



JUDICIARY OF
ENGLAND AND WALES

R
-v-
JAMES STUART HALL

SENTENCING REMARKS OF MR JUSTICE TURNER

23 MAY 2014

INTRODUCTION

1. Stuart Hall, you fall to be sentenced on two counts in the indictment upon which you were tried having been acquitted of the remaining nineteen counts.
2. You have pleaded guilty to Count 21 which relates to an occasion upon which you indecently assaulted a young girl.
3. Under Count 19, you have been found guilty by the jury of later indecently assaulting the same girl
4. I will say at the outset that these offences are so serious that no sentence other than one of immediate imprisonment could be justified in respect of either of them.
5. I propose to deal with each count in turn.

COUNT 21

6. Count 21 relates to an occasion the precise date of which was in issue between the prosecution and the defence. The prosecution alleged that your victim was between the ages of ten to twelve at the time of this offence but failed to satisfy the jury so that they were sure that this was the case. I honour the verdict of the jury. Nevertheless, I am sure, on the evidence I have heard, that she was no more than thirteen at the relevant time and I sentence on this basis.
7. The facts are these. For many years, you and your wife had been very friendly with another married couple. This couple had two daughters one of whom, a young teenager, was destined to join your lengthening list of female victims. As we know from the details of the offences to which you pleaded guilty last year, your sexual offending against girls had started in 1967 which was about ten years earlier than the events to which this count relates.
8. One evening about 35 years ago, you, your wife and your teenage son went to your friends' house having been invited over to supper. Also there was another young girl who was their daughter's friend. Unhappily, while you were with the other adults, the two girls and your son found a bottle of spirits and proceeded to consume the contents while listening to music. In due course they all became very intoxicated. They began to feel ill and were physically sick.
9. You volunteered to help clean them up. Your real intentions, however, were far darker. You saw their condition not as a cause for concern but as an ideal opportunity to carry out acts of gross sexual molestation on the two girls while they were at least partly incapacitated by drink.
10. You went into your victim's bedroom while she was drowsy or unconscious with the quantity of alcohol she had taken. You came to her bed. You

molested her by touching her intimately and putting a finger in her vagina. She woke up during this ordeal and you continued until at one point you tried to get on top of her. Eventually, you desisted and left the room. As if this behaviour were not grotesque enough, on the same evening you molested your victim's friend in the very same way while purporting to give her a bath.

11. The vileness of your conduct on that evening would be difficult to exaggerate. The element of breach of trust was of the utmost gravity. Your victim was well below the age of consent. You carried out your depredations under the roof of her parents and under the camouflage of synthetic concern for the welfare of the children. You repaid your close friends' hospitality by cynically defiling their daughter.
12. You have already been sentenced last year for the indecent assault which you perpetrated on your victim's friend in the bathroom. For that offence you received an immediate custodial sentence of 15 months which was subsequently left unchanged by the Court of Appeal.
13. In this day and age, some might well consider that such a sentence was not long enough but, under the law as it stood when you were committing these indecent assaults, the maximum sentence laid down by Parliament was one of two years imprisonment. In approaching the task of determining the appropriate level of sentence on this count, I bear in mind the principles laid down in by the Court of Appeal in H and others [2012] 2 Cr. App. R (S) 21 in the context of so-called "historic" offending. The sentence for each offence has to be limited to the maximum sentence at the date when the offence was committed. This, therefore, is a ceiling beyond which this court is not permitted to go. It is a longstanding principle both of the English common law and under Article 7 of the European Convention on Human Rights that no-one may be punished more severely for an offence than the extent to which he or she could have been punished under the law that prevailed at the time

the offence was committed. In that regard, therefore, the hands of this court are tied.

14. Furthermore, the court is required by the Sentencing Guidelines Council Definitive Guideline – “Reduction in Sentence for a Guilty Plea” to discount, where a guilty plea is entered, the level of sentence which would otherwise have been appropriate after a trial.

15. Within these parameters, sentencing is to be in accordance with the sentencing regime which applies at the date of the sentencing hearing and in accordance with a measured application of the Definitive Sentencing Guideline.

16. In this case, had you committed this offence in more recent years, the Definitive Guideline with respect to your conduct would have been that relating to Assault by Penetration the appropriate sentence for which would have been considerably greater than this court can accommodate within the statutory maximum of two years imprisonment laid down by Parliament in the Sexual Offences Act 1956 which applies to your offending.

17. However, it is right that I should look at the generic factors both aggravating and mitigating as identified in the Definitive Guideline to assist in the balancing act which this sentencing exercise involves but still acting within the constraints of the sentencing powers imposed by the provisions of the 1956 Act.

18. The most significant aggravating features on this count are:

- (i) The serious nature of the assault itself which involved a sustained act of molestation involving full digital penetration of your victim’s vagina;
- (ii) The gross disparity between your respective ages;

- (iii) The impact which the assault had on your young victim. I have carefully read her personal statement and bear in mind such of those effects upon her which can safely and properly be associated with the level of offending for which you fall to be sentenced;
- (iv) The uninvited intrusion into what ought to have been the privacy of your victim's bedroom;
- (v) The gross element of breach of trust;
- (vi) The particular vulnerability of your victim arising through a combination of her age and state of intoxication;
- (vii) The lack of candour and remorse evidenced in your prepared statement to the police in which you expressed confected surprise at all the allegations made against you when you knew full well, in the case of this victim, that you had sexually molested her.

19. There are also mitigating features:

- (i) The relevant offending took place over 35 years ago;
- (ii) At the time of the offence, you had no criminal record; although you were later to acquire one as a result of both earlier and later offending;
- (iii) There are positive aspects of your character which are to your credit. There are number of occasions upon which you have performed unambiguously brave and selfless deeds. Your television and charity work as surely merited your OBE as your criminality justified its subsequent removal;
- (iv) You are of relatively advanced years and this should be reflected in your sentence;
- (v) The process under which the matters alleged against you have come to light, and for which you have been and remain to be

sentenced, has been a protracted one that has been the source of considerable stress as have the repeated court appearances which have ensued and the risk that the jury might have found you guilty of offences of rape even more serious than those which you now face;

- (vi) I have the medical report which was prepared by your general practitioner for use when you fell to be sentenced on the first indictment last year. You are in poor health and you suffer from many of the infirmities which can be expected to accrue in later years. The criminal proceedings have undoubtedly and predictably taken their toll.

20. I take these factors into account but must bear in mind the guidance given in Attorney-General's References (Nos. 37, 38, 44, 54, 51, 53, 35, 40, 43, 45, 41 and 42 of 2003) [2004] 1 Cr. Appellant. R. (S) 84 as to the limits of the mitigating impact which age and infirmity will usually have in "historic" sex cases.

21. Your counsel contends that if the matters for which you fall to be sentenced today had been dealt with when the first tranche of allegations came before this court last year then they may not have made any difference to the total sentence you would then have received. However, this point is of limited assistance to you. In this regard, reference can be made to the case of R v Smith [2013] EWCA Crim 2091. When the offences for which you were sentenced last year came to light, it was open to you to reveal to the court that you had abused another child. You did not do so. You did not wipe the slate clean. You therefore denied yourself the freedom from subsequent prosecution and punishment which a full confession would have given you. To this extent, you are therefore the author of your present situation. Accordingly, although I do not lose sight of the principle of totality it is of

significantly less relevance than if you had admitted this offence in the context of your last prosecution.

22. It has also been hypothesised on your behalf that the prosecution may not have brought fresh proceedings against you if the later allegations relied upon had been limited to the two matters upon which you now fall to be sentenced. I very much doubt that such conjecture is well founded and I am not prepared to entertain the level of speculation which would be involved in following this line of argument. The offences for which you fall to be sentenced today are far more than mere postscripts to the offending for which you have already been punished.

23. Furthermore, I take the view that the fact that you molested two girls in such quick succession sheds an even more sinister light on your offending than was evidenced by the one related offence to which you pleaded guilty last year. It is difficult to resist the conclusion that it must have been with a sense of arrogant and contemptible immunity that you defiled each of these young girls one in the immediate wake of the other. It was an act of vile bravado and horrible betrayal.

24. To reflect the residual element of totality and the other mitigating features, I take as the starting point for this offence a sentence of eighteen months from which the appropriate discount for a guilty plea at the first available opportunity is, under the relevant Guideline, one third. It would have been open to me to give a lower discount because you failed to admit this offence during your police interview but I have already identified your lack of candour and remorse at this stage as an aggravating feature and it would be wrong to double count this element against you. This approach gives rise to a sentence of twelve months on this count which is to be served consecutively to the total period of imprisonment to which you are already subject. A consecutive sentence is justified not least by the fact that there were two victims of your

egregiously predatory behaviour on the evening in question. Each has suffered the individual consequences of your offending and so must you.

COUNT 19

25. Count 19, of which you were convicted by the jury, relates to oral sex occurring before your victim's sixteenth birthday. About two years after your assault upon her in her bedroom, your victim began to spend time with you at the BBC studios at Piccadilly and Oxford Road. She would go with you to football matches upon which you were commentating. You would pick her up and bring food and champagne. Throughout this period you had frequent sexual intercourse. This occurred at the studios, at a flat in Sale and, on one occasion, at a flat near St John Street, Manchester. The jury was sure that on one occasion, at least, oral sex took place.

26. At this point I must say something about the curious legal position which applies to this aspect of your offending. Under the provisions of the Sexual Offences Act 1956, a victim under the age of sixteen cannot consent to indecent assault. Accordingly, once the jury was sure that, for example, oral sex had taken place between you and your victim before her sixteenth birthday then conviction was inevitable. It was also an offence under the same Act to have sexual intercourse with a girl under the age of sixteen. However, for historical reasons, the Act imposed a one year time limit on the commencement of proceedings for unlawful sexual intercourse. This time limit does not apply where the offence charged is rape but this offence will only be made out where a jury is sure that there was no consent or concludes that the perpetrator may have had a genuine belief that such consent was given.

27. The anomalous result is that under the 1956 Act the lesser offence of indecent assault can be charged at any time whereas the more serious

offence of unlawful sexual intercourse is subject to a limitation period of one year.

28. It follows that, notwithstanding that fact that you had unlawful sex with your victim on numerous occasions, you fall to be sentenced only in respect of the oral sex which amounted to indecent assault the maximum total sentence in respect of which is two years. In deference to the verdicts on the counts of rape, I must sentence you on the basis that the jury concluded that, despite the fact that your victim was under the age of sixteen, the prosecution had not proved that the assault was non-consensual. This is a matter of mitigation and not a defence.

29. Had you had oral sex with an underage girl more recently, you would have been guilty of the offence of sexual activity with a child and, again, the appropriate sentence would have comfortably exceeded the maximum of two years laid down by Parliament back in 1956. Nevertheless, for the reasons I have already given with respect to Count 21, this court is simply not permitted to exceed that ceiling.

30. The aggravating features under this count are:

- (i) This was a gross breach of trust. You had known your victim for many years and she was entrusted to your care when you took advantage of her;
- (ii) There was an element of grooming involving the combined use of flattery and the disinhibiting effects of alcohol;
- (iii) There was a significant disparity in age between you;
- (iv) The level of indecency was serious;
- (v) You showed no remorse in your prepared statement to the police in which you clearly implied that no such conduct had taken place.

31. The mitigating features are the same as those which I identified under Count 21 but, by your plea of not guilty, you lost your right to a discount on your sentence.
32. In the circumstances, I am satisfied that the appropriate sentence under this Count is one of eighteen months imprisonment which should run consecutively to the sentence of twelve months under Count 21 and also consecutively to the total period of imprisonment to which you are already subject making a total of a further two years and six months. Consecutive sentences are merited to reflect the fact that the offending on the two counts relates to very different occasions in time and in nature.
33. I am not persuaded that the principle of totality justifies any further reduction either with reference to the sentence you are presently serving or as between the two counts upon which you fall to be sentenced today. This is, in my view, the shortest term I can pass which is commensurate with the seriousness of your offending. I wish to make it plain that the levels of sentence I have adopted and their consecutive application is based upon the principles set out in H and others and is uninfluenced by any perception that the impact of my sentencing should be somehow artificially augmented to counterbalance the advantages you have enjoyed as a result of the two year statutory maximum or the operation of the limitation period in respect of sexual intercourse with children. Unpalatable as the result may appear to some, you are entitled to the benefit of the protection which Parliament thought fit to provide and it would undermine the rule of law to attempt to circumvent the consequences of this by collateral means.

OTHER MATTERS

34. You will serve up to one half of your sentence in custody before you are released on licence. You must abide by the terms of the licence and commit

no further offence or you will be liable to be recalled and you may then serve the remainder of the sentence in custody.

35. This is not a suitable case for a compensation order. I do not have sufficient information to make one. If a claim for compensation is to be made then the appropriate jurisdiction is that of the civil courts.

36. I do not consider it is necessary to make a Sexual Offences Prevention Order for the protection of the public to whom I accept you pose no perceptible continuing risk.

37. You will, in addition, pay the appropriate victim surcharge.