[2026] EWCA Crim 743

Jay Jermaine Davis and The King
Jerry Tolbert and The King
Dawayne Anthony McLaren and The King
Jordan Webster and The King
Stuart O'Neill and The King
Benjamin Hibbert and The King

SUMMARY OF THE DECISION OF THE COURT OF APPEAL CRIMINAL DIVISION , ON 12 JUNE 2026

(The Vice President, Lady Justice May and Mr Justice Lavender)

The provisions of the Sexual Offences (Amendment) Act 1992 apply to the cases of **Hibbert**, **O'Neill** and **Webster** [See para.2.1 of the Practical Guide to Reporting Restrictions in CACD]. 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.

1. These cases concerned the now-repealed scheme of indeterminate sentences for dangerous offenders under Chapter 5, Part 12 of the Criminal Justice Act 2003 ('CJA 2003'). Each appellant received a sentence under these provisions. The CJA 2003 enacted a new sentencing regime introducing sentences for dangerous offenders of either Detention or Imprisonment for Public Protection ("DPP" and "IPP"). DPP was the sentence for those under 18 at the date of conviction and IPP for others (for those over 18 but under 21, the same provisions as for IPP applied but the sentence was one of Detention in a Young Offender Institution for Public Protection ("DYPP")). The

criteria for imposition of an indeterminate sentence on those under 18 at the time of sentence differed in very important respects from those which applied to offenders over 18 between 2005 and 2008. Important changes were made to the regime made in July 2008. We explain in the judgment the different versions of the scheme which were in force at these two stages before their abolition by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO'). [1]

2. The DPP and IPP sentences were, in almost all respects, equivalent to life sentences. In cases where the maximum penalty was life they could only be imposed where the sentencer had decided that the seriousness of the offending before the court did not justify a life sentence In other cases, these sentences allowed for, or required, a sentence very similar to a life sentence where the maximum sentence was less than that. [2]

3. At the conclusion of the hearing on 23 April 2026 the court announced its decisions and said that it would give its reasons in writing in due course. This it now does in the judgment handed down today. It said:

> "It is important that we start by explaining clearly the scope of this decision. The oldest of these six appellants was 21 at the date of sentence. Others were under 18. We were required to consider in one case what the relevance of age is to the making of a finding of dangerousness, particularly when such a finding made the indeterminate sentence inevitable for all offenders over 18 prior to the July 2008 changes. We were also required to consider the proper approach to the age of the offender when sentencing a person under the repealed provisions which permitted a court to impose a DPP or IPP sentence if satisfied that the offender was dangerous as defined in those provisions. What we say the about sentencing of children and young people relates only to that context. We are concerned with how a court ought to have approached the task of deciding whether sentences of IPP or DPP should

be imposed. Those were, in their effect, life sentences and they only arose for consideration once the court had decided that the seriousness of the offences did not justify a life sentence properly so called. That particular context is no longer part of our law and what we say in this judgment therefore only affects those who were sentenced under these long-repealed provisions. The sentences we have imposed in their place are of academic interest only, because they have long since been served. They should not be regarded as having any significance in considering other cases." [2]

4. The orders which the court made were as follows:-.

i) The appeal of Jay Davis is allowed. The sentence of DPP is quashed and a sentence of 18 months' imprisonment imposed in its place. This was for one offence of one count of possession of a firearm with intent to cause fear of violence contrary to s16A of the Firearms Act 1968. The offence was committed in September 2006 and the sentence imposed in October 2006 when Davis was 19 years old.

ii) The court grants leave and the necessary extension of time, and allows the appeal of Jerry Tolbert. The sentence of DPP is quashed and a determinate sentence of 5 years detention under section 91 of the Powers of Criminal Courts Sentencing Act 2000 imposed in its place. Tolbert was 14 when he committed one offence of robbery and one of possessing a firearm or an imitation firearm at the time of committing an offence arising out of the same incident. He used an imitation firearm to threaten his victim so he could steal his mobile phone and credit cards. This happened in June 2007 when Tolbert was 14.

iii) The appeal of Dawayne McLaren is allowed. The sentence of IPP is quashed and an extended sentence of imprisonment for public protection imposed in its place with a custodial term of 7 years and an extended licence period of 5 years. The IPP was imposed for one offence of attempted robbery using significant violence in December 2007 and three offences of robbery and one of attempted robbery in March 2008. This appellant was 21 years old at that time.

iv) The court grants leave and the necessary extension of time, and allows the appeal of Jordan Webster. The sentence of DPP is quashed and an extended sentence of detention for public protection imposed in its place with a custodial term of 5 years and an extended licence period of 8 years. The sentence of DPP was imposed for an offence of rape and an offence of aggravated burglary committed by Webster in May 2008 when he was 14 years old. Webster had pleaded guilty, and a 5 year term reflected a sentence of 7½ years before credit was allowed for those pleas.

v) The appeal of Stuart O'Neill is allowed. The sentence of DPP is quashed and an extended sentence of detention for public protection imposed in its place with a custodial term of 8 years and an extended licence period of 8 years. The DPP was imposed for an offence of rape committed just after his 20th birthday and some offences of dishonesty committed just before that birthday.

vi) The case of Hibbert was adjourned. [3]

5. The approach taken by the court in dealing with these cases is set out in these terms at paragraphs [113]-[121]:-

> "113. …….. The statutory regime distinguished at all times between those under 18 and those over 18. That was a statutory recognition of the need to deal differently between young offenders and adults. That need was also reflected in section 142 of the CJA 2003 which set out the purposes of sentencing for adults, and which did not apply to those under 18. Section 142A which might have identified the purposes of sentencing those under 18 was never brought into force. However, section 37 of the Crime and Disorder Act 1998 and section 44 of the Children and Young Persons Act 1993 provided a clear statutory warrant for the difference that youth makes, and were in force throughout the relevant period. The contribution which the decision in *Clarke* makes is to extend the relevance of this difference to those who are somewhat over the age of 18. The passage quoted at [38] above from *Jamie Dalton* shows that this concept was recognised in the present context before Clarke. In modern times, the fact that an offence was committed by a young person has always been regarded as a highly significant factor.
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> "114. Our review of the decisions of this court since 2005 starting with *Lang* shows that the potential for young people to develop and mature is, and always has been, highly relevant to a court considering whether an offender is dangerous under the CJA 2003 and whether, if so, an indeterminate sentence should be imposed where that was not mandatory. We have quoted at length from *Lang* at [23]-[25] above and repeat here for ease of reference paragraph 17(vi):-
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> "It is still necessary, when sentencing young offenders, to bear in mind that, within a shorter time than adults, they may

> change and develop. This and their level of maturity may be highly pertinent when assessing what their future conduct may be and whether it may give rise to significant risk of serious harm."

"115. That guidance was available to all the sentencers in this case and binding on them. It relates to the point in the process where the finding of dangerousness may be made. The court should be less pessimistic in assessing future risk when dealing with a young person with a capacity for rehabilitation and reform which may not exist for an older offender. This is emphasised by consideration of the decisions summarised at [27]-[40].

"116. For those under 18 in both iterations and for those over 18 in the second iteration the cases summarised above are also highly material in deciding whether an indeterminate sentence is appropriate because it was not mandatory following a finding of dangerousness. Here the critical passages are those from *Attorney-General's Reference No. 55 of 2008) (R v C)* at [32]-[33] above. Having made a finding of dangerousness, and decided that the seriousness of the offence(s) did not justify a sentence of life imprisonment, the court was required to consider the effect of the "total protective sentencing package" available alongside determinate or extended sentences and must find them inadequate before moving to the indeterminate sentence of DPP or IPP. The total protective sentencing package will often include detention or imprisonment during the years when the child or young person is reaching full maturity. Having rejected the most severe sentence, the life sentence, the sentencer was required to start at the bottom and work up to identify the least sentence which could be passed which properly achieved punishment and the necessary protection of the public.

"117. This court does not allow appeals simply because sentencers may have omitted some form of words from their sentencing remarks. *Lang* 17(ix) at [25] above set out the duty in this way:-

> "Sentencers should usually, and in accordance with section 174(1)(a) of the Criminal Justice Act 2003 give reasons for all their conclusions: in particular, that there is or is not a significant risk of further offences or serious harm; where the assumption under section 229 (3) arises for making or not making the assumption which the statute requires unless this would be unreasonable; and for not imposing an extended sentence under sections 227 and 228. Sentencers should, in giving reasons, briefly identify the information which they have taken into account."

"118. *Johnson* at [11] clarified this by saying:-

> "The court would not normally interfere with the conclusions reached by a sentencer who has accurately identified the relevant principles, and applied his mind to the relevant facts. The question to be addressed by the CACD was whether the sentence was manifestly excessive or wrong in principle."

"119. In accordance with that approach, in dealing with these appeals we have considered the transcripts of all six hearings and read the sentencing remarks with particular care. We are concerned to see that each sentencer truly took into account the age and level of maturity of the offender both when making a finding of dangerousness and, if appropriate, when deciding whether to impose an indeterminate sentence in consequence of that finding. No particular form of words is required, but there should be evidence that this important factor was taken properly into account. If it was, then this court will be slow to find that the sentencer gave it insufficient weight. If it was not, then given

> the severity of the indeterminate sentence, the court will replace that sentence with a sentence from lower down the available options, if that is appropriate. The "total protective sentencing package" which would have been imposed cannot, in most cases, now be replicated but that is not a reason for preserving an indeterminate sentence which should not have been passed.
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> "120. In some of these cases there is no evidence at all that the sentencer appreciated, when sentencing a second iteration case, that the law had changed in 2008. In **Tolbert** the sentencer does not seem to have appreciated that he was sentencing a child and appears to have thought that the first iteration rules relating to adults applied when they did not. These are serious failures. They particularly affect **McLaren** and **Tolbert**. These are two cases which were never appealed.
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> "121. In accordance with the approach set out above, this court will be slow to take into account events which have occurred after sentence. In some of these cases offenders have committed offences and other misconduct which has led them to be recalled. This may be a product of the indeterminate sentence itself which creates a very deeply demoralising situation which is precisely why it should be a sentence of last resort. It may also, of course, be a product of an ingrained propensity to commit crime. We can never know how things would have turned out had some or all of these appellants been sentenced differently."

6. The previous decisions referred to in that passage are:-

> *R v Lang* [2005] EWCA Crim 2864; [2006] 2 Cr App R (S) 3
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> *R v Johnson* [2006] EWCA Crim 2486; [2007] 1 WLR 585
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> *Attorney-General's Reference No. 55 of 2008) (R v C)* [2008] EWCA Crim 2790; [2009] 2 Cr App R (S) 22
>
> *Jamie Dalton* [2013] EWCA Crim 177

Clarke [2018] EWCA Crim 185; [2018] 1 Cr. App. R. (S.) 52

Important note for media and public: this summary forms no part of the court's decision. It is provided to assist understanding of the Court's decision. The court's full decision is in the judgment, which is the only authoritative document, and is available at www.judiciary.uk and https://caselaw.nationalarchives.gov.uk