

Making indecent photographs of under-age children and possession of a Class B controlled drug.

[2020]GRC041

**ROYAL COURT
FULL COURT**

17 July 2020

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and:
Claire Helen Le Pelley, Jonathan Grenfell Hooley, Steven John Morris,
David James Mortimer, Joanne Marie Wyatt, David John Robilliard,
Stuart Michael Crisp, Marilyn Jasmine King, Tina Jane Le Poidevin, Jurats.**

THE LAW OFFICERS OF THE CROWN

- v -

CARL ANTHONY HALKER

**Advocate J McVeigh appeared for the Crown
Advocate L Roffey appeared for the Defendant**

LIEUTENANT BAILIFF:

Background

You appear here today for sentence on an Indictment containing 3 Counts: two of making indecent photographs of under-age children, and one of possessing the Class B controlled drug, cannabis resin. The punishment on each is a maximum of 10 years' imprisonment.

You are a 20 year old local person, so still subject to the provisions of the Youth Detention Law.

You have, for a young person, a very worrying and serious number of previous sexually-connected offences. We have heard the details in the Prosecution opening.

In summary:

- In November 2013 (aged 13), you were referred to the Children's Convenor for matters concerning the possession and distribution of indecent images of children.
- In December 2015 you appeared before the Juvenile Court for four charges of making indecent images of children, possession of 471 indecent images, category SAP 1. One charge of possessing 11 indecent videos of children, category SAP 1 and one charge of distributing indecent photographs of children. You were only 15 then and got a Suspended Sentence Supervision Order of 18 months' Youth Detention and 2 years' Supervision, plus a 5-year Sexual Offences Notification Requirement.
- In December 2016, you appeared for a further eleven relevant offences. One of unlawful sexual intercourse on a girl below age, a vulnerable 15 year old in care at the time; four charges of making an indecent image of a child, one of distributing indecent photographs of a child, one of possessing 38 indecent images of children, category SAP 1, one charge of possessing four indecent videos of a child, SAP 4, and three charges of indecent assault on a girl aged 14. You received a 3 year Probation Order, leaving the December 2015 Order in place.
- In February 2018 you appeared before this Court for four charges of making a total of 39 indecent photographs of a child, SAP 1, one charge of possessing 18 indecent images of children, SAP 1 and

one Count of possessing cannabis. We note the facts given about two of the images being part of the 2015 conviction, and today it appears all of the images were on a hard drive seized in this 2018 case. The Probation Order was revoked and you received a total of 2 years 6 months' Youth Detention.

- In March 2019 you were sentenced for one offence of indecent assault, going back to 2017, involving a 15 year old girl. You got an extra 6 months' Youth Detention.
- Also, there are other measures in place to protect victims. You were then made subject to a Sexual Offences Notification Order for 10 years and a 7 year Extended Sentence, which was imposed for the previous conviction, and was adjusted to start on the day of your release.
- You appeared before this Court on 15th June this year and entered early guilty pleas.

The facts of the present case have also been given in detail by the Prosecution. You were subject to a court-imposed condition from 25th July 2019 to allow inspection of devices, including mobile phones. On 7th February 2020, Probation officers carried out such an examination and as suspected, indecent images were found. Further examination was carried out. A very small amount of cannabis resin, on which we will sentence concurrently, was found at your home address. Again we have heard in detail what was found: 4 images on your iPhone, equivalent to SAP 1 involving 14 year old girls; the same images on your laptop. Again we need not repeat all the details.

You have been in custody for breach of the Extended Sentence Licence since discovery of the offences. There was a level of sophistication, the helpful Probation report says, in the concealment of some of the images. The report also states your behaviour "demonstrates disguised compliance, in order to continue to offend in a sexual way"; which is worthwhile noting when looking at the rather 'starry-eyed' letter we have seen today - and we also note young local females are the repeated victims of your "self-serving sexual gratification". The Probation officer also points out that you are motivated to circumvent rules, and attempt to obtain 'power' over others, both in a sexual and in a non-sexual way. You are assessed as being in a 'very high' risk category with regards to sexual recidivism. You have been subject to extensive intervention, but continue to re-offend. You are subject to Multi-Agency Public Protection Arrangements. Finally, we do note that no Newton hearing was called for in respect of this part of the case.

Sentencing Considerations

A lot of what we have just said applies here. The aggravating factors are the repeat similar offending and breach of Court Orders. It is right that this case came to this Court.

In view of the individual circumstances of this case, particularly considering the need to protect vulnerable underage children, local children, a rather enhanced starting-point is, in our judgment, wholly necessary. This is a case which plainly causes the Probation Service a very high level of justified concern, which we share. Courts exist in appropriate cases to protect the public, not just in the interests of offenders. We state in terms that we wholly share the well-reasoned views set-out convincingly in the detailed Probation report.

It is never an easy task to sentence a young person to custody, but your record is appalling, and that plus your manipulative pattern of offending go to increase our starting-point. Every case is different and each has to be dealt with individually. We repeat that the protection of vulnerable victims is a pressing concern to us today.

We start on Counts 1 and 2, with a total in all of 2 years' Youth Detention. We need to stress, that whatever legitimate concerns the Court and Probation have, we still sentence on the offences before us, despite our deep concerns about your criminality. We note the binding guidance in cases of this type in the Court of Appeal case on Wicks, yet this case stands on its own special facts.

Mitigation

We are not obliged to go fishing for mitigation in the hope that something comes up. In this case the applicable mitigation is your age. You still fall to be treated as a young offender. We also cannot lose sight of the fact that the images were not in the worst categories, though bad enough.

You also, on the facts, had no viable alternative to pleading guilty. We will impose a realistic discount, based fairly on the circumstances. We are encouraged to afford a discount, even though it may be reduced in cases such as this. Here the figure is less than one-third, but still a fair one of 25%.

Sentence

You present as a person aged 20 with a dreadful record of sexual offending, who has had chances commensurate with your age. There comes a time, even with a young person that, as we have tried to set-out, the protection of the public comes first. You are a sexual predator, manipulative and not lacking intelligence. We put this very plainly, it is right that Multi-Agency Protection arrangements are in force as you are a serious concern to this Court. Young girls at a vulnerable stage in their development need to be protected.

On Counts 1 and 2, the sentence is 18 months' Youth Detention concurrent on each – total 18 months, based on the seriousness of the offences, the need to protect the public and prevent crime and your unwillingness to abide by non-custodial measures. You are presently locked-up because you breached the Extended Sentence Licence. That was part of another sentence, and this present sentence starts from today and includes 7-days concurrent on Count 3 which therefore doesn't increase the overall total.

Further Measures

Your present Extended Licence is for 7 years, expiring we hear on 25th July 2026. We consider an enhanced period is necessary on the facts of the case before us today. We make it for 10 years from today, with all the current conditions which remain, which are set out in the Licence and I will not go over again because you are doubtless familiar with them, plus the extra one requested in the Probation report, which on the facts before us is necessary and reasonable and not oppressive - and it is in order to ensure your activities are effectively monitored and controlled and that is:

- To inform your Supervising Officer if you have contact with anyone that is physical and sexual in nature, within 24 hours of such contact.

This plainly is a standard format and we do not depart from it in this case.

We have considered and accepted the Probation Officer's recommendations at paragraph 23 of his report. We have noted the English guidance. We stress that we consider the Orders made are proportionate in the light of your activities, both today (shown in this case) and in the past. Similarly, on the facts we impose a 12-year Notification Period, which has to be from the date of your guilty pleas here which is the 15th June 2020. We are not a 'rubber-stamp' in respect of these recommendations, but regard these added requirements as wholly necessary in the public interest in this particular case and we have stressed, having carefully considered them, proportionate and necessary and I repeat, we have looked at the guidance from the English cases and followed it.

There are Confiscation and Destruction Orders as requested. The Order made I have canvassed with your learned Advocate with the ex-partner having the ability to retrieve her own data from the device by arrangement with the Police and there is Compulsory Supervision after release. There will be a Sexual Offences Notification Order with the conditions on there. You are aware of the standard form on the Extended Sentence and the additional condition requested by the Probation officer, having considered all the facts and your learned Advocate's observation is made, as requested, as proportionate.

**John Russell Finch, Esq., O.B.E.,
Lieutenant Bailiff**

17 July 2020