

ENGLAND AND WALES / JUDGMENT

R v XfV

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IN THE COURT OF APPEAL CRIMINAL DIVISION ON APPEAL FROM THE CROWN COURT AT
NORWICH RECORDER HARDY KC T20200642 CASE NOS 202501209/B4 & 202501212/B4

[2026] EWCA Crim 287 Royal Courts of Justice Strand London WC2A 2LL Thursday, 19 February
2026 Before: LORD JUSTICE JEREMY BAKER LADY JUSTICE COCKERILL DBE MR JUSTICE
BRYAN REX V XFV

MR P WEBB appeared on behalf of the Applicant (Sentence only) The Applicant appeared in
person (Conviction only)

A P P R O V E D J U D G M E N T MR JUSTICE BRYAN:

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 has been anonymised accordingly.
2. On 16 February 2023 in the Crown Court at Norwich, before Mr Recorder Hardy KC and a jury, the applicant (then aged 67) was unanimously convicted of eight offences of sexual assault, contrary to section 3 of the Sexual Offences Act 2003 (Counts 1 to 6 and 11 to 12) and four offences of sexual activity with a child, contrary to section 9(1) of the Sexual Offences Act 2003 (Counts 7 to 10).
3. The applicant was sentenced the same day. The Recorder passed consecutive sentences in relation to each of the six complainants, as addressed in due course below, which totalled 60 months' imprisonment (five years and six months' imprisonment), as well as imposing a Sexual Harm Prevention Order and Restraining Orders.

4. The applicant's application for an extension of time (750 days, approximately two years) for leave to appeal against sentence has been referred to the full Court by the single judge, who also granted a representation order for fresh counsel, Mr Paul Webb, who appeared before us today.
5. The applicant also renews his application for an extension of time (750 days, approximately two years) for leave to appeal against conviction following a refusal by the single judge. He also seeks leave pursuant to section 23 of the Criminal Appeal Act 1968 to introduce fresh evidence.
6. Turning to the facts. The applicant ran a café in a market town in Norfolk. All of the complainants worked for the applicant at the café and were teenage girls or young women, other than C6 who was comparatively older. The applicant used to walk past complainant 1 ("C1") and slap her bottom (count 1). The applicant also inappropriately kissed her neck and said strange things about how she was his "favourite" and that she could get a raise because of that (count 2). C1 told the applicant "no" and then she left.
7. Complainant 2 ("C2") described one occasion when she and the applicant were in the kitchen area together; C2 had gone in to collect some things. The applicant asked her, as he often did, what colour knickers she had on and said to her that he would go out and buy her some silky ones. The applicant then put his hands down C2's trousers and tried to touch her but she got away (Count 3). Every opportunity that the applicant got, if C2 was getting something, the applicant would also touch and slap C2's bottom (Count 4). On the evening of a burger night, C2 went to have a cigarette, and the applicant came out and started touching her leg and trying to get her trousers down (Count 5).
8. Complainant 3 ("C3") began to work at the café in 2016 when she was aged 23 and worked there until June 2017. The applicant allowed her to wear a skirt for work, and he said it was short and nice. He also commented on her breasts. These kinds of things would be said out at the back, and the applicant pulled her pigtail two or three times (Count 6).
9. Complainant 4 ("C4") started working at the café when she was 14. After a while the applicant started calling her "babe" and encouraged her to wear tight clothing and leggings. The applicant asked C4 to wear short skirts but she declined. Then slight touches began, brushing past, touching her hips and bum with an open hand, which she felt was deliberate. Then the applicant began to grab and slap her bum, and his touching became increasingly forceful. C4 would tell him to stop and say "no" (Count 7).
10. The parents of complainant 5 ("C5") knew the applicant and when C5 was 15 the complainant offered her a job. The applicant used to tell C5 that she was his "favourite". Then he started to touch her bum and smack it (Count 8). As time went on, the applicant started doing more and he grabbed C5's knickers underneath her trousers and pulled them up (Count 9). The applicant would also pull C5's ponytail and lick her neck and ear and he referred to her as his "sexy little slut" (Count 10). He would also touch her under her clothing (Count 11). C5 had lost count of the number of times that the applicant had touched her.

11. Complainant 6 ("C6") had gone to the café to arrange returning to work. She had a chat and a drink with the applicant. Before leaving the café, she went out to the back to have a cigarette and the applicant came out. They were chatting and the applicant was insinuating about them having a snog with no tongues. C6 said "no" and laughed it off. The applicant then came to give her a hug and was sexually putting his tongue into her ear (Count 12).
 12. The prosecution case was the applicant was a sexual predator who made sexual advances to the young women that he employed at the café. He would groom them by making inappropriate comments and sending inappropriate texts before molesting them.
 13. To prove its case, the prosecution relied on: (1) The inappropriate comments made by the applicant to the complainants and the inappropriate text messages that he sent to some of them which supported the case that he was a sexual predator. (2) The video-recorded and/or oral evidence of each of the complainants. (3) The evidence from C1's father. C1 had been quieter and more reclusive than usual, burst into tears and ran into her room. C1 then had told him and her mother that the applicant had tried to pin her in a corner and tried to kiss her and as she turned away the applicant had kissed her on her neck. C1 was described as being absolutely distraught. (4) The evidence of "BD" who worked at the café. She felt that the applicant's behaviour was a little too forward. She was contacted by C1's mother about messages to C1. C2 also told her about the inappropriate messages that she had received and how the applicant had tried to put his hands down her trousers. She had seen the applicant tapping the girls on the bum. She denied saying that she wanted to bring the applicant to his knees. The evidence of "TT", C3's mother. C3 had telephoned her and told her that she had been inappropriately touched by the applicant and had then clammed up, without giving details. She also visited the café quite a lot and was able to give evidence about the applicant's behaviour, including brushing up against the girls and putting his arms around their waists, including C3. The evidence of "ER", C4's mother. She was told about incidents at the café. When she asked C4 about them, C4 told her that the applicant had been smacking her on the bottom. The evidence of "SM", C5's mother. BD had asked to speak to her at the beginning of September 2017 and had told her about concerns at the café. She had looked at C5's phone and had seen inappropriate messages. As a result, C5 was spoken to by her mother and she showed her the messages. The evidence of "EQ", C6's friend. She gave evidence that C6 had told her that the applicant was getting a bit close to her, invading her personal space and being inappropriate. C6 also told her about the specific incident of the applicant licking her ear. The evidence of "RY" who used to help out with the cooking at the café. She spoke to the applicant about him being too familiar with the young girls who worked at the café. He would tickle them and get their heads under his arms and smack their bottoms. (5) (6) (7) (8) (9)
- (10) The evidence of the officer in the case, DC Tate, who exhibited the applicant's interviews.

14. The defence case was that none of the allegations were true, other than the allegation in relation to C6. The applicant accepted that he had hugged and licked her ear and that he should not have done it, but that it was not sexual.
15. The applicant gave evidence and adopted what he had said in his police interviews. He accepted poking C4 in the ribs on one occasion. He said that he never touched C5 or any of the other complainants. In 2001 he had a bad injury when he injured his left arm. He had owned the café for 22 years and there had been no issues at the café. The issues only arose after BD had gone on holiday to Turkey. She had gone away with about £800 of café money at her home so he had asked a friend to go and get it from her house. She also owed him about £1300 for a car that he had sourced for her. After that he said they were all out to get him as he had dented BD's ego.
16. The defence called the following evidence in support of the defence case: (1) (2) (3) (4) (5) (6) The evidence of "PH", landlord of a pub in the area, who stated that he had never seen anything untoward between the applicant and the girls who worked in his café. The evidence of "DQ" who had told C2 about job availabilities at the café and also confirmed that she had not seen anything untoward by the applicant. The evidence of "KF" who had met the applicant as her and her husband ran a commercial kitchen business, and the applicant had placed some orders with them. She gave evidence that she had a knowledge of safeguarding and that she had never been made aware of any inappropriate comments from the applicant to C2. The evidence of "BN" who worked at the café for six years. She gave evidence that C4 asked for a lift home from the applicant every weekend and C5 also got lifts home from him. She had never heard the applicant say or do anything untoward towards the girls. The evidence of "CN". He had known the applicant for 15-20 years and had worked at the café until the pandemic. He never saw the applicant behave in an untoward manner and the applicant spent more time with the older clientele than he did with any of the young waitresses. The evidence of "TM" that BD was adamant that the applicant was guilty and that she wanted to bring him to his knees. He had also been to the café and the applicant was fantastic with his employees.
17. Accordingly, the issues for the jury on Counts 1-6 and 11-12 was whether they could be sure that the applicant (1) intentionally, (2) touched the particular complainant in the way that she alleged, (3) the touching was sexual, (4) the particular complainant did not consent, and (5) the applicant did not reasonably believe that the particular complainant consented.
18. The issue for the jury on Counts 7-10 was whether they could be sure that between the specified dates the applicant (1) intentionally, (2) touched the particular complainant in the way that she alleged, (3) the touching was sexual, (4) the particular complainant was under the age of 16 when he did so, and (5) the applicant did not reasonably believe that the particular complainant was 16 or over.

19. The applicant was aged 67 at conviction and sentence. He had nine convictions for 23 offences spanning from 1974 to 2011, though most were motoring offences and there were no recent relevant convictions.
20. The Recorder proceeded to sentence in front of the jury immediately after the verdicts were returned, it is assumed in circumstances where he did not consider a pre-sentence report was necessary, having adjudicated over the trial and the applicant having given evidence and called witnesses in support of the defence case.
21. In relation to sentence, the judge determined that the applicant had engaged in grooming behaviour, particularly in relation to C1 and C2, and had used encouragements to act sexually as a precursor to his behaviour. He was asked to desist and did not, and as a result each offence fell to be categorised as A3 under the Sexual Offence Guideline in what he described and categorised as "a veritable campaign of offending".
22. In relation to C1, on Count 1, the sentence was nine months' imprisonment. On Count 2 it was six months' imprisonment concurrent. In relation to C2 on Count 3 the sentence was 12 months' imprisonment and on Count 4 it was six months' imprisonment, to run concurrently to each other but consecutively to the sentence on Count 1. In relation to C3 the sentence on Count 6 was three months' imprisonment to run consecutively.
23. Count 7 was regarded as one of the two more serious offences committed and for that offence on C4 the sentence was one of 18 months' imprisonment to run consecutively. In relation to C5, Count 9 was the other offence which was regarded as the most serious and the sentence was one of 18 months' imprisonment, again to run consecutively. In respect of Count 8 the sentence was 12 months' imprisonment, on Count 10 the sentence was six months' imprisonment and on Count 11 the sentence was 12 months' imprisonment with each of those terms to run concurrently.
24. In relation to Count 12, the applicant had engaged in this conduct after he had been investigated by the police and had been warned by RY. Nonetheless the applicant felt that in the café he controlled everyone and that he could behave like this. The sentence was six months' imprisonment to run consecutively to the other sentences imposed.
25. The total sentence was five years and six months (66 months' imprisonment). A Sexual Harm Prevention Order was imposed until further order. A surcharge was imposed in the appropriate amount. A "slip rule" hearing was held on 4 April 2023 where the Restraining Orders were imposed for a period of five years in relation to each of the complainants.
26. The grounds of appeal against conviction (settled by the applicant himself and refused by the single judge, but now renewed before us) are as follows: (1) The Recorder insisted that a defence witness (KF) answer questions about safeguarding. This was unfair on the witness and swayed the jury, which was confirmed by his solicitor. (2) The defence witnesses were not allowed to give full evidence. His barrister/solicitor never had a conference with his witnesses. (3) (4) No medical evidence was sought to prove most of the charges and he could

not have physically committed them as he has limited arm movement following a road traffic accident. No CCTV evidence was used, even though it was seized. The text evidence was only produced at trial. (5) Evidence requested at a pre-trial hearing was never produced. (6) (7) The Recorder and barrister were due to go on holiday and defence witnesses were not given adequate time. He had no conferences at the beginning or the end of the day as trains needed to be caught. Nobody was present from his solicitors, even though he was a private client. (8) The Recorder's conduct led the jury to convict him. (9) The applicant also makes complaints against his lawyers in that they did not obtain any medical evidence, his solicitor did not interview his defence witnesses and important information was not told to the jury.

27. On the day of the hearing before us of the renewed application, we were provided with a written document drafted by KF (a defence witness at trial) who is not legally qualified, and who largely reiterated the existing grounds advanced by the applicant. We have nonetheless read and given careful consideration to the contents of that document. We also gave the applicant an opportunity to develop his submissions orally before us today and he availed himself of that opportunity. Again we bear in mind all that he said before us, which largely developed matters set out in his existing grounds.
28. The Prosecution have lodged a Respondent's Notice and Grounds of Opposition in which they submit: (1) The purpose of KF's evidence was to establish that C2 had shown no signs of abuse. It was quite legitimate for the prosecution to attempt to undermine the witness' evidence by pointing out that the applicant had sent a highly sexual text to that witness and asking if that would have been a safeguarding issue had she been aware of it. (2) The defence were allowed to put such evidence as they wished before the jury. (3) (4) (5) It was not in dispute that the applicant had suffered injury and some physical disability as a result of a road traffic accident in 2001. It is clear that whether this disability rendered him incapable of acting in the manner alleged was considered by the defence before trial and it had been decided that it would not be pursued. Whilst cameras may have been seized, no footage was available. The jury were made aware of this. Regarding the text messages, the applicant accepted sending the texts and that they had been inappropriate but said that this were simply 'banter'. As a result of a defence application, disclosure was made of material which demonstrated that C2 had untruthfully said that she had been suffering from brain cancer. This was fully explored at trial and the defence were able to comment on this behaviour. (6) (7) (8) The Recorder was at pains to tell the jury that they had all the time in the world. Furthermore, no complaint was raised at the trial concerning this alleged issue. Even if there was a lack of defence conferences, the applicant does not explain how this would make his convictions unsafe. The applicant makes a general complaint about the Recorder but does not identify how his conduct rendered the conviction unsafe. No complaints were made at trial. The law was fully explained by the Recorder, and the facts were fairly summarised by the Recorder in his summing-up.

29. The grounds of appeal against sentence (as originally settled by the appellant himself) were that: (1) mitigating factors were not taken into account, including his help in the community, providing meals to care homes and meals for the vulnerable during Covid; (2) a medical report should have been obtained; and. (3) the sentences were disproportionate.
30. The grounds of appeal against sentence, settled by fresh counsel post-referral, are that the overall sentence passed was manifestly excessive for the following reasons: (1) Whilst a custodial sentence was merited, the nature of the offences, save for Counts 3, 7 and 9 (which involved either touching under clothing and/or a victim under the age of 16 years) did not merit sentences toward the upper end of the A3 sentencing range and were therefore excessive. (2) A sentence of three months' imprisonment for Count 6 (pulling of a ponytail) was excessive and did not merit a consecutive sentence. (3) The judge failed to acknowledge mitigating factors. (4) The judge failed to acknowledge the principle of totality. If he did consider it, but failed to mention it, the overall sentence was nevertheless disproportionate.
31. In view of the complaints made of the trial representatives, the applicant signed the waiver of privilege form and responses were provided by his trial counsel and solicitors in letters dated 15 May 2025 and 9 May 2025 (to which the applicant responded in a letter dated 2 July 2025), all of which we bear well in mind.
32. A preliminary question is whether the applicant has demonstrated a good reason as to why he did not seek leave to appeal against conviction and sentence earlier, or indeed for nearly two years. The stated reasons are that his solicitor and barrister advised that he did not have grounds of appeal, but that he has subsequently relied on advice from other people, who he candidly accepts are not professional lawyers, as well as reliance on friends and family "to try and fight to show [his] innocence".
33. We do not consider that good reason has been shown. However, in circumstances where the application for an extension of time for leave to appeal against sentence has been referred to the full court and we have heard full argument on it, and in circumstances in which we have considered the grounds of conviction, lest they contain any points of merit, we were prepared to consider the applications. As will appear below, we ultimately grant the extension of time in relation to sentence and refuse it in relation to conviction.
34. We can deal with the appeal against conviction briefly as we consider it to be without merit. Whilst we have considered the recent written document provided to us, and the oral submissions made by the applicant, we do not consider that they are any more meritorious or make the existing grounds any more meritorious than they were at the time of refusal of leave, and we agree with the reasons identified in the Respondent's Notice and given by the single judge.
35. In relation to the grounds advanced by the applicant: (1) (2) There was nothing unfair about the questioning of KF. The prosecution was entitled to challenge her on what she had said about the applicant's case, especially as she put herself forward as having knowledge of safeguarding. We reject the submissions that have been made in this regard both in the

original grounds and in the submissions made before us today. There is no basis for the assertion that the applicant's case was not properly advanced. The complainants were properly cross-examined, the applicant gave evidence, and the applicant called evidence in his defence. Such evidence was properly summed up by the Recorder, as is apparent from the summing-up. What the jury made of the evidence as a whole was a matter for them. The witnesses called on the applicant's behalf mostly attested to the applicant's character, but they also made comments on the complainants' evidence as well. The jury were told about matters which undermined the credibility of one of the complainants. It is not surprising that there was not more testimony about the actual acts complained of, as normally only the defendant and the complainant would have been present when such alleged acts occurred. The applicant has not identified any evidence that is alleged to be significant, and which was not put before the jury. (3) The Recorder, in his summing up referred to the applicant's disability. The defence at trial did not put forward a medical case to show that the applicant could not have committed the offences and there is no evidence to support such an argument. The applicant's solicitors state that this possible defence was discussed with counsel and it was decided not to proceed with it. There can be no valid complaint in that regard. The applicant also referred to his disabilities (4) (5) (6) (7) (8) in his submissions to us in Court today. We do not consider that they would have prevented him doing the acts alleged. The fact that no CCTV evidence was deployed does not render the convictions unsafe. In any event, it would be a matter for the applicant to identify any relevant CCTV and why it supported the defence case. That has not been done. The applicant has not identified what evidence was allegedly requested but not obtained and what difference it could have made. Equally, the applicant has not identified any evidence which his legal team allegedly failed to obtain or to put forward or identified what difference it could have made. There is nothing to suggest that the trial was conducted other than at an appropriate speed and with all issues being explored. It was made clear to the jury that they were not under pressure to return verdicts by any particular time and the jury took the time they needed. Equally, we do not consider that there was any necessity for a pre-sentence report to be obtained before sentence given the evidence before the judge (and for our part we do not consider that a pre-appeal report is necessary either). The suggestion that the applicant's legal team did not make enough time for conferences and the like is rebutted by them. In any event, and once again, this is no more than a generalised complaint without any identification as to how this allegedly impacted on the trial or the fairness thereof. It is apparent from the responses of counsel and solicitors that they acted at all times on the applicant's clear instructions and undertook appropriate work in support of the defence case. There is nothing in the material before the Court, including the summing-up and legal directions, to suggest that there was any conduct on the part of the Recorder that prejudiced the defence or rendered the trial unfair. In this regard the Recorder gave a fair and balanced summing up, in a case where there was a very strong case against the applicant from multiple complainants and the jury, by their verdicts, clearly were satisfied, so that they were sure, that the applicant had a tendency to behave in the way complained of. He had an opportunity at trial to argue that this was a witch hunt, motivated by individuals' personal grievances, an argument which he

continues to pursue. However, the jury, by their verdicts, accepted the truth of the allegations made against him.

36. Accordingly, we refuse the application for an extension of time to appeal against conviction in circumstances in which we are satisfied that the grounds of appeal are themselves without merit.
37. In relation to the appeal against sentence, we consider that the grounds of appeal against sentence settled by counsel post-referral are arguable and in such circumstances we grant the extension of time sought and leave to appeal against sentence limited to such grounds.
38. We are grateful to Mr Webb, who has been appointed to act on the applicant's behalf in relation to the referral, for the quality of his written and oral submissions before us. We make clear at the outset, however, that the fact that we have granted leave is simply a reflection that we consider the points to be arguable and in the case of ground 4 we also consider it important to say something about totality and the submissions we have heard in that regard.
39. We turn to address the four grounds of appeal against sentence that are advanced.
40. The first ground is that whilst a custodial sentence was merited, the nature of the offences, save for Counts 3, 7 and 9 (which involved either touching under clothing and/or a victim under the age of 16 years) did not merit sentences toward the upper end of the A3 sentencing range and were therefore excessive. There are a number of points to be made which we consider the applicant has rather lost sight of. First, there is no doubt that each of the sexual assaults was properly categorised as A3 under the Sexual Assault Guidelines given that they were each committed in breach of the power and trust that the applicant, as the owner of the café, had over each of the complainants, who were, in the main, young girls and who he should have been protecting rather than molesting. Secondly, the offences were committed against each of the complainants despite those complainants repeatedly asking him to desist from his behaviour, which was both brazen and engrained, not least in circumstances in which others had warned him about his behaviour. Thirdly, the individual incidents are not to be considered in isolation but having regard to the offending as a whole. Fourthly (and relatedly), the Recorder as the trial judge was particularly well-placed to categorise the offending against each complainant and as a whole. In this regard he was entirely justified in his categorisation of this offending as "a veritable campaign of offending" which justified, indeed merited, sentences towards the upper end of the sentencing range.
41. As to the second ground, we consider that it was appropriate for the Recorder to pass consecutive sentences in relation to each of the victims, provided of course that proper regard was had to totality (which we address separately below). Equally, we do not consider that the sentence of three months' imprisonment for Count 6 (culminating in the pulling of the complainant's ponytail) was excessive in the context of offending against a separate complainant, when set against the facts that we have identified under ground 1. The submission also ignores the factual circumstances surrounding such sexual assault.

42. As to the third ground, it would have been better if the Recorder had expressly referred to the mitigation (such as it was) but he was well aware of it having heard from defence witnesses, and presided over the trial, and we have no doubt that he took it into account. Whilst the applicant had no relevant previous convictions, he was not of previous good character and, as with all such sexual offending, in the context of what was rightly considered to be a "veritable campaign of offending", the overall offending was serious and as expressly recognised in the Guideline, the more serious the sexual offending the less weight should be attached to good character/exemplary conduct. In any event, matters such as contribution to the community, including the provision of meals during the pandemic, can carry very little weight when weighed against the repeated sexual abuse in breach of trust perpetrated against his young employees.
43. As to the fourth ground, it is submitted that the Recorder either did not take into account the principle of totality or, if he did, the overall sentence was disproportionate to the totality of the offending.
44. In relation to totality, and as the Totality Guideline makes clear, when sentencing for more than one offence the overriding principle of totality is that the overall sentence should reflect all of the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors relating to the offences and those personal to the offender; and be just and proportionate.
45. What is neither required, nor usually appropriate, is to set out individual sentences and then express a reduction or reductions so as to reflect totality, just as it is not necessary for a sentencer to set out figures for the amount of uplift for aggravating factors and the amount of reduction for mitigating factors; rather, and as the Totality Guideline makes clear, the judge should ensure that the overall sentence reflects all of the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors relating to the offences and those personal to the offender, and to be just and proportionate.
46. Whilst it is best practice for the judge to make clear that he has had regard to totality, not least so that it is clear that he has done so, we are in no doubt whatsoever in the present case that the total sentence passed was just and proportionate having regard to all of the offending behaviour and the aggravating and mitigating factors in the case.
47. Accordingly, the appeal against sentence is dismissed.

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