

**ROYAL COURT
FULL COURT**

31 OCTOBER 2019

**Before: Richard James McMahon, Esq., Deputy Bailiff and:
Claire Helen Le Pelley, Niall David McCathie, Margaret Ann Spaargaren,
Terry John Ferbrache, David Allan Grut, Steven John Morris, Joanne Marie Wyatt,
David John Robilliard, Marilyn Jasmine King, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

GREGORY JOHN LYDALL

Crown Advocate F M Russell appeared for the Prosecution

Advocate P T R Ferbrache appeared for the Defendant

DEPUTY BAILIFF:

Background

Gregory Lydall, you have pleaded guilty to an indictment containing eleven Counts. The first seven of those Counts relate to making indecent photographs of children contrary to section 3(1)(a) of the Protection of Children (Bailiwick of Guernsey) Law, 1985, as amended. By way of explanation, the reference to “*making*” is used in this context in a technical sense, meaning downloading the images and where they have been stored, and not to taking or producing the photographs yourself. The first five Counts relate to a sample image in each of the five SAP categories, or levels, used to differentiate between types of image, about which we say more shortly. The sixth Count relates to the indecent photographs of all levels found on one hard drive and the seventh Count to a single file of a montage of photographs at level 4 found on a SD card. Each of the offences in these seven Counts is punishable with a maximum sentence of 10 years’ imprisonment. The other four Counts relate to possessing indecent photographs of a child contrary to section 3A(1) of the 1985 Law, for which the maximum sentence is five years’ imprisonment. The first three of those Counts relate to indecent photographs found on three other storage devices and the eleventh Count relates to 4,137 indecent pseudo-photographs found on the same hard drive as is covered by the sixth Count.

You were born and grew up in South Africa and are now aged 44. You moved to London in 2003 to specialise in psychiatry, and registered as a British citizen. You subsequently married, became a father and you moved to Guernsey in 2010 in your first consultancy post with the adult psychiatry services here.

Your offences came to light following the execution of a search warrant at your then home address on the morning of 10 January 2019 because it was believed that a device linked to that address had been accessing internet websites connected to child sexual exploitation. 66 electronic items capable of storing data were seized, some of which were subsequently examined as a result of you co-operating and providing some passwords to the police. The extent of the usage of the devices that were

examined has been described to us today. In summary, the indictment relates to the following images: 716 at Level 1, 18 at Level 2, 11 at Level 3, 27 at Level 4 and 3 at Level 5, as well as 4,137 pseudo-photographs, effectively computer generated images, where no grading has been undertaken.

You are a man with no previous convictions. You entered your pleas to these Courts when a revised indictment was put to you on 29 August this year. You have been on bail throughout these proceedings.

Sentencing Considerations

In 2012, in *Wicks, Sharp and Towers*, the Court of Appeal gave guidelines in relation to sentencing in indecent images cases to which this Court is obliged to have regard. We recognise that (as was emphasised in para. 52) they are only guidelines and “*are not designed to inhibit the Royal Court from passing an individualised sentence in any case where such a sentence would be justified, or to provide any sort of straightjacket*”.

At this stage, the Court is considering the offences themselves rather than you as the offender. There are five levels of seriousness that were expressly adopted by the Court of Appeal, derived from the then Sentencing Advisory Panel, which are used to divide indecent images into levels of gravity. They are:

- Level 1: images depicting erotic posing with no sexual activity;
- Level 2: non-penetrative sexual activity between children, or solo masturbation by a child;
- Level 3: non-penetrative sexual activity between adults and children;
- Level 4: penetrative sexual activity involving a child or children, or both children and adults; and
- Level 5: sadism or penetration of, or by, an animal.

The offences you have admitted cover all five Levels. These Levels are then put into the Categories found in para. 37.

As we have already clarified, there is no suggestion that you took or produced any of these photographs and so we agree that the three most serious Categories referred to in *Wicks* are not engaged. Accordingly, the first of the categories to which we have regard is Category 4, which covers making an image within Levels 4 or 5, where an initial figure in the region of 3 years’ imprisonment is indicated. The fourth to seventh Counts are such offences. Category 5 is in respect of images within Levels 2 or 3, where an initial figure in the region of 18 months’ imprisonment is indicated. The second and third Counts are such offences (as also is the sixth Count, which becomes relevant when considering the total number of images at each Level). Category 6 covers images within Level 1, and so applies to the first Count, with the same type of overlap with the sixth Count. In respect of Category 6, the guideline suggests “*a fine or community sentence preferably with a condition of treatment. If any relevant aggravating factor is present, the court may feel that the custody threshold is passed and may consider a sentence of up to 6 months’ imprisonment.*” The case does not directly deal with the less serious offence of possessing an indecent photograph, but Category 7 refers to making a pseudo-image, and so can be regarded as indirect guidance in respect of the eleventh Count, where the indication given is that “*the sentencing court may take the view that the custody threshold has not been passed and a fine or community penalty, with or without conditions, would be appropriate.*”

The aggravating factors listed in *Wicks* are mostly not found in your case. However, the second factor in para. 38 is, in our view, engaged. This relates to “*Where the number of images is large, indicating a high level of personal interest in such images and/or a significant period of time over which the images have been collected.*” The Court of Appeal regards “*any number of images above 100 as constituting a large number.*” However, we recognise that the Court of Appeal also noted that “*a*

large number of images of Levels 4 or 5 would constitute a more significant aggravating factor than a similar number of images of Level 1, or Levels 2 and 3” and that the only Level covered by the various Counts that exceeds 100 is Level 1. We have concentrated on the fact that there are 30 images at Levels 4 and 5.

We have also had regard to the date range of your offending. It is apparent from the reports submitted on your behalf, to which we will turn in more detail shortly, that you had been engaging in downloading indecent images for a number of years, and increased the frequency and length of your activities at particular times. However, we have carefully reminded ourselves that the period covered by the sixth Count, noting that this Count covers 16 of the images at Level 4, is approximately 18 months, (further noting that the seventh Count covers a longer period but relates to a single file), rather than covering as long a period as the reports mention you being involved in downloading indecent images of children. We have also noted that the Child Abuse Image Database analysis of this external hard drive showed a huge number of images, but with only a tiny proportion at the corresponding highest Band A. That said, we still regard 18 months as being a significant period of time over which the images in the sixth Count had been collected and so treat this aggravating factor as being applicable in your case.

Although it is not mentioned expressly in Wicks as an aggravating factor, we consider that the sophisticated methods used by you to evade detection, including installing a TOR browser, using a VPN to hide your IP address and encrypting the data downloaded, can be regarded by this Court as further aggravating these offences. Similarly, having regard to the search terms you have admitted using and some of the names used when storing images, we take the view that you were seeking images portraying children younger than your stated preference for post-pubescent girls. The seventh Count, in particular, demonstrates this and this amounts, in our view, to another aggravating factor, whilst at the same time we acknowledge the way age is generally dealt with in para. 40 of Wicks as not, of itself, being an aggravating factor.

As already explained, the most serious of the Counts are those relating to making Level 4 or 5 indecent images, with the sixth Count covering multiple images, and so that is where we have started. We are satisfied that the custody threshold is clearly met. Having regard to the totality principle applicable to the entirety of your offending as represented by the eleven Counts on the Indictment, and also bearing in mind the premises on which the “*initial figure*” has been based, as set out in para. 41, due to the aggravating factors just mentioned, emphasising that this is before considering any personal mitigation, the Court has increased the indicative three year period and taken as its starting point for the sixth Count a term of imprisonment of four years. The starting points in relation to the other Counts are scaled appropriately from this highest starting point to reflect the different Levels involved and the fact that the final four Counts all have a lower maximum penalty.

Mitigation

We have had regard to everything that has been said about you and on your behalf by Advocate Ferbrache. Before turning to the material with which we have been provided, we start with some general comments that we give you full credit for your guilty pleas to all Counts, accepting that they were entered at the earliest opportunity, note that you co-operated with the investigation by supplying passwords that you could remember and recognise the deep remorse you have expressed about these offences.

We have also taken into account what is written about you in the helpful social enquiry report. In doing so, we note the assessment that there is a low likelihood of general re-offending and that you are not assessed as presenting a risk of harm to others, save for the potential risk mentioned of going on to commit contact sexual offences, but where you have demonstrated a strong motivation to change, which we acknowledge serves to reduce that risk of further offending.

The Court has also had the benefit of two reports prepared on your behalf, which set out in considerable detail the effect that your compulsion or addiction has had on you and the steps you have taken since your arrest finally to confront these deep-seated problems.

Starting with your personal history, we understand that, as a child, you were concerned that your family's financial position was relatively poor. You went to university at a time when apartheid was ending and qualified as a doctor. Your best friend was murdered when you were 19. Your first placement as a junior doctor in Johannesburg involved many hours of work each week, the work including the aftermath of gun wounds and stabbings and AIDs-related illnesses, all of which inevitably took its emotional toll on you. It was from this time that internet access of pornography provided a means of relief and release for you. Your reliance on pornography and masturbation escalated over the years, with occasional periods when you would not engage, but generally the worse you felt, the more you used. You moved from viewing lawful pornography to indecent images of children. As your tolerance developed, you relied more and more on such indecent images, conceding that you had compulsively downloaded "*vast quantities*" of pornography and indecent images of children, which is also demonstrated by the browser history to which the Crown referred and the number of deleted images to which reference has also been made. This was, of course, a serious error of judgment on your part and it continued for far longer than it should have done.

Following your arrest in January, it is to your credit that you have taken a number of steps to address your offending behaviour, including starting Sex Addicts Anonymous and the 12-step programme, the five session Lucy Faithfull Foundation Inform Plus programme, and developing a Personal Relapse Prevention Plan. We note the impact that being caught has had on your personal and professional situation.

Against those general comments, which we mention by way of context to the commission of your offences, the first of the reports comes from Dr Mike McPhillips, a consultant adult psychiatrist, who is a specialist in addictions. As highlighted by Advocate Ferbrache, we note his opinion that you suffer "*with a non-specified sexual behaviour disorder*", whilst he also says that condition is difficult to classify, and further that the main goal of addiction treatment is abstinence. He believes you would benefit from ongoing work with a psychologist. He adds that "*Addiction is characterised by eventual relapse in the majority of cases, so there is a danger of repetition despite the incredibly painful experience of being detected and publicly shamed.*" His assessment is that you knew at the time you viewed the images with which this Court is concerned that it was not legal to do so and that you were "*fully aware of the likely consequences of [your] behaviour, hence [your] efforts to conceal and hide it*". He explains that:

"Addictive behaviours are characterised by denial, a defence mechanism in the human mind that separates a behaviour from its inevitable consequences and makes it possible for us not to experience the amount of fear, shame and guilt that would normally accompany acting in an immoral or unethical or illegal way."

He notes that punishing you does not actually treat you, adding "*and in some ways, it may make him so discouraged about his future that he sees no point in changing*" and that you are "*far more likely to receive treatment outside prison than in it*".

The second report is from Dr Oliver Eastman, a consultant clinical psychologist. He notes your "*many childhood challenges and adversities that are likely to have interfered with [your] normal emotional and psychological development*", which left you "*vulnerable to mental health difficulties in adulthood*", during which time you have experienced at least three episodes of depression. However, Dr Eastman takes the view that "*pornography became [your] primary means for managing stress and escaping life's problems*" and that the level of arousal you obtained from indecent images "*served to reinforce [your] interest in viewing further indecent images online*". By reference to what published research material there is, he offers the opinion, carried into the terms of the social enquiry report, that you present a low risk of recidivism and that the risk of you engaging in sexually abusive contact with

a child is very low. Because your relapse prevention plan is “*highly individualised, comprehensive and of high quality*”, Dr Eastman does not recommend any additional intervention for you at this stage, but points out that it is important that complacency does not set in.

The Court has considered all 36 of the written character references provided. They can be grouped into four broad types: from family members and close friends; from professional colleagues; from former patients; and from those you have encountered this year as part of your efforts to address your disorder.

Understandably, those from family and friends describe how you have helped them, being kind, generous and supportive to others when they were in need. They are symptomatic of your lifelong wish to fix things for others, which started with the complex needs of your sister and how they impacted on your immediate family when you were a child and since. The general tenor of this batch of references is to urge the Court towards leniency. That said, we have particularly noted that four of the sample Counts, therefore including at the most serious Levels 4 and 5, all relate to Christmas Day last year in the evening, which we consider detracts from the picture of a devoted family man.

From what your professional colleagues have written, you have had an eminent career. Your publications will speak for themselves. From your former patients who have written in support, sometimes unsolicited, it is apparent to us that you have been a highly regarded psychiatrist who has performed a valuable service to a good number of members of our community. However, as noted by Dr McPhillips, most people on the island know of your difficulties, where “*some are supportive, but many are not*”. We do not, therefore, know quite what adverse impact your offending coming to light may have had on others, and note the comment of the probation officer that your former professional life means that you have worked with highly vulnerable persons, including those who suffered sexual abuse, which is a factor that cannot be ignored. We consider that the consequences of your offending could very well have an adverse effect on how the psychiatry services are perceived. Accordingly, whilst we accept you have played an effective part in treating persons who have been in your care for a number of years, and that will no longer be the case for the future, because you concede that you are likely to be struck off by the GMC as a result of your offending, we find the overall position is not as positive as it has been painted to the Court.

The final group of references comes from people who have also sought help through Sex Addicts Anonymous. They speak highly of the positive role you play in also helping them.

One of the paradoxes that crosses the mind in relation to someone like you, who is a specialist in addiction, yet chose not to confront your own problems and seek external assistance – really a “*physician, heal thyself*” type of concern, as expressed by Advocate Ferbrache – is helpfully explained in the lengthy reference provided by your sponsor at Sex Addicts Anonymous. That person, “*a healthy recovered addict*”, notes that addicts of some standing in the community “*who are themselves therapists, doctors or members of the clergy ... were genuinely blind to what was going on and ... genuinely able to believe that we were not like the people we were working with and advising. This is particularly the case around sex addiction. Greg could tell himself that what he was doing was ‘normal’ and that the addicts were the people on drugs, alcohol, gambling etc which almost all of his clients would have been. His brain and illness could deceive him because he was ‘high functioning’ – able to hold down a family, a job and a status in the community. It is the nature of this illness that self-deceit [sic] is so strong that it can be destroying us and we can be in denial at the same time.*” We have chosen to quote this passage because it offers some explanation as to why you failed to seek professional help yourself, which was an aspect with which we were struggling, as we expect others are as well.

Sentence

This Court has had to grapple with the primary decision of whether you should be sent to prison today or receive exceptional leniency and not face that outcome. Child pornography is exploitative and

inevitably has an adverse impact on the well-being of those who feature in the images, particularly those of a more extreme nature, that you chose to view, knowing full well how wrong your activities were. As you now appreciate, as a result you have lost everything. We regard these types of offences as abhorrent and disgusting. They degrade those whose pictures people like you view, and those subjects of your need for arousal are the real victims here, not you. Being caught may well prove to be a blessing for you. We are satisfied that, but for your arrest, you would have continued to download more and more indecent images without seeking any help. We believe that there should be an element of deterrence in the sentences handed down by this Court.

Despite the able submissions advanced on your behalf, we find that the custody threshold has been passed and that only a sentence of immediate imprisonment can follow because of the seriousness of these offences. Even allowing for the personal mitigation to which we have had regard and which has just been covered in some detail, including your remorse and being of previous good character, we find little else by way of mitigation, and so reduce the initial figure previously mentioned by some months, as well as your guilty pleas, having regard to the totality principle, the most serious aspects of your offending warrant sentences that are longer than those for which some other disposal is available.

We are satisfied that your road to recovery will not be adversely affected if you are sent to prison and that, when released, you have the strength of character to continue to serve others in whatever way you can. Each of the sentences that follows will be made to run concurrently to each other on the basis that they all arise from the overall pattern of offending.

We start with the most serious of the offences, which is Count 6, and impose a sentence of 30 months' imprisonment.

In respect of each of the other Counts relating to the making of Level 4 or 5 images, being those numbered 4, 5 and 7, we impose a slightly shorter sentence of 27 months' imprisonment, on the basis that each relates only to a single image.

In respect of each of Counts 2 and 3, we impose an even shorter sentence of 12 months' imprisonment.

In respect of Count 1, we impose what is effectively a nominal sentence of just one month's imprisonment.

Turning to the Counts of possessing indecent images, in respect of Count 9, which includes some Level 4 images, we impose a sentence of 15 months' imprisonment; in respect of Count 8, which contained fewer images, and only one in Level 5, we impose a slightly shorter sentence of 12 months' imprisonment; in respect of Count 10, we impose what is effectively a nominal sentence of one month's imprisonment; and, in respect of the thousands of pseudo-photographs, taking account of the exceptional realism of some of them, as covered by Count 11, we impose a sentence of three months' imprisonment.

With all sentences running concurrently, in total, therefore, the sentence will be 30 months', or 2 years and six months', imprisonment, to run from today.

The Crown's application pursuant to section 3 of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 in respect of the 55 items listed as mentioned by Advocate Russell is also granted. The items on the list not to be covered by this order are those numbered 3, 47 and 54. The Court notes that this application was not resisted and in any event, the Court is satisfied that six of the items that were examined, against which a star appears, had been used for the purpose of committing or facilitating the commission of these offences and, in respect of all the other items, which have storage capability, that they were intended by you to be used for that purpose. The Court has, as

required by subsection (5), had regard to the value of the property and the likely financial and other effects on you of making the order before reaching that final decision.

Extended sentence

The Court has carefully considered the recommendation in the Probation Report for an extended sentence under section 3 of the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004. We agree with the assessment of you that the usual period of supervision after sentence would not be adequate for the purpose of preventing the commission of further offences and securing your rehabilitation. Accordingly, the Court is imposing such an extended sentence. This has two elements: the custodial term of 30 months imprisonment, followed by an extension period after your release throughout which you will be subject to an Extended Sentence Licence. The extension period shall be that recommended of three years, thereby enabling completion of what will have begun whilst you are a serving prisoner, as well as monitoring and addressing your progress after release. If upon your release from Prison you fail to comply with the conditions in the Extended Sentence Licence, or are convicted of a further imprisonable offence, the Court sentencing you or the Parole Review Committee, can revoke the licence, in which case you would be returned to custody for the remainder of your sentence.

The conditions of the extended sentence are the standard ones, namely:

- To be well behaved and not to commit any offence and not to do anything which could undermine the purposes of your supervision, which are to protect the public, prevent you from re-offending and help you to re-settle successfully into the community.
- To keep in touch with your supervising officer in accordance with any instructions you may be given.
- If required, to receive visits from your supervising officer at your home.
- Permanently to reside at an address approved by your supervising officer and notify him or her in advance of any proposed change of address or any proposed stay (even for one night) away from that approved address.
- To undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change.
- Not to travel outside Guernsey without prior permission of your supervising officer (which will be given in exceptional circumstances only).

In addition, the Court will add the further conditions recommended by the Probation Officer, which are:

- “1. *To comply with any requirements specified by your Supervising Officer for the purpose of ensuring that you address your sexual offending behaviour problems.*
2. *Not to have any contact directly or indirectly by any means (including electronic communication) with any child under the age of sixteen years without prior permission of your Supervising Officer, other than such contact which is inadvertent and not reasonably avoidable in the course of lawful daily life.*
3. *Not to possess or use any device capable of accessing the Internet without the prior approval of your Supervising Officer.*
4. *Not to delete the usage history of any internet enabled device or computer and to allow such items to be inspected and removed as required by the police or your Supervising Officer.*

5. *To allow the installation of monitoring software on any internet enabled device or computer if deemed necessary by your Supervising Officer.”*

Notification

Having been convicted of a relevant offence, you become subject to the notification requirements under Part II of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013.

We follow the recommendation of the probation officer that the notification period should be 10 years, which runs from the date of your guilty pleas to those relevant offences on 29 August 2019. This period is a precaution against any risk you may pose and can be further extended. You will be given a written notice setting out all the requirements of being a notifier, but in summary they are:

- You are now required by Law to notify the Police within 24 hours of your name, any other names that you use, your address, your date of birth, your social security number, your passport details, your bank account details and your employment details. If asked to do so, for verification purposes, you must allow your fingerprints, photograph and/or a DNA sample to be taken.
- You must notify the Police of any change of name or home address at least 24 hours in advance of the change occurring, or within 24 hours if you had no prior knowledge of the change occurring.
- You must notify the Police of any address where you reside or stay for 7 days or longer. This means either 7 days at a time or a total of 7 days in any 12-month period.
- You must notify the Police of your details every 12 months on the anniversary of your initial notification, even if there is no change in these details.
- You must notify the Police at least 7 days in advance of any plans to travel abroad.

Conclusion

In summary, therefore, Dr Lydall, you are sentenced to a total of 30 months' imprisonment, running from today, we are making you subject to an extended sentence of three years, the forfeiture and destruction of the 55 items listed on the Crown's schedule as seized from you and on some of which the images were found is ordered and you are made subject to a notification period of 10 years.

Richard McMahon
Deputy Bailiff

31 October 2019