Regina v Jodie Simpson

No. 2012/06995/A5

Court of Appeal Criminal Division

13 February 2013

[2013] EWCA Crim 1250

2013 WL 3550295

Before: Lord Justice Aikens Mr Justice Griffith Williams and Mr Justice Edwards-Stuart

Wednesday 13 February 2013

Representation

Mr A Bateman (Solicitor Advocate).

Judgment

Wednesday 13 February 2013Lord Justice Aikens:

I shall ask Mr Justice Griffith Williams to give the judgment of the court.

Mr Justice Griffith Williams:

1 This is an appeal against sentence by leave of the single judge.

2 On 30 July 2012 in the Crown Court at Bradford the appellant, who is 22 years old and was of previous good character, pleaded guilty at the first opportunity to two offences of doing an act tending or intended to pervert the course of public justice. On 29 November 2012 she was sentenced by His Honour Judge Rose to concurrent terms of 21 months' imprisonment.

3 The case concerns two false allegations of rape made against Shaun Longdon, who was married to the appellant's mother many years ago. When the allegations were made two years ago, he had not seen or heard of the appellant for some nine years, when she would have been 11 years old.

4 On 1 January 2010 the appellant telephoned a Police Rape Team to allege that Mr Longdon had pulled up in his car and driven her to an address where four other men and a woman had raped her orally, anally and vaginally.

5 There were delays in video-interviewing the appellant. On 18 January 2010 she again telephoned the police, this time to allege that Mr Longdon had called at her grandmother's address and taken her together with the grandmother's partner and another man to an address where they had all raped her.

6 Mr Longdon was arrested at his home at 2am on 19 January 2010 and taken into

custody. He was detained for fourteen hours, during which time he was physically examined, required to provide intimate samples, and was interviewed under caution. Unsurprisingly, he found the experience traumatising and upsetting, even though on enquiry it was all too apparent that he could not have committed either offence and that the allegations were wholly false.

7 When the appellant was arrested on 3 March 2010 she claimed that the first allegation was true, but she said that she could not remember the second allegation and could not remember reporting it.

8 There was a basis of plea to the effect that the appellant had made the false allegations because she was angry regarding incidents in her childhood and how she felt that she had been treated in the abusive relationship between Mr Longdon and her mother. These claims lacked any particularity. Although they were supported by the appellant's mother, they were not accepted by the prosecution or by the judge, who seemingly rejected them, although he was prepared to accept that such may have been the then perception of the appellant.

9 The sentencing judge was provided with medical reports and a pre-sentence report. Dr Clare Stephenson, a consultant psychiatrist, reported that the appellant had been under the care of Child and Adolescent Mental Health Services since 2005, and more recently under the care of the Intensive Home Treatment Team. She was diagnosed with an emotionally unstable personality disorder associated with a reactive depression. In January and April 2010 she was admitted informally to Lynfield Mount Hospital, on the first occasion due to an increased risk of self-harm, and on the second occasion following an overdose when she attempted suicide. On that occasion she was detained under section 2 of the Mental Health Act . She continued to receive psychiatric care and treatment.

10 In the spring of 2011 the applicant became unexpectedly pregnant. There was an immediate dramatic improvement in her psychiatric presentation. She coped well with the death of her father in January 2012 — a death which occurred within a week of the birth of her baby daughter. The consultant psychiatrist reported:

> "5. Miss Simpson has pleaded guilty to the charges as she accepts the evidence before her that she made the allegations and that they are untrue. Should Miss Simpson be convicted, I would have significant concerns about the effect of imprisonment. My concerns would relate to both Miss Simpson and to her daughter … While Miss Simpson is mentally preparing herself for a term of imprisonment and is motivated to survive for [her daughter's] sake, I am concerned that the environment would be too stressful, as well as the emotional distress associated with any separation from [her daughter]. While Miss Simpson's mental state is currently stable, there will be a lifelong vulnerability to emotional instability associated with potentially significant deliberate self-harm. My second concern would relate to [the daughter]. There is evidence for the adverse effects on children of separation from primary care givers."

The probation officer voiced similar concerns.

11 In passing sentence the learned judge said that the appellant had made false and wholly malicious allegations. He said:

> "Now, I take into account the evidence I have seen regarding your state of mental health in 2009/2010 and indeed before that, and I accept that you were indeed quite unwell before, during and after you made your allegations. In January 2010 you were, of course, receiving treatment for your mental health issues. I am not, myself, convinced, having read the report, as to the extent to which those mental health issues in fact had any bearing on the offences that you have committed, were behind the commission of those offences, caused you to lie in the way that you have undoubtedly done. But I am satisfied that you were unwell at the time, that the principal focus of your ill-health was yourself and that self-harm that you were committing. I accept of course, and am pleased, that you have since made a full recovery, that you have been blessed with the gift of a child, and that you are in employment. You had not offended before 2010, nor have you offended since and you are of course entitled to credit for your guilty pleas."

12 The learned judge proceeded to refer to *R v McKenning [2009] 1 Cr App R(S) 106* (page 597), and in particular to the observations of the court in its judgment given by the Lord Chief Justice at paragraph 16. He referred also to *R v Ngwata [2012] EWCA Crim 2015* . While in both those cases this court concluded that the appropriate starting point was three years, we observe that those were decisions on the particular facts of those cases.

13 In his sentencing remarks the learned judge then said:

> "I recognise and take into account all the matters raised on your behalf: your age, your good character, the issues of your mental health and your eventual guilty plea. I understand that the sentence I am about to impose will separate you from your baby. I hope that that will not be for an inordinate period of time, but it is necessary to deter you and others like you who would make false allegations of rape against innocent men for their own purposes and to punish you for the ordeal through which you put this man.
>
> Having regard to the authorities and all that I have seen, read and heard about you, it seems to me the least sentence I can impose on you is a sentence of imprisonment of 21 months ….
>
> I have taken particularly into account the mental health issues referred to in the psychiatric report and it is for that reason that the sentence is significantly less than those imposed in the two cases, the two authorities, to which I have already referred."

14 Unfortunately, the sentencing judge did not identify his starting point, but his

observation that the sentence of 21 months' imprisonment was “slightly less” than the two cited cases would seem to suggest that he may have applied a starting point of three to three and a half years, and reduced that starting point, having regard to the mental health issues. It would seem that he then discounted by one-third to reflect the early guilty plea, to arrive at the sentence of 21 months' imprisonment which is the subject of this appeal.

15 On behalf of the appellant Mr Bateman properly accepted that, absent any mental health issue, there could be no criticism of a starting point of three years' imprisonment. He submitted, however, that insufficient discount was allowed for the mental health issue and for the fact that the appellant would be separated from her young baby. That was certainly Mr Bateman's understanding at the time when he advised, but in a letter from a probation officer at Her Majesty's Prison Hascombe Grange dated 8 February 2013 it is clear that the appellant has not been separated from her child — certainly not since 14 December 2012, slightly over a fortnight after she was sentenced. The appellant and her baby are in the Mother and Baby Unit at that prison where she is responding positively to the prison sentence she is serving.

16 In any case in which the mental health issues of the offender are engaged, both the sentencing court and this court have anxious regard to the relevance of those mental health issues, not only to the offending but also to sentence. Making due allowance for the appellant's mental health issues at the relevant time, it is important not to lose sight of the fact that these were very serious offences, the more serious because the appellant made the second allegation quite deliberately to make matters even worse for Mr Longdon. In our judgment there could be no criticism of a starting point of three to three and a half years. We are satisfied, from a consideration of the sentencing remarks, that the sentencing judge clearly had regard to the appellant's mental health issues. He also had regard to the appellant's previous good character and to the impact the sentence would have on the appellant and her baby. When he passed sentence he would not have appreciated that the appellant and the baby would not in fact be separated.

17 Mr Bateman sought to argue that Article 8 of the European Convention on Human Rights was engaged by reason of the circumstances of the appellant's baby. He argued that they would be engaged even though the baby is with the appellant in the Mother and Baby Unit of the prison. We are not persuaded that there is any substance in those submissions.

18 While the sentence of 21 months' imprisonment was necessarily a severe one, we are not persuaded that it was manifestly excessive. Accordingly, for all the reasons that we have given in this judgment, we have concluded that this appeal must be dismissed.