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IN THE COURT MARTIAL

held at

MILITARY COURT CENTRE, CATTERICK

on the

16th day of January 2025

in the case of

REX

V

30253365 Private Luke Peter Stewart BUSH

Defence Explosive Ordnance Disposal, Munitions and Search Training Regiment

JUDGE ADVOCATE

Judge Smith

Assistant Judge Advocate General

SENTENCING REMARKS

JUDGE ADVOCATE: : Private Bush, you can stay sitting down while I explain the sentence; you are very courteously sitting up just relax because I want you to listen to what I am saying. Once I have explained the sentence to you and made sure you understand it then I am going to ask you to stand up and the President of the Board will formally pass the sentence upon you. This will take a few minutes, but you know effectively what the sentence is going to be because I gave an indication on the last occasion that if at that stage in the case you would not be sent immediately into prison and that is a position which we have maintained.

You are 32; you have been in the military for 8 years and 281 days, you are a man of good character, there is an elderly caution on your record for a dissimilar type of offence. You pleaded guilty to 11 charges on this indictment. Counts 1 to 9 are all offences of making indecent images of children of various categories. Charge 10 is the making or the possession of 6490 prohibited images of children and charge 11 is the possession of 48 extreme pornographic images. The reason for the number of charges was that the indecent images of children were recovered from nine separate devices. You pleaded guilty at the first available opportunity.

The reason for your arrest came from information being provided to the Service Police by the Hampshire Police that your ISP address had been linked with the possession of indecent images of children. On 11th October 2022 the police arrested you, seized a number of devices and in due course over a lengthy investigation it was identified that on those devices were 387 category A images of children, 115 category B images of children, 259 category C images of children, 6490 prohibited images and the 48 extreme pornography images.

Category A images are images of children under the age of 18 and some of these images were children very much younger than that who are involved in penetrative sexual activity with adults, the most serious of the various categories of category A images. Lest anybody thinks when they are looking at this material online that this is a victimless crime, they could not be any further from the actual truth because these are images which have been taken of children under the age of 13 being raped by adults, they did not want that to happen to them. These images are taken of children that are usually outside of the safety of West European or the UK jurisdiction. This is happening to them, and they are not being protected from this. People looking at images of this type think well, there are not any victims of this crime but by accessing these sorts of images then it generates a trade in these images and also people who are interested in images of this type, as we identify in this case, are a risk so far as the Probation Service are concerned and the courts concerned that maybe if there is not an early intervention committing even more serious offences which may involve the actual sexual abuse of children.

Category B images, awful though they are, are not as serious as category images showing children under the age of 18 involved in non-penetrative sexual activity. And the category C images, they are 259 images of children under the age of 18 being sexually posed in some way. The prohibited images at least have this mitigation. They are not actual records of real children being sexually abused; they are cartoons or drawings or tracings. Nonetheless the possession of images of that type again raises issues so far as the Court is concerned with regard to the interest of the person who possesses those images and what else they might be capable of. And the extreme images in this case are adults involved in sexual activity with animals. With regard to the images of children they were a mix of moving images and of still images.

Where there are sentence guidelines in this case the Court is obliged to follow them. We have had our attention drawn to the guidelines that would apply in the Crown Court or the Magistrates' Court for the possession of indecent images of these types. As I say the most serious are the category A images where somebody is making them or possessing them, category A. The starting point for the sentence is one of 12 months' imprisonment with a sentence range of 26 weeks up to 3 years' imprisonment. We intend to pass one concurrent sentence on all these charges taking into account the totality of the offending and that sentence will be passed on charge 1 simply on the basis that it is the first charge on the indictment. The Sentencing Council guideline is not the only guideline that we consider. The Judge Advocate General has guidelines which apply in the Court Martial and where those guidelines apply, we are obliged to follow them.

The Judge Advocate General is not dictative with regard to the sentence that is imposed for sexual type offending and we hear what is said by Mrs Edington that we take the view that the Judge Advocate General's guidelines with regard to sexual offences apply just as much to this offence as to any sexual contact offence which is that people within the Services are expected to adhere to higher standards than their counterparts in the civilian world. That when sexual offences take place, they are particularly detrimental to the Service ethos, it, we know, causes difficulties with regard to the Commanding Officer having to manage you in the unit and ensure that information with regard to the offences with which you have been charged are known to as few people as possible. In those circumstances we take the view the fact that you are a serving member of the Armed Forces and the potential reputational damage to the Armed Forces are aggravating features of the offence which means that we would be entitled and do take it more seriously than it would be if we were dealing with a civilian for the same offence. On the other hand, you have pleaded guilty to these offences at the earliest opportunity.

The first issue that we need to consider is whether you can remain in the Armed Forces. At the background of any case involving indecent images or sexual offending is what is sometimes loosely referred to as the zero tolerance policy within the Armed Forces. True it is that indecent images of children are not directly covered by that policy, but the effect is the same. We take the view that the seriousness of this offence is such that it would be impossible for you to continue your career within the Armed Forces and as you have already acknowledged dismissal is an inevitable part of this sentence not least because word will inevitably get round amongst others in the Services with regard to your conviction for these offences and people simply will not work with those who are involved in the downloading of indecent images of children.

What sentence are we going to impose upon you? I have referred already to the guideline that would apply in the Magistrates' Court or the Crown Court. Given the length of time that you were involved in downloading images, which is some two years or so, given the multiplicity of different devices that you were downloading images to, given the number of the images this is not a prurient downloading of one or two images but somebody who has made a concerted effort to identify and look at a large number of images we take the view that giving you credit for guilty plea we can suspend the sentence upon you but the sentence will be one of 18 months' imprisonment. We are going to suspend that sentence for two years. The reason we suspend the sentence is firstly because you have pleaded guilty to this offence and are entitled to credit for that. We take the view that for somebody who comes before the Court for the first offence of this type it is more important to try and rehabilitate you to ensure that there is no offending going forward.

We have read very carefully what is said in the pre-sentence report about you. We acknowledge the difficult childhood that we had, we acknowledge the traits of your behaviour that perhaps makes you a little more of a loner, somebody who does not mix well with other people and therefore prefers to keep himself to himself gaming on the internet and that is a background which perhaps has made this offending come more naturally to you given that background than others. We take that very much into account. The Probation Service take the view that you are a low risk of re-offending, but should you re-offend you are a medium risk of causing harm to children. Not every person who downloads indecent images of children is going to go on to commit more serious offending but there is a definite link which the courts acknowledge between those people who are interested in material of this type and those people who go on to more serious offending if there is not immediate and effective intervention. And we take the view, given your attitude that you will work with the Probation Service, that the appropriate thing to do is for that work to be done with you in the community.

In those circumstances the suspended sentence of 18 months is going to be suspended for a period of two years and during the two year period you are going to be required to attend up to 30 sessions of an accredited offender behaviour programme, a further 25 days of rehabilitation activity requirements to focus on the work that has been identified in that programme. That is to rehabilitate you to prevent you committing further offences going forward. But in addition, we take the view that there is appropriate room in this case for a degree of punishment by way of the sentence and for that reason you will perform 140 hours of unpaid work in the community. We have taken into account in fixing that amount the fact that sooner or later you are going to want to get paid employment, it is going to be better for you and better for everybody because it will be rehabilitative in itself for you to be involved in paid employment and we have reduced the figure of 140 hours from the maximum available which would have been 300 hours to acknowledge that you need to do the other work and concentrate on that and also make steps towards obtaining employment.

Some members of the public listening to cases of this type just hear the disgraceful activities which are depicted in these images and say to themselves why does the Court not just lock people like you, Private Bush, up for a number of years. Well, the reason that we have not done that in this case is firstly we have to apply the sentence guidelines and the sentence guidelines would not allow us to lock you up for a number of years but, secondly, the Court acknowledges that the reality of the situation is that you can be helped if you are willing to be helped. If we send you to prison for the type of sentence that I have described which would be allowed on the sentence guidelines the reality is very little work will be done with you in prison and when you are released on licence little resource will be available as opposed to what is available now to target your offending behaviour. So, we take the view that suspending the sentence properly punishes you but more importantly it is going to allow you to work with the Probation Service so that low risk admittedly of causing serious harm to children going forward is going to be reduced even more by the effective intervention of the Probation Service.

As a result of this conviction, we are invited to pass a sexual harm prevention order upon you. We are going to make that order as required on the basis that we think it is appropriate to do so. The length of the order will be for the length of time that you are going to remain on the sex offenders register with regard to this offence. You need to understand the order. It is incumbent upon you to know precisely what this order says, and I summarise it now. You will be allowed to use computers to access the internet going forward but only if the device that you are using has got the ability to retain and display its internet history, you must not wipe the history until 30 days have elapsed and you must make the device available on request for inspection by any police officer or civilian police employee. You are not to delete any history on the internet, you are not to use any forensic wiping software, you are not to access any social networking sites or chat rooms unless you notify the site that you are using any access details to the police in advance. And if a police officer or police employee wishes access to your home address to check the conditions are being complied with you must not unreasonably deprive them of access. If you breach that order you commit a separate criminal offence, you could be sent to prison for up to five years.

As a result of this conviction, you will be required to sign on the sex offenders register. The Court will give you a document before you leave today telling you what your obligations are. Make sure you understand those obligations because if you are proved to have breached the sex offender register requirements again you could be separately punished with a prison sentence of up to five years. With regard to the sentence that we have imposed upon you of 18 months suspended for two years that will apply concurrently on counts 1 through to 9. There will be a concurrent sentence of six months similarly suspended with the same conditions which applies to counts 10 and 11.

I am just going to turn to Colonel Whiting. Is there anything I have missed, Colonel Whiting, that I should have dealt with which I have not dealt with or is there anything that occurs to you as being technically incorrect with regard to the sentence we intend to pass?

LT COL WHITING: Your Honour, no. My only observation is the destruction order.

JUDGE ADVOCATE: Yes, sorry, I have not dealt with the destruction order. The destruction order which you have uploaded to M3 will be made, not to be destroyed within 28 days in case there is an appeal with regard to the sentence of this Court. With regard to the sexual harm prevention order can you please redraft the document to take out the words "or social worker" but replace it with "police employee please"? A lot of the MAPA work which is done by various police forces involves civilian police workers rather than police officers.

LT COL WHITING: I will do, your Honour, and I will send that through as soon as.

JUDGE ADVOCATE: I am grateful. Mrs Edington, is there anything that you want to add?

MRS EDINGTON: Your Honour, no thank you very much.

JUDGE ADVOCATE: Now, do you understand the sentence that is imposed upon you, Private Bush?

DEFENDANT: Yes, your Honour.

JUDGE ADVOCATE: Yes, all right. The Probation Service will give you further details with regard to when you need to work with them and the like. As long as you abide by this order and it is a deliberately intensive order, there is a lot of work that is going to be done with you, as long as you abide by the order then you will not have to serve the sentence that we have passed upon you. If you breach the order, then you will be brought back before a Crown Court and if the judge takes the view, you are not prepared to comply with the requirements, then it is likely that the judge will make that sentence be served immediately. Similarly, if you commit any further offence during the course of the currency of the suspended sentence which carries imprisonment, and it might be a dissimilar offence, you run the risk of being brought back before the Crown Court and the Crown Court again could similarly impose the sentence immediately upon you that we have pass today. Do you understand that?

DEFENDANT: Yes, your Honour.

SENTENCE

PRESIDENT OF THE BOARD: The sentence of this Court Martial is that you be dismissed from His Majesty's Armed Forces. We pass a sentence of 18 months' imprisonment, which will be suspended for 2 years. You will be required to undertake an accredited offending behaviour programme for up to 30 sessions and up to 25 days of Rehabilitation Activity Requirements. You will also complete 140 hours unpaid work in the community.