Neutral Citation Number: [2019] EWCA Crim 1566

Case No: 201900511/A3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM SOUTHWARK CROWN COURT
Her Honour Judge Cahill QC

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2019

Before:

LORD JUSTICE LEGGATT
MR JUSTICE WILLIAM DAVIS
and
HIS HONOUR JUDGE MICHAEL CHAMBERS QC
(Sitting as a Judge of the CACD)

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Between:

REGINA	**Respondent**
- and -	
SABINE MCNEILL	**Appellant**

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Mr Tom Stevens appeared on behalf of the **Appellant**
Mr Philip Stott appeared on behalf of the **Crown**

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Approved Judgment

Lord Justice Leggatt:

1. On 14 December 2018, following a trial at Southwark Crown Court before Her Honour Judge Cahill QC and a jury, Sabine McNeill was convicted of four offences of stalking involving serious alarm or distress, contrary to section 4A of the Protection from Harassment Act 1977, and six offences of breach of a restraining order, contrary to section 5(5) of that Act. For those offences she was sentenced on 9 January 2019 to a total sentence of nine years' imprisonment. She has appealed against that sentence with leave of the single judge.

2. The offences involved a relentless campaign of intimidation and harassment committed by the appellant over a period of more than three years which has caused incalculable harm. It began after she offered her services as a McKenzie Friend, that is somebody who assists a person involved in litigation, to a woman whom we will refer to as Ms D in family proceedings in the High Court. Ms D was separated from her partner Mr D and, together with her new boyfriend, Abraham Christie, set about ensuring that Mr D would not see his two daughters. To that end, she and Christie concocted lies of a revolting kind which they forced the children to repeat in video interviews recorded by Christie. Those lies included the false and malicious allegations that Mr D was the head of a satanic cult operating in Hampstead. The cult allegedly imported babies for ritual slaughter, and cooked and ate babies, and sexually abused not just the D children but many other children at their school in Hampstead. Other parents, teachers, police and social workers were named as being members of the cult. The allegations were of murder, cannibalism, satanism and sexual abuse. As the judge observed in sentencing the appellant, they could not have been more serious or vile.

3. Fantastical as those allegations were, they had to be investigated by the police and resulted in the children being taken into temporary care. Proceedings in the High Court then followed in which the appellant acted as the mother's McKenzie Friend.

4. During the proceedings, despite warnings from the judge, material from the case, including videos of the children describing the alleged abuse, was uploaded to the internet by the appellant or with her assistance. By the time the judge, Pauffley J, gave judgment on 19 March 2015, no fewer than 4 million people had viewed this material online.

5. In her judgment, Pauffley J found that the only person who had in fact abused the children was the mother's boyfriend Christie in collaboration with their mother. The children had been subjected to ill-treatment that amounted, as Pauffley J found, to torture. The stories they had been made to tell were completely false and all the material which had been published on the internet was, in the judge's words, "nothing other than utter nonsense". In a long judgment, Pauffley J set out in detail the history of the matter and the reasons for her findings. The appellant, of course, read that judgment.

6. Unfortunately, that was not the end of her involvement in peddling those false and pernicious allegations. In fact it was scarcely the beginning. Over the following months and years she continued to propagate online the allegations which Pauffley J

had found to be false and baseless. She did so exploiting her considerable skills as a systems analyst and web publisher.

7. A particularly insidious feature of McNeill's conduct was the publication online of the personal details of the parents of other children at the school attended by Ms D's daughters who were falsely and maliciously accused of having taken part in sexual and satanic abuse, said also to involve their own children. Their names, addresses, telephone numbers, email addresses, pictures of their children – all that and more was disseminated.

8. The four stalking offences which were the subject of counts 1 to 4 each involved a family which was persecuted in this way. They were put in fear of paedophiles attracted by the fantasy that their daughters were available for sexual abuse and of people seeking vengeance for their supposed abuse. Several of those targeted received malicious and intimidating telephone calls and emails at all hours of the day and night from all over the world. Some of these messages said things like: "Hey cock. We're coming for you, you paedo scum". In one incident a man travelled from the United States and posted a photograph of himself outside the children's school with a comment that he was carrying a knife. The appellant assisted him and offered him accommodation in London. He was later convicted of harassment.

9. In her sentencing remarks, the judge described in detail the terrible harm caused to the families concerned, which she summarised in this way:

> "The direct consequence of your actions is that for the four families concerned in counts 1 to 4 you have ruined all normal family life. Their children have been unable to attend school normally, and are either home-schooled, or have to carry tracking devices and alarms. The families have escape routes planned in case of attack. Mothers have slept on the floors of their children's bedrooms to protect them. They have had to move home. They have had businesses ruined as a result of being unable to have an online profile. As if that is not bad enough, for the children they will never, as things stand at the moment, be able to go online and put their own names in online without seeing the vile filth that you have peddled over a period of years."

The judge went on to say that the appellant had had warning after warning of the consequences of her actions and had continued regardless.

10. The warnings which the appellant chose to ignore included these. In January 2016 she was interviewed by the police and told them that she had taken down a website called "whistleblowerkids" on which material had been published a few days earlier. The fact that she said that to the police demonstrated that she was well aware of the consequences of her actions. During the interview the police spelt out their concerns. It subsequently emerged that the appellant either never took down the website or almost immediately put it back up again.

11. In July 2016 the appellant appeared in the Crown Court on a charge of intimidating witnesses. She was acquitted on legal grounds but the judge was nevertheless so

concerned that he made a restraining order to prevent, as he put it, "further appalling harassment". The appellant almost immediately breached that order. She was prosecuted for that breach, to which she pleaded guilty on 17 October 2016. The judge on that occasion gave her a conditional discharge but warned her that if she committed any further breach of the restraining order she could expect a custodial sentence.

12. That warning made not a blind bit of difference to the appellant. On 25 October 2016, only eight days later, she breached the restraining order again. That was the subject of count 5 on the indictment on which she was convicted. The appellant was interviewed by the police for that breach on 4 November 2016. They explained to her then the effect that she was having on the families she was hounding. They read to her a statement made by one of those victims, describing the devastation that she had inflicted on that family. The appellant was evidently entirely unmoved. She carried on with her campaign. Counts 6, 8 and 10 of which she was convicted involved further breaches of the restraining order around New Year of 2017 and then in April and October of that year.

13. The last two offences of which she was convicted (counts 20 and 21) were committed in February 2018. By this time the appellant had been remanded on bail and, as a condition of her bail, had had to surrender all internet enabled devices. But so determined was she to carry on her criminal campaign that she adopted a new form of harassment. She handed out leaflets at the General Synod of the Church of England, making scurrilous and, as always, baseless allegations against members of the clergy and in particular the Vicar of Christchurch in Hampstead. He is someone who as a result of the appellant's campaign has had to have police protection. That was count 20. Count 21 involved making a telephone call to a Christian charity in order to publicise her false and malicious allegations of sexual and satanic abuse.

14. We are bound to observe at this point that the facts of this case, of which we have given only the barest summary, amply justified the judge's comment that "this case has to be one of the most serious cases of stalking in breach of a restraining order that there can be."

15. In sentencing the appellant, the judge was required to follow the definitive guideline for intimidatory offences issued by the Sentencing Council. For the four offences of stalking, the judge assessed the appellant's culpability as very high on the basis that her conduct was intended to cause as much fear and distress as possible to the families she targeted, that it was persisted in over a prolonged period and that there was also a high degree of planning and sophistication involved in the appellant's use of the internet and in changing websites and settings between blogs in order to carry on propagating hateful material when attempts were made to stop her. In terms of harm, all three features of Category 1, the highest level of harm, were present in this case: that is, very serious distress was caused to the victims, there was significant psychological harm caused and the victims had to make considerable changes to their lifestyles as a result of the conduct.

16. The judge therefore assessed each of the four offences as falling in Category 1A within the sentencing guideline, for which the starting point is five years' custody and the category range is from 3½ to eight years' custody. The judge identified factors which further aggravated the offences as being that the appellant had used a position

of trust to start the campaign - that was a reference to the fact that she had abused her position as a McKenzie Friend to publish confidential material received in court proceedings; that she posted and propagated material which was grossly offensive; that the impact of the offences on the children concerned was great; and that the period during which the offences were committed included periods in which the appellant was in breach of a restraining order and a conditional discharge. Mitigating factors taken into account were the appellant's previous good character until she was convicted of breach of the restraining order in 2016, her age and ill-health. Although it was suggested that the appellant had shown remorse, the judge did not accept that claim, as the appellant had never accepted that the allegations she made were untrue.

17. The judge said that, if she had been sentencing the appellant in relation to one of the offences only, she would have moved upwards from the starting point of five years by one year to take account of the aggravating factors she had identified and would have imposed a sentence of six years' imprisonment. However, there were four stalking offences each committed against a different family and each family had suffered to an equally appalling degree. To arrive at a sentence which was proportionate to the totality of this offending, the judge increased the sentence for the stalking offences by two years to one of eight years' imprisonment, and ordered the four sentences to run concurrently with each other.

18. Turning to the six offences of which the appellant was convicted which involved breaches of the restraining order, the judge again, following the applicable sentencing guideline, classified the offences as falling in Category 1A, which for such offences has a starting point of two years and a range of one to four years. Had those offences been committed on their own, the judge said that she would have imposed sentences of two years' imprisonment on each of counts 5, 6, 8 and 10 to run concurrently with each other and sentences of two years' imprisonment on each of counts 20 and 21 – which were quite separate in the manner of their commission, as well as being committed while on bail and in breach of further court orders – with those latter sentences to run concurrently with each other but consecutively to the sentences on counts 5, 6, 8 and 10. However, to take account of the overall sentence that she was passing and of the appellant's age, the judge reduced each of the six sentences for breaches of the restraining order to one year and ordered them all to run concurrently with each other, although consecutively to the sentences for the stalking offences. In this way, the judge arrived at the total sentence of nine years' imprisonment.

19. Mr Stevens, who represents the appellant at this hearing and who has said everything that could possibly have been said in mitigation on her behalf, could not properly challenge and realistically and rightly has not sought to challenge the judge's assessment that all the offences fell within Category 1A, the worst category of offending within the sentencing guidelines. Nor has he sought to challenge the sentences imposed for the six offences of breaching a restraining order. But he has sought to submit that the sentences imposed for the four stalking offences were manifestly excessive.

20. Three grounds have been advanced by Mr Stevens today on the appellant's behalf. All relate to mitigating factors which, it is argued, the judge failed properly or adequately to take into account in arriving at the sentences which she imposed. The first is the appellant's age and the fact that she is not in good health. We see no merit at all in this ground of appeal. The relevance of age is explained in the well-known

guideline case of R v Millberry [2002] EWCA Crim 2891; [2003] 1 WLR 546, at para 17, in which the then Lord Chief Justice, Lord Woolf, said:

> "... the court is always entitled to show a limited degree of mercy to an offender who is of advanced years, because of the impact that a sentence of imprisonment can have on an offender of that age."

21. Four points may be made in this connection. First, as is apparent from that passage just read, a discount in sentence on account of age is not a matter of right on the part of a defendant. It is a matter of discretion on the part of the judge: a matter of mercy, if the judge thinks it fit or proper to be merciful in all the circumstances of the case. The judge's view on that matter is therefore one most unlikely to be disturbed on an appeal.

22. The second point to note is the word "limited". It is well-established that age is a matter entitled to limited weight, unless perhaps in an extreme case such as sometimes is seen before this court– an example being the case of Clarke [2017] EWCA Crim 393, where the appellant was over 100 years old. In that context, this appellant's age (she was aged 74 at the date of conviction and sentence) when seen in relation to the length of sentence imposed (one of nine years) is a consideration in our view which should receive minimal weight. As it was, it seems to us – and this is the third point – that the judge gave a generous allowance for age, because it was a factor which she identified as a substantial consideration in leading her to reduce the total sentence for the breaches of the restraining order from four years to one year.

23. Finally, in relation to ill-health, that is a matter which in an extreme case – for example, someone suffering from a terminal illness who is estimated to have a very short time to live – may be a material consideration. But provided that any disabilities or conditions can be managed within the prison setting, it seldom counts as significant mitigation. There is no suggestion in this case that the appellant's medical conditions cannot be appropriately managed in custody.

24. The second matter on which Mr Stevens relied was the fact that, at any rate when the stalking offences began, the appellant had no previous convictions. Again, that is a matter which the judge in sentencing took into account. Moreover, its significance in this case seems to us to be very substantially diminished by the fact that, after the appellant was convicted of a breach of the restraining order in 2016, she ploughed on with her offending and committed all the offences for which she fell to be sentenced. In those circumstances, it is difficult to see that her lack of previous convictions was a substantial mitigating factor.

25. The final matter on which Mr Stevens placed reliance was what he claimed was the remorse shown by the appellant. That, in our view, is a hopeless submission in circumstances where the judge, who had the benefit of observing the appellant throughout a long trial and throughout a long period of giving evidence, came to the conclusion that she entirely lacked remorse. That is not a judgment which we as an appellate court are in a position to second guess. Nor are the two factors on which Mr Stevens sought to place reliance in our view the objective indicators of remorse that he suggested. They are, first, the fact that when a Criminal Behaviour Order was imposed at the time of sentence the appellant instructed her counsel not to oppose the

making of that order; and secondly, that at that stage she gave instructions to take down material that had been put up on the internet.

26. As to the first of those matters, the fact that the appellant did not oppose the making of a Criminal Behaviour Order simply showed at that stage at last some sense of realism on her part; but since such an order was bound to be imposed, it is hardly indicative of remorse. Furthermore, the fact that she gave instructions then to take material down may be said to have come far too late in the day. Had she heeded any of the endless warnings that she received throughout the sorry course of these events and taken down material rather than continuing to put it up, that might have been a factor to be taken into account in mitigation. Coming as it did only after she was convicted at her trial, it seems to us to be of very little significance.

27. In all the circumstances, we consider that the sentence passed on the appellant was, if anything, a lenient sentence. By no stretch of the imagination can it be described as manifestly excessive. This appeal is entirely without merit and accordingly will be dismissed.