

No: DPA

Neutral Citation Number: [2004] EWCA Crim 1490  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
Strand  
London, WC2

Thursday, 13 May 2004

B E F O R E:

LORD JUSTICE HOOPER

MR JUSTICE LEVESON

HIS HONOUR JUDGE METTYEAR QC

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R E G I N A

-v-

DEREK HOOPER

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MR D OSBOURNE appeared on behalf of the APPELLANT  
MISS R COLLINS appeared on behalf of the CROWN

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J U D G M E N T  
(As Approved by the Court)  
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1. JUDGE METTYEAR: On 21st September 2000 at the Crown Court at Exeter before His Honour Judge Cottle and a jury the appellant was convicted of 28 counts of indecent assault on a male, seven counts of attempted buggery, three counts of buggery and two counts of incitement to commit buggery. A schedule of the individual counts and sentences will be attached to this judgment (see attached). For present purposes it is sufficient to say that each of the counts of indecent assault, save for counts 4, 8 and 9, received sentences of three years' imprisonment, each ordered to run concurrently; on the counts of incitement to commit buggery, sentences of five years' imprisonment were passed, again to run concurrently; on the counts of attempted buggery, there were concurrent sentences of six years' imprisonment; on two counts of buggery, sentences of seven years' imprisonment were ordered to run consecutively with each other but concurrent with the sentences already mentioned, making for those offences a total of fourteen years' imprisonment; on counts 4, 8 and 9, the remaining counts of indecent assault, where the appellant forced children to suck his penis, sentences of four years' imprisonment were imposed, concurrent with each other but consecutive to the sentences already mentioned, making a total of eighteen years' imprisonment.
2. On 28th July 2003 this court dismissed his appeals against conviction on certain grounds that were then before the court but left open those that were still the subject of further investigation. Those grounds have since been abandoned. This appeal against sentence is with leave of the single judge.
3. In so far as it is necessary to go through the counts that were before the court and the circumstances of this offending, we take this summary from the decision of the Court of Appeal on 28th July 2003, where it was said that the allegations against the appellant involved a course of serious sexual offending during the 1960s and 1970s. They were against fifteen male complainants, all but one of whom had been pupils at Forde Park School, which was initially an approved school but subsequently a local authority community school, in Newton Abbot. Count 10 was the only count related to a pupil at another school, namely DPA
4. The appellant was initially involved at Forde Park on a voluntary basis, supervising boys outside school hours and on school trips. From 1971 until 1973 he was employed there as a gardener. Thereafter he continued his involvement on a voluntary basis. He also worked at Stokelake School during the period when he was involved at Forde Park. The boys who made complaint were aged between 10 and 15 at the time when the offences were committed.
5. In 1977, after all of these complainants were no longer at school, the Director of Public Prosecution ordered an investigation into alleged abuse by another member of staff at Forde Park.
6. So far as these complainants are concerned, they first made complaints to the police in 1997, and the appellant was first seen by the police in 1999. It is apparent from the date that we have already given that the appellant was being tried in relation to matters which were said to have occurred in relation to the most recent, 24 years previously, and, in relation to the most distant, 39 years previously.
7. The prosecution case was that the appellant had, in a variety of ways, sexually assaulted the fifteen complainants and had used his contact with the principal as a means of gaining access to boys whom he could abuse with little chance of detection. The prosecution case was that the atmosphere at Forde Park was such that few of the complainants felt that there was any purpose in complaining. They feared that they would not be believed. Some of the incidents in the indictment were allegations of specific incidents; others were specimen counts in relation to behaviour which was said to have taken place on many occasions. The defence was that the

all always open to an offender to admit the offences and the fact that they are not reported earlier is often explained because of the relationship between the offender and the victim which is an aggravating factor of the offence. A different factor that could cause the court to take a more lenient view than it would otherwise is the consequences which result from the age of the offender. In these cases the experience is that the offender may be only a danger to members of the family with whom he has a relationship. So this is a dimension that can be taken into account if there is a reduced risk of re-offending. In addition, the court is always entitled to show a limited degree of mercy to an offender who is of advanced years, because the impact that a sentence of imprisonment can have on an offender of that age."

It is quite clear from all that we have read about this man that he will not, on release, constitute a danger to anyone.

14. As we have indicated already, the learned judge said that he was taking age into consideration as a mitigating factor. We have been persuaded by Mr Osbourne that insufficient attention was played to this factor in the case and that there should have been a greater reduction. In all the circumstances we feel that the appropriate total sentence in this case should be fourteen years' imprisonment, which can be achieved by making the three separate sentences imposed for indecent assault ordered to run concurrently with the other sentences, making a total of fourteen years in all. To that extent the appeal is allowed.

#### SCHEDULE OF ORIGINAL OFFENCES AND SENTENCES

Count 1	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 2	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 3	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 4	Indecent assault on [Name Redacted]	- 4 years consecutive to Ct 14
Count 5	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 6	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 7	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 8	Indecent assault on [Name Redacted]	- 4 years concurrent
Count 9	Indecent assault on [Name Redacted]	- 4 years concurrent
Count 10	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 11	Attempted buggery on [Name Redacted]	- 6 years concurrent
Count 12	Attempted buggery on [Name Redacted]	- 6 years concurrent
Count 13	Attempted buggery on [Name Redacted]	- 6 years concurrent
Count 14	Buggery of [Name Redacted]	- 7 years consecutive
Count 15	Buggery of [Name Redacted]	- 7 years concurrent
Count 16	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 18	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 19	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 20	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 21	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 22	Incitement to commit buggery on [Name Redacted]	- 5 years concurrent
Count 23	Incitement to commit buggery on [Name Redacted]	- 5 years concurrent
Count 24	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 25	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 26	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 27	Indecent assault on [Name Redacted]	- 3 years concurrent
Count 28	Attempted buggery on [Name Redacted]	- 6 years concurrent
Count 29	Attempted buggery on [Name Redacted]	- 6 years concurrent