

No: 201500260/B4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 10th September 2015

B e f o r e:

LORD JUSTICE LAWS

MR JUSTICE MITTING

MR JUSTICE WALKER

R E G I N A

v

JAMAL MUHAMMED RAHEEM UL NASIR

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(Official Shorthand Writers to the Court)

Mr I Shafi appeared on behalf of the **Applicant**

The Crown was not present and was unrepresented

J U D G M E N T

(Approved)

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MR JUSTICE WALKER:

1. The provisions of the Sexual Offences (Amendment) Act 1992 apply to this case. Under those provisions no matter relating to the victims in this case may during their lifetime be included in any publication if it is likely to lead members of the public to identify them as the victim of the offence. The judgment that we shall give is anonymised so as to ensure there will be no breach of the 1992 Act.
2. This is a renewed application for leave to appeal against sentence after refusal by the single judge on the papers. The applicant was convicted of six sexual offences. The victims were two young girls whom we shall refer to as "J" and "G".
3. The offences occurred between January 2010 and January 2011 when J was aged 9 and G was 13. In the case of J, two offences of sexual assault of a child under 13, contrary to section 7 of the Sexual Offences Act 2003, were involved. In the case of G four offences were involved, all concerning sexual activity with a child contrary to section 9 of the same Act.
4. The applicant was convicted after a trial before Her Honour Judge Cahill QC in the Crown Court at Leeds. The conviction was on 20th November 2014. He was sentenced by the same

judge on 18 December 2014 to 4 years' imprisonment concurrent on each of counts 2 and 3, which concerned what happened to J, and to 3 years' imprisonment concurrent on each of counts 4, 5, 6 and 7, these being counts which concerned what happened to G.

5. While the sentences in relation to each of the two victims were concurrent in so far as the counts concerning that victim were concerned, the sentences concerning each victim were consecutive to sentences concerning the other victim. Thus the sentence passed by the judge involved a total period of 7 years' imprisonment.
6. Mr Imran Shafi appears today on behalf of the applicant. Other counsel had appeared on behalf of the applicant at the trial and sentencing hearing. We have the benefit of a carefully prepared and comprehensive renewed application for leave to appeal prepared by Mr Shafi in writing. With the benefit of that document and of Mr Shafi's submissions this morning we can deal with this matter very shortly.
7. The first two points advanced by Mr Shafi are that too high a starting point under the guideline was applied to all counts and that insufficient account was taken of the principle of totality. As to those we observe that the judge when sentencing noted factors concerning the vulnerability of the victims, and noted further factors as

regards the nature and circumstances of the applicant's conduct. These factors, taken together, are such that, despite the considerable efforts on the part of Mr Shafi to demonstrate the contrary, there is no basis for saying either that there was an incorrect starting point or that no adjustment for totality was made by the judge. As Her Honour Judge Cahill pointed out, had she been sentencing in relation to each victim individually, the facts of the present case would have entitled her to have moved up a category. She deliberately refrained from taking that course. In this way she ensured that the overall sentence was, as required by the principle of totality, just and proportionate in relation to all the offending behaviour before the court.

8. The remaining point taken by Mr Shafi is that the judge had, he submitted, regarded the offending as aggravated because of the victims' ethnic and religious origin. This point is, with great respect to Mr Shafi, a misconception. In her sentencing remarks the judge observed that J was finding it difficult at school because her friends knew what had happened, leading to problems and shame for her. In relation to G, the judge observed that she had had difficulty as a result of what the applicant had done to her. This had caused G to behave completely out of

character: she had previously been a young girl doing well at school, and now was not doing as well as expected. For the family as a whole there had been enormous implications. The father had said that he and their mother were struggling and felt socially isolated because, within their particular community, it brought great shame on the whole family when things like this happened. He was also concerned about the future marriage prospects for his daughters. The applicant, coming from this community, knew only too well the effect upon the children and their family and this was an aggravating feature.

9. In this regard Her Honour Judge Cahill was, entirely properly, having regard to the particular harm caused to the victims by this offending. As it happened, that harm was aggravated by the impact on the victims and their family within this particular community.
10. We noted earlier that the single judge, when considering the matter on the papers, refused permission to appeal against sentence. When doing so the single judge observed that Her Honour Judge Cahill, who had tried the case, was in the best position to determine the correct category and the appropriate sentence. We agree.
11. In those circumstances, despite all that has been so carefully said by Mr Shafi in his written renewed grounds of

appeal, and repeated in his oral submissions today, this application for leave to appeal against sentence must be refused as regards the substance of the matter.

12. There is, however, a technical point which needs to be dealt with. The formal record of the Crown Court includes a victim surcharge. Such a surcharge could only lawfully be imposed if the sentence had included a fine, but in this case the sentence did not include a fine. The consequence is that the surcharge must be quashed. Accordingly, we give permission to appeal against sentence, and allow the appeal, only to the extent of quashing such parts of the Crown Court's order as required payment of a victim surcharge. All other orders made by the sentencing judge remain in place.