



[2026] EWCA Crim 845

THE KING

- v -

X

Y

Z

(References under section 36 of the Criminal Justice Act 1988)

PRESS SUMMARY

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>.

References in square brackets are to numbered paragraphs of the judgment.

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The complainants

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 s.3 of the Act. The complainants are referred to in this judgment as C1 and C2 for this reason.

The offenders

The provisions of s.45 Youth Justice and Criminal Evidence Act 1999 are engaged in this case because the offenders are aged under 18 years.

An order under s.45 was made in relation to proceedings in the Crown Court. That order extends to these proceedings. As a result, the first offender is referred to as “X”, the second offender as “Y” and the third offender as “Z”.

The child witnesses

A further order under s.45 was made in relation to certain named child witnesses. This order also applies to these proceedings.

Details of the Crown Court orders are available from the Crown Court.

The Court of Appeal (The Lady Carr of Walton-on-the-Hill (Lady Chief Justice), Lord Justice Edis, Vice-President of the Court of Appeal Criminal Division, and Ms Justice Norton) handed down judgment in these References by the Attorney-General.

It first gave a short oral ruling to the child offenders, X and Y, who were attending remotely from Southampton Crown Court. Z was not present. The Court delivered a lengthy written judgment, of which it gave a short oral summary.

Overview

1. This was a difficult sentencing exercise given the number and seriousness of the offences but also the ages and vulnerabilities of very young children. The judge carried out a careful sentencing exercise in accordance with the statutory principles and the sentencing guidelines that he was required to follow. However, the Court decided that the non-custodial sentences which were imposed by the judge on X and Y were unduly lenient. X was convicted of an offence of rape committed against C1 in a first incident and a further offence of rape against C2 in a second incident. Y was convicted of three offences of rape against each complainant in each incident, six rapes in all. Both X and Y were also to be sentenced for their part in filming these offences. Each incident, involving rape by more than one offender, was extremely serious, but the fact that they repeated their behaviour after the first incident, and did it again to a different person in the second incident, is the crucial feature of their cases. This rendered a significant sentence of detention for X and Y unavoidable.
2. Z, on the other hand, was involved only in the second incident and was convicted of one offence of rape by encouraging Y to commit the offence against C2. He is

younger than X and Y. In his case, the judge's sentence was not unduly lenient and the Attorney General's application in his case was dismissed.

Summary of facts and reasons

3. Following a 29-day trial in the Crown Court at Southampton, the three offenders, X, Y and Z were convicted of rape and other sexual offending that had taken place in Fordingbridge, Hampshire, against two separate complainants, C1 and C2, and on two separate occasions.
4. The first incident occurred on 26 November 2024 and involved X and Y only. The second incident occurred on 17 January 2025 and involved all three offenders. Each offender had pleaded guilty shortly before trial to offences of taking indecent photographs of a child.
5. X and Y were both aged 14 at the date of the first and second incidents, and 15 at the date of conviction and sentence. Z was 13 at the date of the second incident, and 14 at the date of conviction and sentence.
6. The complainants were also young. C1, the complainant in the first incident, was 15 at the relevant time; C2, the complainant in the second incident, was 14 years old.
7. The circumstances in which the offending took place, and the details of the individual offences are set out at [20] to [41], to which reference should be made. Specific findings made by the judge are set out at [75] and [76].
8. The offenders were sentenced on 21 May 2026 by the trial judge (see [12]). In respect of X and Y, he passed a Youth Rehabilitation Order with Intensive Supervision and Surveillance Programme for a period of 3 years; in respect of Z he made a Youth Rehabilitation Order for a period of 18 months. The requirements attached to each order included supervision, a curfew and compliance with specialist harmful sexual behaviour intervention.
9. The Attorney General sought and was granted leave to refer the sentences to the Court of Appeal (Criminal Division) under section 36 of the Criminal Justice Act 1988 on the ground that they were unduly lenient and ought to be increased (see **Section D**). It was argued that the extent and nature of the offending was so serious that non-custodial sentences could not be justified and that sentences of detention should have been imposed on each child. In particular, it was argued that the judge had wrongly assessed the level of harm caused to the two complainants, and, in respect of X and Y, had had insufficient regard to the number of offences, and the fact that they had repeated their offending behaviour.
10. In response, it was argued on behalf of each child that the judge who had heard the facts at trial was best placed to make decisions about the level of harm caused and the seriousness of the offences. Reliance was placed on the very young ages of each of the offenders, their own vulnerabilities and their prospect for rehabilitation (see [47] to [66]). The court was reminded that custody for a child is a sentence of last resort, and that the court is required to take an individualistic and child-centred approach in order to fulfil the statutory requirements to have regard to the principal aim of the

youth justice system, which is to prevent offending or re-offending by a child; and to have regard to the welfare of the child (see [111]).

11. Any judge passing sentence, and this court on appeal, must apply the statutory framework enacted by Parliament as contained in the Sentencing Act 2020 (see [107]). Section 230 of the Act states that a court ‘must not’ pass a custodial sentence unless the offence is so serious that no other sentence can be justified (see [109]). In forming that opinion, the court must take into account all the information that is available to it about the circumstance of the offence(s) and any aggravating or mitigating factors. Section 63 of the Act sets out that the assessment of seriousness is to be made by considering the offender’s culpability in committing the offence, and any harm which the offence caused, was intended to cause, or might foreseeably have caused (see [109]).
12. In order to make these assessments, courts are required by section 60 of the Sentencing Act 2020 to follow all relevant Sentencing Guidelines (see [111] to [131]). Where the offender is a child under 18, these include the overarching guideline, “Sentencing children and young people” (the “Principal guideline”) and any offence specific guideline applicable to children: here the “Sexual offences, Sentencing children and young people” (the “Child sexual offences guideline”). These guidelines, read together, require the sentencing judge to follow a stepped approach to assess the seriousness of the relevant offences in context and to determine whether, the offence passes the ‘custody threshold’ (see [141]). Having done so, even where the court concludes that the custody threshold has been passed, the court is required to review the sentence and to consider the full range of sentencing options (see [120]). The fact that the circumstances of the offence are such that it passes the custody threshold, does not mean that a custodial sentence is unavoidable.
13. Where the offender is under 18, the court must comply with the statutory provisions set out in section 37 of the Crime and Disorder Act 1998, and section 44 of the Children and Young Persons Act 1933, which together require every judge dealing with a child offender i) to have regard to the principal aim of the youth justice system, which is to prevent offending or re-offending by a child; and ii) to have regard to the welfare of the child (see [108]). Sentences for children must therefore be individualistic and rehabilitative where possible. By law, custodial sentences must only be imposed as a measure of last resort and where an offence is so serious that neither a fine alone nor a community sentence can be justified. If a custodial sentence is imposed upon a child, the court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate (see [118] and [120]).
14. The judge’s assessment of seriousness was the issue at the heart of this appeal.
15. As already indicated, this was a difficult sentencing exercise given the number and seriousness of the offences but also the ages and vulnerabilities of very young children. The judge carried out a careful sentencing exercise in accordance with the statutory principles and the sentencing guidelines that he was required to follow. He made findings of fact that were relevant to the sentencing exercise: in particular, that both C1 and C2 had had consensual sexual activity with at least one of the offenders prior to the offences taking place, that the offences were not pre-planned and, in

respect of incident 2, that no knife had been used and C2 had not been forced to give up her phone to avoid being tracked (see [75]). As the trial judge who had heard the evidence, he was entitled to reach these findings and was best placed to do so. In respect of X and Y the judge was satisfied that their offending passed the custody threshold, but bearing in mind their ages, vulnerabilities, and time spent in detention prior to trial, concluded that it was possible to step back from imposing a sentence of detention (see [89] to [99]). In respect of Z, who was 13 at the date of convictions, and whose role had been limited, he concluded that his offending fell short of the custodial threshold (see [100]).

16. On review, this court carried out a detailed analysis of the relevant statutory provisions and the sentencing guidelines. It considered, and took into account, a significant amount of information about the circumstances of the offending, vulnerabilities and levels of culpability of the offenders and the effects that the offending had had upon the complainants as detailed in victim personal statements, and Harmed Person reports (see [42] to [66] and [102] to [106]). The court received lengthy submissions from all the parties.
17. Having assessed all this material in the context of the statutory framework, the court concluded that the judge had erred in his assessment of the seriousness of the offences (see [160]). In particular, he had failed to take sufficiently into account (see [148] to [150]):
 - the ages and vulnerabilities of the complainants and the psychological effect upon them, which this court considered was severe;
 - the humiliation and degradation resulting from filming and group offending;
 - the number of individual offences, and
 - (in respect of X and Y) the fact that there were two separate incidents.

The court found that for each child, the offences passed the custody threshold (see [157] and [158]).

18. In so far as child Z was concerned, although his offending passed the custody threshold, in his case the court considered that a custodial sentence was not unavoidable (see [157]). He was only 13, he was only involved in the second incident, his role was limited to assisting or encouraging another to carry out rape, and he did not himself take part as a principal. The court found that it was reasonable to approach his case on the basis that he had joined a group (X and Y) which had committed the offences in the first incident and was seeking to repeat that behaviour. The court therefore declined to review the sentence imposed which was a proper sentence and not unduly lenient.
19. In so far as X and Y were concerned, the court reached a different conclusion (see [158] to [173]). Their involvement in the two incidents, taken together, were such that an immediate and substantial sentence of detention was required. They participated, either as principals or as assisters or encouragers, in multiple rapes that were carried out in front of others, and in which the complainants were subjected to humiliation and degradation, in particular by the filming of the offences as they took place. The court found that the judge had undervalued the seriousness of the offending, and the serious harm caused by it to the complainants. Notwithstanding the young ages and

vulnerabilities of the child offenders, custodial sentences were unavoidable for each of them.

20. The court stated that, had X and Y been adults, custodial sentences substantially in excess of 10 years would have resulted (see [127] and [161]). The court reduced the sentences that would have been passed in those circumstances to take account of the mitigation available for each child, time spent before trial either in detention or subject to stringent bail conditions, their lack of previous convictions, and their vulnerabilities, about which the court was provided with substantial expert evidence and which, particularly in respect of child Y, significantly reduced levels of culpability. The court then followed the Principal guideline, which suggests that where the child is under 15, it may be appropriate to pass a sentence that is less than half that which would be imposed upon an adult (see [164] to [165]).
21. The court quashed the sentences imposed on X and Y in the Crown Court, and imposed upon each of them sentences of 4 years' detention under section 250 of the Sentencing Act 2020 (see [171] to [172]). The court also quashed the 10 year restraining orders on X and Y and replaced them with indefinite restraining orders (see [173]).
22. The court declined to find that either X or Y was a dangerous offender under section 308 of the Sentencing Act 2020 such that an extended sentence was necessary (see [163]). The young age of both boys meant that there was a real prospect of development, maturity and rehabilitation; neither child was considered to be at high risk of re-offending.
23. Finally and separately, the court made some comments about the administration of justice more generally (see **Section S**). It expressed its concern about the inaccurate reporting and misinformed and inappropriate commentary by members of Parliament, the media and elsewhere that preceded this review and whilst legal proceedings were still ongoing. The court was particularly critical of the conduct of the Crown Prosecution Service, which published a formal press release following the sentencing hearing which they knew, or should have known, was neither a fair nor accurate representation of the factual basis for sentence. It was this inaccurate press release that appeared to be the root of the misconceptions that followed, in particular the misconception that the offending involved a knife-point rape and that C2 had been forced to give up her phone to avoid tracking. This portrayed the offending as even more serious than it already was. It took almost three weeks for the Crown Prosecution Service to correct the inaccuracies.

Ends