to suicide and had to be prevented from doing that. She had various psychological problems. The effect had been very serious, something to which Mr Lloyd has attached significance in his submissions on behalf of the Solicitor General. The Recorder also mentioned the traumatic effect on the victim, again something that Mr Lloyd relies on to demonstrate that even if the word "severe" was not used, that was in substance what was being said by the sentencing judge.
19. Count 6 in the judge's view was the lead offence; when the offender put the victim's hand on his penis. There were other incidents of incitement where the offender wanted to put his penis in her mouth and the victim had adamantly refused. The judge said the grooming was a bit difficult to quantify. It was not a case where the offender attracted some unknown young girl to perform sexual acts with him. This was the offender's own daughter. However

there was no doubt there was a substantive breach of trust. There were aggravating features including the previous convictions. The sexual assault of a child under 13 fell into category 2A. Whether there was grooming behaviour or not, the Recorder thought there was some. There was also an abuse of trust. The offender isolated the victim specifically at the second property. As regards the inciting or causing a child under 13 to engage in sexual activity there was no doubt the lead offence was the offender getting the victim to touch his penis. This was a category 3A case. The court could apply a downward adjustment to those offences involving incitement. However, there were three quite distinct incidents which would attract an increase in the starting point. The judge then considered the question of dangerousness and was satisfied that the test was met. Accordingly an extended sentence would be imposed in the terms that we have outlined already. Finally, as we have mentioned, the Recorder imposed an SHPO for an indefinite period but declined to impose conditions dealing with the storing of material on a telephone or other telephone related prohibitions. A restraining order was made for 10 years. Submissions on behalf of the Solicitor General

20. On behalf of the Solicitor General, Mr Lloyd submits, first, that the sentence was unduly lenient, and secondly, if this Court agrees with that submission and is minded to increase the sentence, he invites this Court to vary the terms of the SHPO. He submits that they should have included the conditions that had been sought by the prosecution relating to the owning or having control of any device capable of accessing the Internet.
21. Mr Lloyd acknowledges that the stance taken by the Solicitor General before this Court is different from the one taken by the prosecution before the sentencing court in relation to the categorisation of the offending in this case. Nevertheless he reminds this Court that the law officers are not bound by the approach taken by the prosecution in the Crown Court (see *R v Stewart* [2016] EWCA Crim 2238; [2017] 1 Cr App R(S) 48 at [32 – 37] in the judgment of Davis LJ).
22. Turning to the burden of his criticisms of the custodial term imposed in this case of 6 years, Mr Lloyd submits, first, that the judge erred in his approach to the guidelines for both the offence of sexual assault of a child and the offence of causing/inciting a child to engage in sexual activity. He submits the judge should have concluded that the victim had suffered severe psychological harm. She suffered nightmares, she self-harmed, she had suicidal thoughts, she was receiving psychiatric care as she suffered flashbacks. She probably suffers PTSD, emotional dysregulation, anxiety and suicidal ideas. Given her age in particular, Mr Lloyd submits that the harm suffered was accordingly severe. He submits therefore that the appropriate category of harm for the offences of sexual assault of a child should have been category 1 and for the offences of causing, inciting a child to engage in sexual activity should have been category 2.
23. Moreover, submits Mr Lloyd, the judge erred in his approach to count 5, the encouragement of TM to engage in the penetration of her mouth with the offender's penis. He submits first, that count 5 should have been placed into category 2 harm. For that reason, as the guideline makes clear, where activity is incited but does not in fact take place the court should identify

the category of harm on the basis of the sexual activity which the offender had intended but then apply a downward adjustment to reflect the fact that no or lesser harm actually resulted. Mr Lloyd submits that the extent of downward adjustment will be specific to the facts of each case. But in this case it should have been limited because the encouragement of TM to permit the penetration of her mouth was a clear escalation of the nature of the offending. He repeated his request and was persistent and upon further rejection he told TM that she did not love him.

24. Furthermore Mr Lloyd points to the aggravating features in this case, in particular, the previous convictions, the blackmail or threats made to TM and what he submits were instances of being under the influence of alcohol when committing some of the offences. Moreover, Mr Lloyd submits that the judge erred in his approach to totality. Even if his earlier submissions are not accepted by this Court, Mr Lloyd submits that on the judge's own approach to the categories the total sentence did not reflect the gravity of the overall offending. The judge had in effect passed sentence on the basis of a single offence rather than increasing that sentence to reflect not only aggravating factors but to reflect the fact that there was a large number of other offences to be sentenced for.
 25. Finally, as we have mentioned, if the Court is minded to increase the sentence Mr Lloyd invites the Court to vary the terms of the SHPO. He submits the judge erred in that regard. In the circumstances the judge ought to have included the conditions sought by the prosecution relating to the owning or having control of any device capable of accessing the internet. Such terms would have been necessary and proportionate given the offender's history and the circumstances of the index offending. Submissions on behalf of the Respondent
 26. On behalf of the respondent, Mr Scott has helpfully filed written submissions and has developed those submissions in focused submissions before this Court at this hearing. He submits that the sentence, although lenient, was not unduly so and that the judge was entitled to reject the prosecution's application concerning the terms of the SHPO. Mr Scott does not accept the summary of the facts in the Final Reference in full although we do not understand there to be any material point taken about this. He also reminds this Court that the transcript of the sentencing hearing is incomplete.
 27. Turning to the grounds of criticism advanced by the Solicitor General, Mr Scott submits first, that the judge did consider the totality of the evidence at the trial and this must have included assessing the victim when she gave her prerecorded evidence. Whether a victim has suffered severe psychological harm, he submits, is a judicial assessment for the sentencing judge (see the judgment of this Court given by Holroyde LJ in R v Chall
- [2019] EWCA Crim 85; [2019] 2 Cr App R(S) 44, in particular [15], [26] and [27]). Mr Scott reminds this Court that the judge also had the benefit of seeing two victim personal statements. He reminds this Court that the Definitive Guideline explains that the sentence levels in this kind of case take into account a basic level of psychological harm which is inherent in the

nature of the offending itself, particularly in relation to sexual offences against children under the age of 13. In relation to count 5 Mr Scott accepts that the intended sexual activity would fall into category 2A but the judge acknowledged that some downward adjustment would be required because the offence had not been completed. He submits therefore, that a meaningful downward adjustment from a starting point of 8 years' custody was not unwarranted.

28. Turning to the discretion of this Court, if the Court is otherwise minded to conclude that the sentence passed was unduly lenient, Mr Scott submits that there can be unfairness to an offender where the Attorney General differs from the approach taken by the prosecution before the sentencing court and this can and should be reflected in some reduction of the sentence imposed if this Court does conclude the original sentence was unduly lenient (see Attorney-General's Reference (Susorovs) [2016] EWCA Crim 1856; [2017] 1 Cr App R(S) 15, in particular the judgment of Lloyd Jones LJ at [33]).
29. Turning to the submissions about totality, Mr Scott submits that the judge did have regard to the aggravating features of the respondent's previous convictions and the threats to tell the victim's mother. He disputes whether there was in fact evidence that the respondent was intoxicated at the time of any of this offending. He accepts the respondent said on one occasion to the complainant's mother that he had got into the wrong bed because he was drunk but this was a lie. Mr Scott submits that a lie that he was drunk was not evidence he had committed offences while intoxicated.
30. In relation to the more general point about totality, Mr Scott submits the sentencing judge was entitled to pass concurrent sentences. He identified a lead offence (count 6) and moved upwards in the category range to take account of aggravating features and the fact that he had to sentence for other offences concurrently. At the hearing before us it has in fact become clear, and we do not understand either side to take issue with this, that in truth count 5 ought to have been taken as the lead offence as being the most serious offence. We will return to this later in our assessment of this case.
31. Returning to Mr Scott's submissions, he submits that the judge had some regard to the personal mitigation available to the respondent and was entitled to give it some weight. He submits there was no "gross error" in this case. He also reminds this Court that an extended sentence has significant implications for the respondent, including the amount of time he will be subject to licence in the community. So far as that is concerned, we accept the submissions which have been made by Mr Lloyd before us that an extended sentence is imposed in principle because there is a risk to the public because an offender is dangerous in the legal sense. That does not have a bearing on the appropriate length of the custodial term. Similarly, we accept Mr Lloyd's submission to us that the appropriate length of a custodial term is not affected by legislation that Parliament has enacted in respect of appropriate release dates whether automatic or other.

32. Finally, turning to the SHPO, Mr Scott submits that the Internet had no relevance to this case other than presumably being the vehicle for sending some messages to the complainant. The respondent is now a convicted sex offender and will be subject to other constraints. He submits that the sentencing judge was best placed to assess the risk that the respondent presents and how they should be managed. There will, on any view, be an indefinite SHPO, indefinite notification requirements and the extended sentence. Our Assessment
33. The principles which apply to an application under section 36 of the 1988 Act are well established and can be found summarised, for example, in Attorney-General's Reference (Egan) [2022] EWCA Crim 1751; [2023] 2 Cr App R(S) 16 at [3] - [6]. In particular: "(1) The judge at first instance is particularly well placed to assess the weight to be given to competing factors in considering sentence.
- (2) A sentence is only unduly lenient where it falls outside the range of sentences which the judge at first instance might reasonably consider appropriate.
- (3) Leave to refer a sentence should only be granted by this Court in exceptional circumstances and not in borderline cases.
- (4) Section 36 of the 1988 Act is designed to deal with cases where judges have fallen into gross error..." Furthermore as this Court held in the seminal case of Attorney-General's Reference No 4 of 1989 (1990) 90 Cr App R 366 at page 371, even where this Court considers that a sentence was unduly lenient, it still retains a discretion as to whether to exercise its powers (see the judgment of Lord Lane CJ).
34. We do not accept the submission made by Mr Lloyd on behalf of the Solicitor General that the judge was required to find that there was in this case severe psychological harm. This was very much a matter of evaluation and judgment for the sentencing judge, who also had the advantage of having presided over a trial. He was therefore familiar with the entirety of the evidence and had observed the complainant giving evidence in recordings that were played at the trial. The judge had also seen the two victim personal statements. Nor do we accept the submission that the judge was required to include conditions relating to the Internet in the SHPO. This was, again, a matter of judgment for the sentencing judge and we note that in the particular circumstances of this case access to the Internet had not featured as a significant matter of a trial as in other cases it might well do.
35. What has given us considerable pause is whether the judge had sufficient regard to the principle of totality. He was entitled to structure the sentence so as to take a lead offence but he then had to reflect the overall gravity of the offending, including the fact that he had to sentence for a relatively large number of offences. Further, there were aggravating factors even if one puts to one side the disputed one relating to intoxication. On the other hand, the judge was entitled to give some, although limited, weight to mitigation in this case.
36. In principle it appears to us to be appropriate to view this case in the following way. As appears now to be common ground the most serious offence in this case was in fact count

5. It also appears to be common ground, but in any event in our judgment is correct to state, that the offence should have been placed in category 2 harm because there would, if it had been completed, been penile penetration. For a category 2A case, the Definitive Guideline for the offence of causing or inciting a child under 13 to engage in sexual activity recommends a starting point of 8 years' custody with a category range of 5 to 10 years' custody. We must bear in mind that the offence was not in fact completed and accordingly a reduction was warranted. But even if the judge was entitled to reduce it to 5 years on count 5, the overall increase in the sentence of only 1 year, to make it a custodial term of 6 years in total, is in our judgment plainly insufficient to reflect the overall gravity of the respondent's offending. As we have mentioned, there were not only aggravating features, there was a relatively large number of other offences which had to be sentenced and the overall sentence had to reflect the fact that those sentences would be concurrent.
37. In those circumstances, we have reached the conclusion that the necessary sentence, so far as the custodial term is concerned, on count 5 should have been one of 8 years. We do not think it necessary to amend or alter the other sentences which will remain concurrent nor do we think it necessary to alter the extended licence period which will remain 2 years.

Conclusion

38. For the reasons we have given, this application for leave by the Solicitor General is granted. On the Reference to this Court, we quash the sentence on count 5 and substitute a sentence of an extended sentence of 10 years, comprising a custodial term of 8 years and an extended licence period of 2 years. The other sentences will remain as they were and remain concurrent. Accordingly, the total sentence is now an extended sentence of 10 years comprising a custodial term of 8 years and an extended licence period of 2 years. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof. Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk

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