

Case Study: ASD and Viewing Indecent Images of Children

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This case study focuses on the importance of considering potential innate vulnerabilities in some individuals with ASD who have been charged with the viewing of Indecent Images of Children (ILOC).

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Background

Recently, Allely and Dubin (2018) and Allely, Kennedy and Warren (2019) have emphasised that there are a range of innate vulnerabilities in many individuals with autism spectrum disorder (ASD) who are charged with the viewing of Indecent Images of Children (IIOC). Some of the key innate vulnerabilities were discussed in a previous [Gillberg's Blog](#). This highlights that the understanding of the association between ASD and the viewing of IIOC is poorly recognised and understood both by the general public as well as clinical and legal professionals. Mahoney (2009) has highlighted the following factors which can contribute to an individual with ASD engaging in the viewing of IIOC:

- Unbridled curiosity of ASD individuals
- ASD individuals' interest is not necessarily deviant - "counterfeit deviance"
- IIOC's mere existence on the internet sends the message of legality to the ASD teen or young adult
- ASD individuals' inability to intuit social mores and legal rules
- Empathic deficits (but note that individuals with ASD do have empathy when told that the children in the images are victims and are in distress, etc)
- Unless explicitly explained, ASD individuals fail to see the harm in merely viewing or receiving IIOC
- Distinction between of-age and underage females is intentionally blurred by the media and pop culture and legal "adult" porn (Mahoney, 2009)

This case study will discuss the case of P.J., who was charged and found guilty of downloading indecent child images ("CIVIC GOVERNMENT (SCOTLAND) ACT 1982. SECTION 52(1)(A) – CHILD SEXUAL"). This case was explored in detail in an academic article published this year in the Journal of Intellectual Disabilities and Offending Behavior (Allely, 2020). The academic paper includes P.J.'s experience of receiving a diagnosis of ASD; his experiences with police; during the court proceedings; in prison and when released from prison; and also his suggestions and ideas for what support or interventions would have been useful at all stages of his involvement with the criminal justice system. P.J. did not produce or share any content; his was a strictly non-contact offence. However, within the law, no distinction is made between contact and non-contact offenses of this type. P.J. was 30 years of age when he was charged and 31 years of age when he was convicted. P.J. was sentenced to prison for 13 months (a total of 6.5 months in prison given good behaviour). He received a formal diagnosis of ASD when he was 31 years of age, a week after being released from prison on bail, pending an appeal hearing. The case study paper explores the difficulties and challenges that P.J. faced at each stage of the criminal justice process including: his experience with police when arrested and questioned; his experiences during the court proceedings and Appeal Hearing; his experience within the prison environment; his experiences following release from prison and, lastly, his recommendations and suggestions for what supports or resources are needed for individuals who find themselves in a similar situation.

This case study will focus on the experiences that P.J. had during the court proceedings and during his Appeal Hearing. P.J. reported experiencing feelings of "helplessness" during the court proceedings. The Sheriff stated that there were no mitigating factors. P.J. argued that this is not accurate because he had no previous record (it was a first offence), he was in employment, had the support of his family and friends and had willingly engaged in support, both through work (Occupation Health assessments) and also privately (therapy with a trained Sexologist who has dealt with countless individuals in his position). He also reported that the court had access to his medical records and a report on the matter but it appeared that the court did not take these into consideration in the sentencing decision.

While in prison, P.J.'s family began preparations for an appeal and contacted the National Diagnosis & Assessment Service who carried out an assessment with P.J. when he was released on bail after 72 days in prison. He was formally diagnosed with ASD. The decision was made to go private following information that the waiting time within the NHS for such assessment can take at least one year. P.J.'s therapist had also told him that some of her clients were taken off the waiting list when it was found the request for a diagnosis was prompted by a criminal conviction. P.J. states that if his family had not arranged everything while he was still in prison and had the funds to obtain a private assessment, it would have been impossible for him to have received a diagnosis prior to his appeal hearing. The diagnostic report was pivotal during the appeal. The High Court Judges quashed his sentence and reduced it to a community payback order (with 200 hours unpaid labour). They acknowledged the Sheriff had been excessive in his sentencing (even without the knowledge of a diagnosis of ASD on which to base his decision). They also specifically cited the significance of the autism diagnosis they had just received from P.J.'s advocate.

Lastly, it is important to also point out here that even P.J.'s lawyer was unaware (and sceptical) of the impact the autism report could have on his appeal, to such an extent that he did not submit the report in advance. He eventually submitted it on the day of the appeal, after P.J.'s family personally provided him with a physical copy and encouraged him to submit it.

Judicial attitudes regarding the sentencing of offenders with high functioning ASD

Surprisingly, there has been only a handful of studies which have investigated judicial attitudes or perceptions regarding the sentencing of individuals with a diagnosis of ASD. In one of these studies, Berryessa (2016) investigated the attitudes of 21 US trial judges for the California Superior Court on the sentencing of offenders with high functioning ASD (hfASD). Fifteen judges reported that when making sentencing decisions an individual's diagnosis of hfASD would be an important consideration and that information about a defendant's hfASD diagnosis may help judges and jurors ascertain whether the disorder played a contributory role in the offending behaviour. Another key finding from this study was that 12 of these 15 judges considered hfASD to be a mitigating or an aggravating factor. Nine judges reported that hfASD would be a potential mitigating factor in sentencing. The majority of judges who considered hfASD to be a potential mitigating factor questioned whether the actions of an individual with hfASD would be "completely wilful or if his criminal intent would be potentially influenced by the symptoms of the condition". Of the 21 judges, only three considered hfASD to be a possible aggravating factor. Lastly, Berryessa found that a significant majority of judges reported that they would likely want to try and avoid imprisoning individuals with hfASD given that the prison environment may be particularly damaging for these individuals. They emphasised that there is a need for alternatives to imprisonment for such individuals. They reported, nevertheless, that the criminal justice system may not have the resources/means to provide other diversionary measures as an alternative to prison.

Judiciary views on criminal behaviour and intention of offenders with high-functioning ASD

Berryessa (2014a) also carried out a study based on semi-structured telephone interviews with 21 California Superior Court Judges in order to explore how they perceived and understood how hfASD can impact on an individual's ability to "formulate criminal intent" and control their offending behavior. The total sample of 21 judges reported having had previous experience of hfASD (either personal or professional). Interestingly, the findings revealed that, for offenders with hfASD, feelings of uncertainty with understanding and making decisions with regards to their criminal responsibility and their sentence were reported by the majority of the judges. Interestingly, one of the judges who had reported having had experience of a number of cases involving a defendant with ASD said that they felt hesitant about whether hfASD has any impact on the defendant's criminal responsibility. Several of the judges reported that, given that offenders with hfASD "view the world" in a different way to offenders without a diagnosis of hfASD, it makes it challenging for judges to fully understand the role of intent in the actions of individuals with this diagnosis and how it should influence sentencing decisions. The study also found that a diagnosis of

hfASD was reported as being a potential mitigating factor by questioning the presence of “intent and a wilful criminal act”. These findings provide “insight on judicial understandings of hfASDs, the types of issues they identify as potentially challenging or influential when processing and making decisions concerning diagnosed offenders, areas of practice that could be affected, and a starting point for future research”.

Available support services for individuals with ASD who find themselves involved with IIOC

In the case of P.J., he was given a leaflet for an organisation which could support him, called Stop it Now! Stop It Now! UK and Ireland was established in 2002 by The Lucy Faithfull Foundation, the only UK wide charity dedicated solely to reducing the risk of children being sexually abused. The Lucy Faithfull Foundation manages the Stop It Now! campaign and helpline, and trained staff provide a call-back and face-to-face service to helpline callers who need specialist, ongoing advice and support. They provide information and support for people wanting to change their illegal online sexual behaviour involving children, including those who view sexual images of children, and those who communicate sexually with children. They also support their families and friends, helping people cope with difficult emotions, and the professionals who work with these groups. Stop It Now! in Edinburgh, for instance, regularly receive clients with ASD. They are aware of the recent literature on sexual offending and child pornography-related offending and ASD. They therefore work with clients with ASD recognising the possible ways in which they might be vulnerable and how best to educate these individuals. Stop It Now! also have some online materials for people who are worried about their online sexual behaviour, including looking at sexual images of children. These are completely anonymous and can be found [here](#).

Conclusion

As pointed out by P.J. the high court appeal judges both understood the implications of his diagnosis of ASD and its significance in the context of offending (it should be noted here that such understanding on behalf of the judiciary is currently not widespread). However, this was not the case for the other Sheriffs, lawyers and prosecutors that he encountered up until that point. The Sheriff during P.J.’s sentencing used his discretion to pass a more severe sentence. In the literature, there is mounting interest in the ‘draconian sentences’ that individuals with ASD receive after being convicted of violating IIOC statutes (Mahoney, 2009). It has been stressed that with individuals with ASD who have downloaded IIOC, prison sentences are not absolutely necessary because of the extremely low risk which individuals with ASD present of harming a child (Mesibov & Sreckovic, 2017). Rather, what is needed is support, intervention and/or psychoeducation. There is a very real and urgent need for the innate vulnerabilities which are associated with ASD which can contribute to offending behaviour such as the viewing of IIOC, to be more recognised in criminal law (Allely & Dubin, 2018; Allely et al., 2019; Freckelton, 2013).

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