



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2023] HCJAC 21  
HCA/2023/108/XC

Lord Pentland  
Lord Doherty

OPINION OF THE COURT

delivered by LORD PENTLAND

in

APPEAL AGAINST SENTENCE

by

DOREL SIMION

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

**Appellant: Culross; Faculty Services Limited**  
**Respondent: Trainer, advocate depute ad hoc; Crown Agent**

6 June 2023

**Introduction**

[1] The appellant was convicted after trial in the High Court in Glasgow of two offences of rape, contrary to section 1 of the Sexual Offences (Scotland) Act 2009; the crimes were in August 2020 and June 2021. Both offences were perpetrated against victims who were

intoxicated and incapable of consenting. The second rape was committed at a time when the appellant was on bail for the first.

[2] The trial judge imposed a *cumulo* sentence of 10 years' imprisonment, 6 months of which she attributed to the bail aggravation.

[3] A co-accused on the second charge had pled guilty at the outset of the trial. He received a sentence of 5 years and 6 months' imprisonment, discounted for the plea from 6 years.

### **The facts**

[4] The first rape occurred after the victim, a middle-aged woman who was extremely drunk, had joined a group of men including the appellant, who were sitting outside a block of flats. The victim was on her own. She spent some time with the men and it would have been obvious to them that she was heavily intoxicated. As she left the group the appellant went after her. The rape took place on open ground and two witnesses saw the victim lying on the ground while the appellant put his penis in her mouth. Police found the appellant hiding nearby.

[5] The second rape, some 10 months later, involved a young woman of 18 years. She too was very drunk and incapable of consenting. The appellant (who was himself drunk) and the co-accused, acting in concert, seized hold of the victim, took her to some bushes, and repeatedly raped her vaginally and orally.

### **The appellant's submissions**

[6] In support of the appeal it was submitted that the *cumulo* sentence was excessive. It was accepted that the offences were serious, but it was said that the sentence imposed was

too long. The appellant had no analogous previous convictions. He had a settled family life and a good work record. The trial judge had given insufficient weight to these factors.

[7] Reliance was placed on the case of *Ibbotson v Her Majesty's Advocate* 2022 SCCR 265 where the appellant had been convicted of two rapes against separate complainers in 2017 and 2019. The offences were prosecuted on different indictments. The appellant was sentenced in October 2020 to 5 years' imprisonment for the first rape and after a subsequent trial in 2022 to 6 years' imprisonment for the second rape, the latter sentence being ordered to run consecutively to the first sentence. Three months of the second sentence was attributed to a bail aggravation and 3 months to an aggravation under section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

[8] The appeal court observed that the interests of justice did not require the two sentences to duplicate the same purposes of punishment, deterrence, protection of the public and rehabilitation. The total punishment in that case was held to exceed what could reasonably have been expected if both crimes had been prosecuted on the same indictment. The court quashed the sentence of 6 years and substituted for it a sentence of the same duration, but ordered that it should run from 1 September 2022, the date on which the appeal was heard. It is important to note that by that date the appellant had served nearly the equivalent of a 3 year sentence in terms of the sentence imposed on the first indictment. It follows that the real effect of the court's decision was that the total punishment for the two offences equated to 9 years' imprisonment, only one year less than that imposed in the present case. Moreover, whereas Mr Ibbotson's offences were committed when he was aged 22 and 24, the appellant's were committed when he was aged 28 and 29. In these circumstances, we do not consider that *Ibbotson* lends any material support to this appeal.

[9] Reliance was also placed on the headline sentence of 6 years selected by the trial judge for the co-accused. It was said that this demonstrated the duplication of sentencing purposes in the overall cumulative sentence imposed on the appellant. We confess that we had some difficulty in understanding this submission. The co-accused faced only a single charge and in his case there was no bail aggravation. The sentence selected for the co-accused does not in any sense support the proposition that the sentence imposed on the appellant for the two rapes was excessive.

[10] While it was acknowledged that the second rape involved a breach of bail by the appellant, it was argued that as the appellant had no previous analogous convictions the total sentence was excessive on a cumulative basis. Punishment had been double counted.

### **Decision**

[11] We are satisfied that the sentence of 10 years' imprisonment was not excessive. These were each serious offences in their own right, deserving of substantial punishment. The appellant raped two highly vulnerable victims when they were incapable of consenting as he would have been fully aware. The second rape was aggravated by being committed while the appellant was on bail for the first charge. The appellant's conduct on each occasion was predatory and displayed a deplorable lack of respect for his victims, each of whom were subjected to very degrading sexual attacks. The criminal justice social work report disclosed that the appellant had little insight into the impact of his offending. We do not consider that there has been any element of double counting in the approach taken by the trial judge or that there has been duplication of sentencing purposes. We are entirely satisfied that the *cumulo* sentence of 10 years' imprisonment was not excessive in view of the gravity of the offences.

[12] The appeal is refused.