



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2018] HCJAC 18
HCA/2017/000626/XC

Lady Paton
Lord Turnbull

OPINION OF THE COURT

delivered by LADY PATON

in

APPEAL AGAINST SENTENCE

by

STEPHEN BELL

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: A Ogg, Sol. Advocate; Capital Defence Lawyers, Edinburgh for Allans Solicitors,
Lerwick

Respondent: D Small, AD ad hoc; Crown Agent

6 February 2018

[1] This is a man aged 59, who is in the grip of an uncontrollable obsession with child pornography.

[2] The sheriff outlines the massive number of images, both still and moving. He outlines their categories, A, B and C. He describes the appellant's total absorption with downloading and viewing, such that he neglected basic household tasks and did not even

bother going to the toilet, simply defecating where he was . The sheriff ultimately concluded at paragraph 14 of his report that: "This was about as bad a case of its kind as I could imagine". We agree.

[3] However, we note that in this particular case, a significant sentence of 52 months has been imposed. Not only will there be opportunities for programmes in custody, but there will also be a period on licence (which could range from as little as 6 months to as much as 26 months). During that time, the appellant will be the subject of close supervision. Also a sexual offences prevention order of indefinite length has been imposed. That order is focused upon the offending conduct. It provides:

"The offender is prohibited from using any device capable of accessing the internet unless it has the capability to retain and display the history of internet use. The offender must make the device available on request for inspection by a police officer. The offender is prohibited from deleting such history of internet use. The offender is prohibited from possessing any device capable of storing digital images unless he makes it available on request for inspection by a police officer."

The appellant is also subject to the notification requirements under the Sexual Offences (Scotland) Act 2003 for an indefinite period.

[4] In these particular circumstances, we have reached the view that the test set out in section 210A of the Criminal Procedure (Scotland) Act 1995 has not been met and that accordingly an extended sentence was unnecessary. We shall therefore allow the appeal, quash the sentence imposed and substitute therefor a sentence of 52 months dating from the same date as that imposed by the sheriff.