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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Case No: 2021/02141/A3

Neutral Citation Number: [2021] EWCA Crim 1375

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 16th September 2021

B e f o r e:

LADY JUSTICE CARR DBE

MR JUSTICE MARTIN SPENCER

MR JUSTICE BUTCHER

R E G I N A

- v -

ADNAN ABDUSHAHUR MOHAMMED

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Mr A L Shakoor appeared on behalf of the Appellant

Mr I Howard appeared on behalf of the Crown

J U D G M E N T
(As Approved)

Thursday 16th September 2021

LADY JUSTICE CARR:

The provisions of the Sexual Offences (Amendment) Act 1992 apply to these offences. 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.

Introduction

1. On 29th July 2020, following a summary trial in West Yorkshire Magistrates' Court, the appellant was convicted on a single count of sexual assault contrary to section 3 of the Sexual Offences Act 2003 ("the committal offence"). He was committed to the Crown Court for sentence pursuant to section 3 of the Powers of Criminal Courts (Sentencing) Act 2000.
2. On 16th April 2021, in the Crown Court at Leeds before His Honour Judge Mairs ("the Judge"), the appellant was convicted of three further counts of sexual assault contrary to section 3 of the Sexual Offences Act 2003 (counts 2, 3 and 5).
3. On 10th June 2021, having found the appellant to be an adult, the Judge imposed an extended sentence of seven years, comprising a custodial term of four years and an extension period of three years under section 226A of the Criminal Justice Act 2003 on the committal offence, and concurrent sentences of six months' imprisonment on each of counts 2, 3 and 5.
4. This is the appellant's expedited appeal against sentence, for which purpose he has

had the significant benefit of representation by his trial counsel, Mr Shakoor.

5. The gravamen of the appeal relates to the Judge's finding on age assessment that the appellant was an adult in his early twenties, and not a youth as the appellant claimed (based on an alleged date of birth of 24th April 2004). It is argued that there was procedural unfairness and that the Judge's finding on age was perverse. Further, and in any event, the overall sentence reached by the Judge is said to have been manifestly excessive.

The Facts

6. The appellant is from the Republic of Chad. His native language is Arabic; he speaks only very limited English. He came to the United Kingdom with his mother in October 2019.
7. The appellant's offending involved four successive incidents between May 2020 and January 2021, involving four different victims.

The committal offence

8. On 4th May 2020, the victim KF was walking along a relatively deserted canal towpath in Luddendenfoot. She was expecting to take part in a Zoom call with colleagues. As she walked along the towpath she noticed the appellant ahead of her, standing still and looking in the water. She walked past him. Out of habit, she turned to look back. She saw that he was now walking behind her. She found a place to sit in order to be able to connect to her Zoom video call. The appellant caught up with her and stood silently by, edging closer to her. She then got up and walked back in

the direction from whence she had come. The appellant followed her. She asked him what he was doing and if he was all right. He did not respond. KF's colleagues on the Zoom call were asking her if she was alright. The appellant then grabbed her by her left shoulder. She shouted at him to get off, get away and not touch her. He tried to push her. She said that he was not very strong.

9. KF's work colleagues by now were saying that they would call the police. KF approached a bend and looked to see if anyone else was around. She did not want to put up too much of a fight, being afraid of what might happen if she did. The appellant then shoved her harder and grabbed her breasts over her clothing. She tried to push him away with one hand whilst holding her telephone in the other. She tried to continue walking, hoping to see somebody on the path. They walked along together for about 20 metres. As they did so, the appellant was touching his penis, moving his hand up and down in a masturbatory fashion.

10. KF saw some houses on the opposite side of the canal and shouted for help. This did not appear to deter the appellant who continued to grab at her breasts and to touch himself. She continued to push him away with one hand. She took hold of his collar with the other hand and put her telephone to his face to show him that she was on a video call, trying to capture him. At that point he said "No" and tried to knock her telephone out of her hand. The fact that another female was approaching some 150 metres away did not deter the appellant either. He continued to touch himself. Then he stopped. KF believed that he had masturbated to ejaculation because she saw discharge on his clothing. He then walked away. She sought help and police officers arrived. The appellant's description was circulated and later on in the afternoon of the same day he was arrested. He made no comment to all questions. KF subsequently picked him out in an identification parade.

11. The appellant was remanded into Wetherby Young Offender Institution ("Weatherby YOI").

Counts 2, 3 and 5

12. Count 2 involved the appellant's custodial manager, JC. On 10th June 2020 the appellant needed help to make a telephone call to his mother. JC asked two male staff members to go to the appellant's cell to assist. She went too. The two male officers went into his cell to help him with the call, but there were difficulties making the connection. The appellant began to pace around. He was told to sit down, which he did. He then put his hands down the front of his trousers and was seen to rub his genitals. He stopped briefly, but then carried on. He then repeatedly tapped his foot on JC's foot in what she viewed to be a sexualised gesture. She told him to stop and kicked his foot away. JC told her colleagues that they should all leave. As they were leaving the appellant got to his feet and approached her. She put her arms up to protect herself. As she did so the appellant grabbed at her left breast. She pushed him away and all three officers left the cell.

13. Count 3 involved a member of the medical team at Weatherby YOI, AH. On 25th June 2020, AH went to examine the appellant in his cell because he said that he was unwell. She was accompanied by three male officers. AH sat next to the appellant on his bed and examined him. When she had finished her examination, she stood up to leave, at which point the appellant patted her buttock twice with the palm of his hand. AH left the cell quickly and the male officers told the appellant not to touch her. He was seen to be smiling as if he found the situation amusing.

14. Count 5 involved another custodial manager, LM. On 14th January 2021 the appellant

was escorted by two male officers to the first aid officer. LM had ensured, given the appellant's history, that there were no female officers in his vicinity. Due to the appellant's inappropriate behaviour at the first aid office window he was taken back to his cell. LM opened the gate, allowing him to walk through. As he did so, he lunged towards her and grabbed her left breast. She pushed his arm away and he was taken to the floor and then returned to his cell.

15. Each of the female victims provided Victim Personal Statements setting out the natural and very real distress caused by, and the damaging consequences of, the appellant's behaviour towards them.

The Procedural History

16. The matter has a complex procedural history which it is necessary to summarise as follows.

17. The appellant first appeared in the Youth Court on 6th May 2020. His date of birth was recorded as 24th April 2004, making him 16 years old. He pleaded not guilty and his case was listed for trial on 1st July 2020.

18. Following a visit by Youth Justice Worker, Mrs Arelys Gomez-Reve, on 23rd June 2020, the prosecution indicated an intention to raise an issue as to the appellant's age.

19. A due inquiry hearing, pursuant to section 99 of the Children and Young Person's Act 1933 ("section 99") took place before District Judge Mallon on 1st July 2020. Apparently no notes or witness statements relevant to age assessment were provided by the prosecution to the defence in advance. Mrs Gomez-Reve gave evidence and was cross-examined. The appellant and his mother also gave evidence.

20. District Judge Mallon found the appellant to be an adult, giving him a birth date of 24th April 1998 which made him 22 years old ("the first age finding").
21. The appellant's trial on the committal offence proceeded, and on 29th July 2020 he was convicted. District Judge Mallon then committed the case to the Crown Court for sentence. A pre-sentence report, dated 16th August 2020, was produced.
22. The appellant lodged an appeal against both the finding on age and his conviction. An appeal hearing was set for 7th January 2021.
23. In the interim, the appellant was charged further, including on counts 2 and 3. In the light of the first age finding, he was treated as an adult. He pleaded not guilty at the plea and trial preparation hearing in the Crown Court at Leeds.
24. On 17th September 2020, Mrs Gomez-Reve signed a witness statement setting out her dealings with the appellant and the grounds for her belief that he was an adult aged between 22 and 26 years old.
25. The defence in turn obtained an age assessment report from Ms Gill and Ms Appleyard, dated 14th December 2020 ("the defence age report"). The defence age report was duly served. Amongst other things it referred to a conversation between Ms Gill and Mrs Gomez-Reve in which it was allegedly indicated that Mrs Gomez Reve had no formal qualifications or experience in age assessment; that she had raised her concerns over age in the hope that the Judge would order a formal age assessment; and that she had been concerned about the appellant in an adult prison environment and the length of time it had taken for a formal age assessment to be requested.

26. The conclusion of the defence age report was that the authors had discovered no evidence to support the assertion that the appellant was over the age of 18 years. It was in their view highly likely that the appellant was 16 years old, as he claimed. The agreed date of birth for the appellant was 24th April 2004.
27. Mrs Gomez-Reve apparently did not respond to the defence age report by way of disagreement or otherwise. In due course, the prosecution conceded the age issue, including in open court at a mention hearing on 30th December 2020.
28. At the appeal hearing on 7th January 2021 the prosecution again formally conceded the age issue. The appellant abandoned his appeal against conviction on the committal offence, and the matter was remitted to the Youth Court for sentence. The matters the subject of the further charges were also remitted on the basis that the original sending had been a nullity, it being agreed that the appellant was a youth and the allegations were not grave crimes.
29. At a hearing in the Youth Court on 11th February 2021, again before District Judge Mallon, the District Judge took the view that her age finding could not be appealed to the Crown Court; section 99 precluded it. Thus, the age issue had not been properly before the Crown Court and could not be conceded by the prosecution. All matters were therefore sent back to the Crown Court.
30. The defence indicated an intention to apply for a judicial review of this decision, but in the event elected not to proceed with such a step, given that the trial date set down in the Crown Court was 12th April 2021. The view was taken that the Crown Court could make due inquiry into the appellant's age and reach the position agreed between

the parties, namely that the appellant was a youth.

31. Whilst awaiting trial, the appellant was charged with yet further offences of sexual assault in January 2021, including count 5.
32. The Crown Court trial took place between 12th and 16th April 2021. On the question of age, the Judge indicated that the trial would be conducted on the basis that the appellant might be a youth; determination of any age assessment could await the conclusion of the trial.
33. Upon conviction the Judge adjourned sentence for a pre-sentence report to be prepared on the question of dangerousness and also for the age issue to be resolved. Half a day was set aside for the sentencing hearing. It was intended that on that date the defence age assessment experts would give evidence, together with any other evidence to be called by the defence. We are told that the prosecution did not indicate any intention to call evidence of its own.
34. The defence also served a report from a psychologist, Dr Wood, dated 14th September 2020. In that report Dr Wood commented, amongst other things, that the appellant's physical presentation was "not obviously inconsistent" with that of a 16 year old boy and that his responses to questions that were intimate in nature were emotionally immature, again in line with a youth of 16 years of age.
35. A further pre-sentence report, dated 7th June 2021, was duly prepared.
36. The age assessment and sentencing hearing took place on 10th June 2021.

37. At 10.36 am that day Mr Shakoor made an entry on the Digital Case System confirming that all of the defence witnesses were present and ready for the hearing. At 11.51 am the prosecution emailed the witness statement and bail report of Mrs Gomez-Reve to the Judge. (Those documents were, in fact, already on the Digital Case System.)

38. At 12.52 pm the Judge emailed counsel in the following terms:

"Given Dr Wood's report, I am not sure if there is anything he can add. I am minded to make a decision on the basis of the written reports and what has gone on before."

39. Mr Shakoor tells us that in the light of this indication the defence apparently understood that the parties' agreed position on age was effectively accepted by the Judge. As set out further below, why this was the case we do not understand. But, in any event, the defence stood down both Dr Wood and Ms Gill. Mr Shakoor confirmed their release in an email sent to the Judge sent at 1.32pm.

40. Neither prosecution nor defence counsel responded to the Judge's indication that he was minded to proceed on the papers with any objection or invitation to him to change his mind in relation to the question of whether or not an oral hearing was necessary.

41. The age assessment and sentencing hearing then commenced later that afternoon. At the outset the Judge said this:

"As I indicated to counsel earlier, I will give a short ruling in relation to the matter of age."

42. Again, neither prosecution nor defence counsel intervened at this stage to suggest that he should not proceed in this manner and needed first to hear further evidence or submissions.

The Second Age Assessment

43. Before giving his reasons, the Judge first announced his decision for the benefit of the appellant (who required the assistance of an interpreter), namely that he did not consider the appellant to be 16 or 17 years of age. He immediately asked Mr Shakoor whether there would then be any complaint if the appellant's interpreter did not interpret his reasons simultaneously, and checked that Mr Shakoor would in due course be able to take the appellant through section 99 and his reasons. Mr Shakoor indicated that he was indeed content with that proposal. He did not complain that he had been taken by surprise by the Judge's decision and would have wanted to call evidence and/or, for example, cross-examined Mrs Gomez-Reve.

44. Having cited section 99, the Judge went on to say that he had considered carefully the defence reports from Dr Wood and the defence age report. He had also considered the statement from Mrs Gomez-Reve, the report from the Youth Offender Team, and the pre-sentence report. He stated that he had also had the advantage of observing the appellant during his trial; this was not to say that he had made any simple visual assessment, which was something to be avoided. He referred to the relevant law, in particular *R (on the application of B) v London Borough of Merton* [2003] EWHC 1689 (Admin); [2003] 4 All ER 280 ("*Merton*"), and said that there was very substantial written material available to him and that the appellant and his mother had previously given evidence.

45. The Judge commented that Dr Wood's report was "perhaps tangential", being focussed on the question of fitness to plead. The Judge went on to rehearse the contents of the defence age report. The authors of that report had had only one meeting with the appellant (on 13th November 2020), and that meeting had lasted for just over two hours. In terms of visual assessment, the Judge recorded that the authors indicated that the appellant was physically slight and that his hands were not calloused. There were no signs of aging or lining. He commented that they laid great store on the appellant being clean shaven. For the record, the Judge noted that at the date of sentence the appellant in fact had extensive facial hair. He also noted recorded comments from those who considered the appellant to be manipulative, particularly in his use of language.

46. The Judge referred to the assessment in the defence age report that the physical presentation of the appellant was not obviously inconsistent with that of a 16 year old and that there was no evidence to support an assertion that he was over 18. The Judge went on to say that he disagreed with that assessment. There was evidence in the report of the appellant's sophistication, manipulation and his use of language mannerisms that would present him as an adult. The Judge referred to the cultural sensitivities of the case, with the appellant's origin in Chad. Mrs Gomez-Reve had expressly considered whether his background meant that he had adapted to the role of being an adult as a result of hardship in early life, as that was what was expected in his culture. Mrs Gomez-Reve did not believe that to be the case with the appellant. The Judge referred to the various points made by Mrs Gomez-Reve, based on her lengthy experience within the youth justice system. Mrs Gomez-Reve referred to discrepancies in the ages claimed by the appellant and his mother, the views of social workers and the Imam at Weatherby YOI. The Imam had believed that the appellant's

thought processes and behaviours were not those of a child. No legal documents were produced by either the appellant or his mother as to the appellant's date of birth. Indeed, his mother had actively stopped social workers from searching their address for such documents.

47. The Judge concluded:

"In light of all of the evidence before me and in light of what I observed of the mannerisms and abilities of the [appellant] who gave evidence at trial, and this is not simple visual assessment of his appearance, I am satisfied that there is no issue before the court today that he is a child, that it does not ... appear to the court that he is a child or young person. The due inquiry that I have made satisfies me in that conclusion ... and I shall treat the [appellant] as an adult."

48. Neither prosecution nor defence counsel raised any concerns at the conclusion of the Judge's ruling as to the procedural approach that he had taken.

Sentence

49. The Judge then proceeded with the sentencing exercise. In sentencing the appellant he stated that he had to deal with the totality of the offending. It was difficult to place the offending, he said, within the Sentencing Council Guideline on Sexual Offences. In isolation, the committal offence fell within Category 2B and the other offences, Category 3B. Looking at the offending in the round, the Judge identified what he considered to be unusual features: the appellant was somebody who took every opportunity afforded to attack women in circumstances where there were obvious deterrents; there was a level of persistence; the appellant had masturbated to ejaculation; he treated his victims with contempt; he found it amusing; there was the number of offences, their nature and the persistence. This, said the Judge, required him to step outside the Guideline. Dangerousness arose in the light of the custodial sentence that he had in mind. He referred to the reports of other instances, including

the appellant's inappropriate touching of an interpreter. The pre-sentence report assessed the appellant as posing a high risk of serious harm to females.

50. As already indicated, the Judge imposed a sentence of four years' custody on the committal offence as a global sentence, which took into account all of the offending. He said that an extended period of three years was necessary in order adequately to protect the public.

51. An updated prison report has been provided since sentence was passed. The appellant has received no adjudications or negative incentive levels since July 2021, when he was transferred to HMP Moorland. However, between 21st May 2020 and 15th January 2021, he was subject to 13 adjudications, including for assault (including sexual assault), disobeying lawful orders, and damaging property.

Grounds of Appeal

52. Mr Shakoor submits, first, that the due inquiry hearing carried out by the Judge into age was procedurally unfair. Although the Judge had a great deal of material before him, and the benefit of observing the appellant during trial, the conduct of the inquiry was procedurally wrong. Although defence witnesses were warned, the Judge "effectively" indicated that he did not need to hear from them as he was minded to make a ruling on the papers and on what had happened before. In the context of it being an uncontested issue, the defence was content for the Judge to give a ruling on the papers. The Judge gave no warning that he was considering a finding of adulthood as he should have done, it is said. Alternatively, the Judge ought to have allowed the parties to call any evidence that they wished, make submissions and then, and only then, give his ruling. By depriving the defence of any opportunity of calling evidence and making submissions, the Judge's due inquiry was procedurally unfair.

Fairness required the appellant to have the opportunity – and a full one – to address the court. Mr Shakoor emphasises that there was no opportunity to address various points made by Mrs Gomez-Reve in her witness statement. He would have wanted the opportunity to challenge, for example, the extent of her experience and the evidential bases for her assertions. He would have sought her updated views on age since sight of the defence age report. Little reliance, it is said, if any, should have been placed on the first age assessment by the District Judge.

53. As his second ground of appeal Mr Shakoor submits that the Judge's finding as to age was unreasonable and not one properly open to him. There was "overwhelming" evidence that the appellant was a youth. The appellant had made a claim for asylum and no issues had been raised as to his age by Home Office or immigration officials trained in such matters. No issue as to age had been raised by the local authority providing housing. On his arrest in May 2020, the police had described the appellant as being between 14 and 17 years of age. There were no concerns in the Youth Court at the outset. The detailed assessment in the defence age report, based on the authors' training and years of collective experience, was that there was no evidence to conclude that the appellant was an adult. Mr Shakoor points in particular to the following statement:

"The finding which resulted in [the appellant] being transferred to adult prison and assigned a date of birth six years older than his claimed age, which up until that point had not been questioned or challenged by the majority, did not comply with statutory guidance. The decision appears to have been based on the opinion of one person who was neither qualified in social work, nor trained or experienced in the assessment of age in children and young people. The opinions and views of other workers who had been involved with this individual since his time in the UK did not appear to have been formally sought nor considered."

Mr Shakoor complains that, in his reasoning underlying his finding on age, the Judge

“cherry-picked” inappropriately from the defence age report.

54. Finally, as his third ground, Mr Shakoor submits that the sentence was manifestly excessive in any event. On the basis that the appellant was a youth, the sentence was clearly far in excess of what might reasonably have been passed on an offender aged 16 at the time of the offences and 17 at the date of sentence. Even on the basis that the appellant fell properly to be treated as an adult, then four years' custody was manifestly excessive and not merited for the totality of the appellant's offending. On that basis no issue of an extended sentence would have arisen. Even if an extended sentence properly did arise, a three year extension period was also unduly long.

55. Mr Howard has appeared at short notice for the prosecution and we are grateful for his assistance. Like Mr Shakoor, he fairly indicates that he was taken by surprise by the Judge's conclusion on age, but agrees that there can be no question that the Judge in some way misled either counsel. Mr Howard submits that there was no procedural unfairness overall: the Judge took full account of the very considerable evidence and material before him. As for sentence, Mr Howard emphasises that the Judge identified significant non-statutory aggravating factors which may explain why he went up to the level of four years' custody in the way that he did.

Discussion

56. The law and procedure relating to age assessments is now well-established. Section 99 provides materially as follows:

"Presumption and determination of age

- (1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child or young person, the court shall make due inquiry as to the age of that person, and for that purpose shall take

such evidence as may be forthcoming at the hearing of the case ... and the age presumed or declared by the court to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person, and, where it appears to the court that the person so brought before it has attained the age of [18] years, that person shall for the purposes of this Act be deemed not to be a child or young person."

57. Section 405 of the Sentencing Act 2020 provides:

"Age of the offender

(1) This section applies for the purposes of any provision of this Code which requires a person's age to be determined by the court or the Secretary of State.

(2) The person is to be deemed to be whatever age the person appears to the court, or, as the case may be, the Secretary of State, to be.

(3) For this purpose, the court or Secretary of State must consider any available evidence."

58. *Merton* remains the leading case in the area. In summary only, the assessment of age and borderline cases is a difficult but not complex matter. It does not require anything approaching a trial, and judicialization of the process is to be avoided. It is a matter which may be determined informally, provided that safeguards of minimum standards on inquiry and fairness are adhered to. Except in clear cases, the decision maker cannot determine age solely on the basis of appearance of the applicant. In general, the decision maker must seek to elicit the general background to the applicant, including his family circumstances and history, his educational background, and his activities during the previous few years. Ethnic and cultural information may also be important. If there is reason to doubt the applicant's statement as to his age, the decision maker will have to test and assess his credibility. (See *Merton* at [36] and [37]).

59. Compliance with section 99 requires much more than superficial observation of the defendant in court. The court must be provided with all the relevant evidence. It is for the parties or relevant social services to carry out the appropriate investigations (see *R v L and Others* [2013] EWCA Crim 991 at [22]). Where there is real doubt as to the claimed age, the proper course is to give directions for an age assessment to be conducted (see *R (on the application of M) v Hammersmith Magistrates' Court* [2017] EWHC 1359 (Admin) at [16]).

60. We turn to the facts of this case. Before giving his ruling, the Judge could have carried out a fuller stock-taking exercise at the commencement of the age assessment hearing. He could, for example, have asked in terms if either party wished to make any further submissions or call any oral evidence.

61. However, we are not persuaded that there was any material procedural unfairness.

62. The Judge was provided with all the relevant material in writing. This "voluminous material" (as he described it) covered, amongst other things, the appellant's background in detail. The Judge also had the benefit of written defence submissions on age (dated 11th April 2021) and a full written chronology (produced by the defence). He was entitled to take the provisional view in all the circumstances that it would be appropriate and fair to proceed on the papers alone. As *Merton* emphasises, the age assessment can be an informal one, although it must be procedurally fair, and a formal trial procedure is not necessary. Relevant to his decision was the fact that the Judge was very familiar with the appellant, having presided over his trial.

63. The Judge gave the parties the opportunity to dissuade him from following such a

course. They did not seek to do so.

64. The Judge was, of course, not bound by any position adopted by or agreed between the parties. As section 99 makes clear, the assessment of age is always a matter for the court. At no stage did the Judge give any indication, let alone an assurance, before his ruling that he was proposing to accept that the appellant was a youth. Indeed, his indication that he intended to give a ruling pointed in quite the opposite direction. That indication did not suggest that there was nothing for him to decide. There is therefore rightly no suggestion that the Judge in any way misled either side.
65. In these circumstances there was no need for him, as a matter of procedural fairness or otherwise, to give a further warning, as suggested for the appellant. The defence assumption that the Judge would simply agree with the parties' agreed position was not a reasonable one. As the defence knew, the Judge had been provided with Mrs Gomez-Reve's evidence and had his own experience on which to draw.
66. It is also right to note that no objection was raised with the Judge either immediately after he announced his determination at the outset, or at the end of his ruling.
67. Further, the matters that it is said that the defence would have wished to raise by way of challenge to Mrs Gomez-Reve's evidence are largely forensic only: for example, whether she had 18 or 28 years' experience. On either basis, Mrs Gomez-Reve was highly experienced within the youth justice system, and she had directly relevant cultural experience which she could bring to bear on her assessment.
68. The second ground of appeal is also without merit. The Judge was fully entitled to conclude that the appellant was an adult for the reasons that he gave. He was at pains

to emphasise that this conclusion was not based on simple visual assessment. It rested, amongst other things, on the appellant's mannerisms and abilities, as demonstrated during his evidence and trial. The Judge was entitled to take into account the lack of any documentation confirming the appellant's claimed date of birth and discrepancies in the ages given by him or on his behalf. He was entitled in particular to take account of Mrs Gomez-Reve's report, which included the following statement:

"The way the [appellant] acted and communicated, especially when formulating answers and responses to questions, was not that of a child. He was able to formulate responses as an adult would. He could recall points and phrases I had made in conversation hours previously, and then challenged and used the same phrases in conversation. This level of manipulated conversation is not something a child is capable of. It is an adult trait."

69. In summary, there is no basis for this court to interfere with the Judge's reasoned disagreement with the findings of the defence age report.

70. These conclusions make it unnecessary for us to decide how it would be appropriate to proceed in the event that the second age assessment was materially unfair and the resulting sentence fell to be quashed accordingly. The second age assessment would not be amenable to judicial review, because the High Court does not have jurisdiction over the Crown Court jurisdiction in matters relating to trial on indictment (see section 29(3) of the Senior Courts Act 1981). Equally, this court, a creature of statute, has no power to remit under section 11 of the Criminal Appeal Act 1968.

71. In these circumstances, it seems to us that it would have been for this court to carry out the exercise afresh at an adjourned hearing, with the appellant physically present in court, and on the basis of the available evidence, if necessary given orally. It

would not have been appropriate, given the hard-edged nature of the issue, its importance, and the fact that there had been two previous judicial determinations that the appellant is an adult, simply to assume the appellant's youth in his favour.

72. We turn to ground 3 and the sentence itself, based on a finding that the appellant was in his early twenties. We can take this shortly. A custodial sentence of four years was manifestly excessive. The question of an extended sentence thus falls away.

73. The totality of this offending, whilst serious, did not merit a sentence of such length. The committal offence was the most serious offence and rightly categorised as Category 2B offending. The offending in counts 2, 3 and 5 was also rightly categorised as Category 3B offending.

74. The starting point of one year's custody for Category 2B offending is for a single offence. But to elevate the term to four years for the four offences, after taking into account the appellant's youth, immaturity and previous good character, was far too high. The striking features identified by the Judge – for example, the appellant's continued offending whilst in the presence of prison officers – were consistent with signs of immaturity.

75. A sentence at the top of the range, namely two years' custody, would more appropriately reflect the seriousness of the appellant's overall offending, taking into account all relevant aggravating and mitigating factors. Given the gravity of the offending, there can be no question of suspending that sentence, not least given the very clear risk that the appellant presents to women and the fact that appropriate punishment could only be achieved by immediate custody.

Conclusion

76. For these reasons, and to this extent, the appeal will be allowed. The appeal arising out of the second age assessment is dismissed. However, the extended seven year sentence on the committal offence will be quashed. A sentence of two years' custody will be substituted in its place. The sentences on counts 2, 3 and 5 are unaffected and stand, as do the notification and Disclosure and Barring Service requirements.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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