

ENGLAND AND WALES / JUDGMENT

R v ZCX

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

MR N CLARKE appeared on behalf of the Applicant

A P P R O V E D J U D G M E N T MR JUSTICE LAVENDER: 1. 2. 3. 4. 5. The provisions of the Sexual Offences (Amendment) Act 1992 apply in this case. 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. This prohibition applies unless waived or lifted in accordance with section 3 of the Act. The applicant renews his application for leave to appeal against a sentence imposed on him on 1 November 2024 in the Crown Court at Bolton for 12 offences of which he had been convicted by a jury in the same court on 21 August 2024. The offences were nine counts (counts 1 to 9) of rape of a child under 13, contrary to section 5(1) of the Sexual Offences Act 2003, for each of which he was sentenced to concurrent extended

determinate sentences of 30 years, comprising a custodial term of 25 years and an extended period of licence of 5 years; one count (count~10) of assault of a child under 13 by penetration, contrary to section 6(1) of the Sexual Offences Act 2003, for which he received the same concurrent sentence; one count (count 11) of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861, for which he received a concurrent sentence of 3 years' imprisonment, and one count (count

- 14) of doing an act tending and intended to pervert the course of public justice, for which he received a concurrent sentence of 27 months' imprisonment. The applicant repeatedly raped his stepdaughter over a number of years before she disclosed this offending. The applicant was 27 years older than her. The complainant described losing her virginity to the applicant and repeated vaginal, anal and forced oral sex (counts 1 to 9). Counts 7 and 9 each concerned at least three rapes, so the applicant fell to be sentenced for 13 rapes. The applicant had also inserted a wooden-handled plunger into the complainant's vagina (count~10). He also beat her with the buckle of a belt (count 11). During the initial stages of the investigation the applicant, assisted by his co-defendants, told the complainant to take back what she had said and to tell the authorities that she had lied (count 14). The applicant was 40 when he was sentenced. He had no previous convictions in the United Kingdom, but convictions in Slovakia for unrelated offences. The pre-sentence report indicated that the applicant continued to assert his innocence. The victim personal statement spoke of the profound and life-long effect of the applicant's offending on her life. Her guardian said that she will always be fractured, splintered and broken. The sentencing judge had presided over the applicant's trial, so he was uniquely well-placed to assess the applicant's culpability and other matters relevant to sentence. In passing sentence, the judge placed each of the offences in category A1 in the relevant sentencing guideline. He also said that he elevated the sentence to take account of the number and variety of the sexual offences. 6. The proposed grounds of appeal are as follows: (1) (2) (3) The judge's starting point for the offence of perverting the course of justice was too high, which made the overall sentence too high. The judge's starting point for the offence of assault occasioning actual bodily harm was too high, which made the overall sentence too high. The judge was wrong to find that the sexual offending had such a profound effect on the victim as to justify a starting point within category 1 harm in the guideline for rape of a child under 13. (4) The judge did not give sufficient consideration to the principle of totality. 7. In refusing leave to appeal the single judge said as follows: "1. 2. The applicant on numerous occasions raped (vaginally, anally and orally) and committed other serious sexual assaults on his 10-11 year old stepdaughter. He was also subsequently involved in seeking to pervert the course of justice in order to suppress the prospect of prosecution. The gravity and frequency of the sexual offences alone indicate a notional figure for sentence well in excess of 20 years. The total sentence also had to reflect the serious attempt to pervert the course of justice. The, with respect, somewhat mechanistic attempts to reduce culpability by reference to aspects of the guidelines do not meet the presence of many adverse factors, when taken in combination, or with the overall gravity of the offending. Further, the Judge clearly had totality well in mind. 3. The imposition of an

extended sentence is not challenged. A custodial term of 25 years is, in my opinion not arguably excessive." 8. 9. 10. We have considered afresh the grounds of appeal, all of the documents in the case and the submissions made today. In his clear and concise submissions to us, Mr Clarke focused on ground 3, submitting that the starting point for each of counts 1 to 9 should have been 13 years rather than 16 years. In our judgment there is no merit in any of the proposed grounds of appeal. The first two grounds concern counts 11 and 14. Those counts are best seen as aggravating factors in relation to the 13 rapes which the applicant committed on this young girl. As for ground 3, the judge was entirely justified, by reference to the victim personal statement, in placing the harm caused in this case in the highest category. Severe psychological harm was conceded by Mr Clarke and that is severe psychological harm caused to a young girl who faced a lifetime of living with such harm. In any event, whatever the categorisation of individual counts, the real issue in a case of this nature is for the judge to identify a total sentence which reflects all of the applicant's offending behaviour. That brings us to ground four, as to which we consider that this was clearly a case in which the following statement in the sentencing guideline on rape of a child under 13 applied: "Offences may be of such severity, for example involving a campaign of rape, that sentences of 20 years and above may be appropriate."

11. We note that the custodial term of 25 years amounted to a little less than two years' custody for each rape of which the applicant was convicted. 12. Looking at all of the applicant's offending in the round, we consider that the sentence which he received was entirely justified and it is not arguable that it was manifestly excessive. We refuse the renewed application. 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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Prepared on 26 October 2026 · Esheria