



JUDICIARY OF
ENGLAND AND WALES

THE HON. MRS JUSTICE WHIPPLE DBE

In the Central Criminal Court

R v N (Female Genital Mutilation)

Sentencing Remarks of Mrs Justice Whipple

8 March 2019

Preliminary Matters

You come before me today for sentencing on two indictments. There are a number of preliminary matters to deal with.

I remind all present that reporting restrictions are in place to protect the identity of R.

As I told you after your trial, you will receive a custodial sentence today. You will serve up to one half of that term before you are considered for release on licence. If after release and before the end of the term you commit any further offence you may be recalled to custody to serve the balance of your sentence as well as being punished for that offence.

If appropriate, the surcharge applies to this case and will be added to the court record in the appropriate amount.

You will be subject to a sexual offences notification requirement for 10 years. You will be given full details at the end of this hearing.

You may also be barred by the Disclosure and Barring Service from regulated activity with children or adults.

First Indictment, FGM

You were convicted following a trial of female genital mutilation contrary to s 1(1) of the Female Genital Mutilation Act 2003. The person mutilated was R. R is your daughter. She was just 3 years old when you cut her.

FGM has long been against our law. Let's be clear: FGM is a form of child abuse. It involves deliberate physical mutilation. It is a barbaric practice and a serious crime. It is an offence which targets women, typically being inflicted on women when they are young and vulnerable. It is often done with the collusion of family members. And then it is hidden. This case contains all those features.

In the early afternoon of 28 August 2017, you called the emergency services asking for an ambulance. The jury listened to a recording of that 999 call and heard you say that your daughter had been trying to get some biscuits and had fallen on metal and the metal had ripped her private parts. Because the ambulance could not get there quickly, a taxi was called. On arrival at hospital you told medical staff that R's injuries were accidental. You gave the same story to the police and to social services who became involved. You maintained that case in evidence at trial. The jury rejected it unanimously. They were sure that you had caused R's injuries.

R's injuries were described at trial by a number of experts called for the prosecution. The first was Mr Dawlatly, consultant obstetrician and gynaecologist. By the time R got to hospital she had lost a lot of blood, so much so that consideration was given to transfusing her. Mr Dawlatly operated on R that evening. He observed three separate cutting injuries to R: one to the labia minora on the right side which was missing; one to the labia minora on the left side which was hanging by a sliver of skin; and one to the clitoris in a curvi-linear shape, with a clot formed beneath it which, when removed, caused the wound to bleed. In his view, there were three separate cuts each of which had been deliberately inflicted by a sharp instrument. His view was shared by Professor Creighton, consultant paediatric gynaecologist, and Dr Hodes, consultant community paediatrician, who together run an FGM clinic for girls at University College Hospital in London and saw R a few days later. It was also shared by Dr Marnierides is a consultant perinatal and paediatric pathologist.

This was a type 2 female genital mutilation, following the classification of the World Health Organisation. Type 2 involves the partial or total removal of the clitoris and labia minora with or without excision of the labia majora.

Dr Hodes has provided an addendum report dated 4 February 2019. The wounds have healed well, and although R does complain of some pain and is still reluctant to

let her carers to clean her, there is no medical explanation for this pain and the likelihood is that these complaints are associated with her experiences. As to the future, she says that R is unlikely to suffer adverse obstetric outcomes as a result of the FGM and her sexual enjoyment in the future will probably not be impaired, although of course R is missing her labia minora.

Whatever the physical consequences, the psychological effects of this crime are likely to remain with R long after the physical scars have healed. As matters currently stand, R appears to be a content little girl growing up normally with her foster carer. But she is still very young. The true significance of what has occurred may not become apparent to her for years to come; it may only be in puberty or adulthood that she recognises that her body is different, and that may cause her embarrassment or inhibition in forming intimate relationships. This is a significant and lifelong burden for her to carry.

I have also been provided with a community impact report from Leethen Bartholomew, a social worker employed by the National FGM Centre.

Turning to this case, there is much which remains unknown about the circumstances of your offending. We do not know whether you cut R by your own hand or whether you held R down while the cutting was done by the "witch-lady" about whom R spoke in her recorded police interview. We do not know precisely how R was cut beyond knowing that a sharp instrument was used - a knife, scissors or scalpel. We do not know whether R was given any local anaesthetic to dull the pain. We do not know why you did this: you do not come from a culture where FGM is practised; there were suggestions during the trial that your crime was connected with witchcraft or that you cut R to cleanse her in some way - these suggestions derived from witchcraft objects found at your home and various messages found on your phone - but they are no more than possibilities.

There are other aspects of the offence which are established on the evidence, and of which I can be sure. The offence was committed within a period of 12 hours before R was taken to surgery on 28 August 2017. You committed this offence with another, as part of a joint plan - Dr Hodes was quite clear that the commission of this offence would have required the participation of more than one person. Y, who was then 9 years old and is your son, was at home when it happened and he saw his sister come out of the bedroom bleeding heavily and crying. You went to elaborate lengths to hide the truth: you gave your false story to whoever would listen, and coached R to do the same. Since your children have been in foster care and away from you, they have changed their account.

There is no guideline for this offence but there are three guidelines published by the Sentencing Council which have some relevance. The first is Overarching Principles on Domestic Abuse. FGM is included within the definition of domestic abuse given in that guideline. The second is the Assault Guideline. There is an analogy to be drawn with the offence of wounding with intent to cause grievous bodily harm under s 18 of the Offences Against the Person Act 1861. If this was a s 18, it would fall within the top category, because the victim was particularly vulnerable, the offence was premeditated, and was committed by the use of a bladed instrument akin to a weapon. That would give a starting point of 12 years in a range of 9 to 16 years, before considering other aggravating and mitigating factors. The maximum for a s 18 offence is of course life imprisonment, whereas the maximum for this offence is 14 years. The third is the Child Cruelty Guideline. There is an analogy to be drawn with the offence of causing or allowing a child to suffer serious physical harm under s 5 of the Domestic Violence, Crime and Victims Act 2004. Were this offence to have been charged in that way, it would fall within category A2 given the use of the bladed instrument as a weapon and the serious physical and emotional harm caused to R. The starting point would be 7 years in a range of 5 to 9 years, before considering other aggravating and mitigating factors. The maximum for that child cruelty offence is 10 years only. That guideline also covers the lesser offence of failing to protect a girl from risk of FGM contrary to s 3A of the Female Genital Mutilation Act 2003, which carries a maximum penalty of 7 years, and which would lead to a likely starting point of 5 years in a range of 3 to 6 years. I have also been shown a number of authorities.

The starting point for sentence in this case is in the region of 10 years.

There are some particularly sickening features of what you did which serve to aggravate it: R was particularly vulnerable by virtue of her age, being only 3 years old at the time. You committed the offence at home, where R should have felt safe. As R's mother, you betrayed her trust in you as her protector. Y was only 9 and he too has suffered a traumatic experience. You acted in concert with another person to commit this crime. These are serious aggravating features.

I take account of the following mitigating features: you are the mother and primary carer of both children, although both are now in foster care. To your credit, you did seek treatment for R by taking her to hospital, although I can safely infer you did that only once you realised R had bled so heavily that she was in extreme need. I accept that for you, custody may be particularly difficult because your offending may evoke strong responses by your fellow female prisoners. I have listened to all that Ms

Wong QC has said on your behalf. In the balance, this mitigation can only be relatively slight.

You have two previous convictions for benefit fraud in 2014. I take no account of those convictions in sentencing for this offence.

The term I arrive at is one of 11 years imprisonment.

Second indictment: Indecent Images

After you were arrested, your phone was examined. Material comprising indecent images of children and extreme pornography was found. This was the subject of the second indictment.

You have pleaded guilty to the following counts:

Count 3: Distributing indecent photographs of children contrary to s 1(1)(b) of the Protection of Children Act 1978. This concerns a Whatsapp message sent to three saved contacts on 12th April 2017 containing the video lasting 2 minutes and 45 seconds which involves a boy of around 5 years old, and young girl, approximately 12-13 years old, engaging in mutual masturbation, performing oral sex on one another, and engaging in penetrative sexual intercourse.

Count 6: Publishing an obscene article contrary to s 2(1) of the Obscene Publications Act 1959. This concerns a Whatsapp message you sent to two Whatsapp correspondents on 11th August 2017 at 19:27 containing a video lasting 28 seconds depicting an adult male penetrating a dog with his penis.

Count 7: Publishing an obscene article contrary to s 2(1) of the Obscene Publications Act 1959. This concerns a Whatsapp message you sent to three saved contacts 8th April 2017 containing a video of a naked adult female being penetrated by a snake.

Count 8: Possessing an extreme pornographic image contrary to s 63(1) of the Criminal Justice and Immigration Act 2008. This concerns a video stored on your phone of an adult male licking the genital area of a dog.

Guilty pleas were indicated in advance of today's hearing, although they were only formally entered today. I will allow a reduction in sentence to reflect those pleas of

15%, however, I also accept that you should have some further reduction to reflect totality in light of the sentence on the first indictment.

The most serious count on this indictment is count 3. The maximum term for that offence is 10 years. There is no guideline for that offence although the guideline for possession of indecent photographs under s 160 of the Criminal Justice Act 1988, an offence which is subject to a 5 year maximum term, is of assistance (see the Sexual Offences Definitive Guideline). Count 3 would fall into category A Distribution under that guideline, with a 3-year starting point in a range of 2 to 5 years. The offending on Count 3 is aggravated by the young age of the children depicted and the fact that the images were moving.

After credit for plea and bearing totality in mind, the sentence on count 3 will be one of 2 years imprisonment, with concurrent terms of three months on each of count 6 and 7 and two months on count 8.

Sentence:

On the first indictment, for the female genital mutilation of your daughter R, I sentence you to 11 years imprisonment, with credit for time served on remand.

On the second indictment, I sentence you to 2 years imprisonment on count 3. I sentence you to 3 months imprisonment on each of counts 6 and 7, and two months imprisonment on count 8. The sentences on counts 6, 7 and 8 are to be served concurrently to the lead sentence on count 3. The sentence on count 3 is to be served consecutively to the sentence on the first indictment.

The total sentence is one of **13 years' imprisonment.**