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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

NEIL BECKETT

REFERENCE UNDER SECTION 36 OF THE CRIMINAL JUSTICE ACT 1988 AS AMENDED BY SECTION 41 OF THE JUSTICE (NORTHERN IRELAND) ACT 2002

Mr MacCreanor KC with Mr McNeill (instructed by the Public Prosecution Service) for the Applicant
Ms Ievers KC with Mr Molloy (instructed by Scullion Greene Solicitors) for the Respondent

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Before: Keegan LCJ, Treacy LJ and Horner LJ

KEEGAN LCJ (*delivering the judgment of the court*)

In this judgment, the identity of the victims has been protected as the Sexual Offences (Amendment) Act 1992 (as amended) requires. Furthermore, we draw to the attention of anyone hearing or reading this judgment, that there is a prohibition on identifying the victim of a sexual offence of this nature.

Introduction

[1] This is a reference brought by the Director of Public Prosecutions for Northern Ireland ("DPP") under section 36 of the Criminal Justice Act 1988 as amended by section 41(5) of the Justice (Northern Ireland) Act 2002. The reference relates to a sentence of three years' imprisonment imposed on 6 December 2024 by His Honour Judge Gilpin ("the judge") on the respondent, Neil Beckett, for offences committed under the Sexual Offences (Northern Ireland) Order 2008 ("the 2008 Order"), namely one offence of meeting a child following sexual grooming pursuant

to Article 22 of the 2008 Order and 16 counts of assault of a sexual nature contrary to Article 17 of the 2008 Order.

[2] The indictment was contested and heard by a jury over five weeks, after which they convicted the respondent on 17 counts on the indictment and acquitted him on a further 11 counts which included more serious sexual offending.

[3] The ancillary orders that were made namely a Sexual Offences Prevention Order ("SOPO") for five years and, restraining orders in respect of the complainants, and disqualification from working with children, are not disputed. Rather, the reference is related simply to the sentence of imprisonment which the DPP contends is unduly lenient.

Case progress

[4] The sentence arises following complaints of a sexual nature made against the respondent by nine female victims aged between 12 and 18. The respondent was arraigned on 27 September 2023 and pleaded not guilty to all counts on the Bill of Indictment. He first appeared before the Crown Court on 8 November 2023 in respect of one indictment which concerned allegations of sexual assault in 2018 and 2019 by one of the victims and sexual assaults and sexual communications by female students at Lagan College during 2021-2023. He pleaded not guilty to these counts on 1 December 2023. In January 2024, a further complainant contacted the police in England where she was residing. Her allegations became new counts on the trial indictment. In the first instance, her allegations formed a new Bill of Indictment which was brought before the Crown Court and following legal submissions the two indictments were joined forming one new indictment.

[5] The respondent had appealed his conviction, but that appeal was withdrawn shortly prior to the hearing of this reference.

Factual background

[6] The facts of the offences are comprehensively contained in the reference. In summary, the first offending in time began in 1999 when the respondent was an instructor with the Army Cadets. The complainant was 12 turning 13 and had experienced a significant event in her life in that her brother was diagnosed with a significant illness. There was contact between the respondent and this victim which involved him dropping by her house to give her coffee he had brought for her, sometimes leaving the coffees on her doorstep. In relation to this complainant, the jury convicted the respondent on count 1, meeting a child following grooming and the judge sentenced him on the basis that he had called at her house on at least two occasions. The jury acquitted the respondent on other more serious allegations in relation to this complainant.

[7] The next period of offending also occurred while the respondent was a cadet leader. The offending took the form of the respondent hugging the complainant who was being bullied. She said that when this occurred the respondent inappropriately moved his arms close to her. The complainant said that the respondent kissed her on the cheek on one occasion, and that he tried to kiss her again on other occasions.

[8] The PPS originally decided not to prosecute the respondent in respect of these allegations. In light of later allegations from other complainants that decision was reversed. The respondent was suspended from the cadets on foot of the complaints from the first victim. The respondent never returned to the cadets after a disciplinary process took place.

[9] However, the respondent applied for a post at Lagan College on 22 June 2021 and started at the college in August 2021 as a Student Health and Welfare Officer. The remaining complainants were all students under his care at the college. They all described the respondent hugging them tightly and his hands straying across their body on occasions and that he kissed some of them on the cheek. These complainants attended with the respondent given his welfare role when they had their own difficulties and needed someone to talk to and some had mental health difficulties.

[10] Some of the allegations against the respondent were put to Lagan College in 2022. The respondent was interviewed by the principal of the college in October 2022 and denied all of the allegations. He was required to undertake additional safeguarding and child protection training. One of the elements of his training at the college as in the cadets, emphasised that he should not be alone with a student unless unavoidable.

[11] However, in January 2023, other complainants came forward and there was a further complaint from one of the complainants already on the indictment. The respondent was then suspended from work and later arrested and interviewed by the police. In February 2023, more students made complaints, Achieving Best Evidence interviews and statements were taken from the new Lagan College complainants and from others in respect of their allegations.

[12] In his police interview in relation to the Lagan College allegations the respondent denied the allegations but agreed that he knew the complainants as students at the college. He claimed to have a good relationship with some but said that others were trouble and made him feel uncomfortable. He admitted that some of them would have been alone in his office at times but denied that the others were alone as they claimed. Instead, he claimed that he would have treated the complainants in the corridor, or they had friends with them, or he left the door open. He denied hugging female students, but when challenged by police as to why they all described similar styles of tight hugs from him, he said he was "a loose hugger." He suggested that the complainants may have spoken to each other and concocted

the allegations despite many of them being in different year groups and friendship circles.

The nature of this reference

[13] Para [90] of the reference asks the court to examine the sentence on three grounds as follows:

(a) That the judge's assessment of culpability did not properly reflect the facts of the case;

(b) That the judge's assessment of harm was opaque and appears to have given too much weight to the physical mechanics of the offences, and insufficient weight to the real impact on the victims; and

(c) That even allowing for totality, both the individual sentences and the resulting global sentence were below the reasonable range of sentences open to the judge.

Our analysis of the issues raised by the reference

[14] We begin by pointing out that the respondent has not proceeded with an appeal against conviction which was originally mounted. That will have been a relief to the complainants and vindicates their position as found by the jury that the respondent is guilty of a range of offending, namely one offence of grooming and 16 offences of assaults of a sexual nature. The only question we must consider is whether the judge in his sentencing made an error of law or reached a sentence which is unduly lenient because it is outside the range of reasonable sentences that a judge fully equipped with all the facts could reach.

[15] We reiterate the law that a reference must be approached in a different way to an appeal. In *R v Sharyar Ali* [2023] NICA 20, this court explained the nature of a reference. In particular, the court stated at para [4]:

> "There is a high and exacting threshold for a reference to succeed. The Court of Appeal when considering a reference must first decide whether to grant leave. The court must also decide whether a sentence is unduly lenient not simply lenient. Finally, even if a court decides that a sentence is unduly lenient the court retains a discretion whether to interfere with a sentence in the circumstances of a particular case and in some instances where double jeopardy is in play."

[16] This case followed well known authority as to the nature of a reference including in *Attorney-General's Reference (No.1 of 1989)* [1989] NI 245, Hutton LCJ

adopted the observations of Lord Lane CJ in *Attorney-General's Reference (No.4 of 1989)* as follows:

> "[1] The first thing to be observed was that it was implicit in the section that this court may only increase sentences which is concluded were unduly lenient. It cannot, we are confident, have been the intention of Parliament to subject defendants to the risk of having their sentences increased - with all the anxiety that that naturally gave rise to - merely because in the opinion of this court the sentence was less than this court would have imposed. A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection, regard must of course be had to reported cases and in particular to the guidance given by this court from time to time in the so-called guidance cases. However, it had always to be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice as a proposition is as soundly based in law as it is in literature.
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> [2] The second thing to be observed about the section is that, even where it considers that the sentence was unduly lenient, this court has a discretion as to whether to exercise its powers. Without attempting an exhaustive definition of the circumstances in which this court might refuse to increase an unduly lenient sentence, we mention one obvious instance: where in the light of events since the trial it appears either that the sentence can be justified or that to increase it would be unfair to the offender or detrimental to others for whose well-being the court ought to be concerned."

[17] Summarising the law, a sentence is unduly lenient, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. However, it must be remembered that the trial judge is particularly well placed to assess the weight to be given to various competing considerations in any sentencing exercise. The test is not what sentence members of the appellate court would have imposed but whether the sentence is unduly lenient and even then, the court has a discretion not to alter the sentence in

certain circumstances for instance where there is double jeopardy, or it would be unfair to a defendant.

[18] In this case, we have the benefit of a comprehensive sentencing decision from the judge who reserved his ruling, after hearing the substantial submissions of counsel on the issues that are now raised in this reference. We can also see the meticulous care he took with this case by reason of his charge to the jury which outlined all of the issues in this. We observe that the judge had the unique benefit of hearing, the evidence including that of the complainants over five weeks of trial.

[19] The judge also had the benefit of a pre-sentence report in relation to the respondent. That is material insofar as it demonstrates that the respondent had a clear record save a minor driving offence. He was 44 years of age at the time that the report was prepared and had been on remand at Maghaberry prison for a period of time. He also had engagement with prison health care regarding ongoing prescriptions, medical conditions and anxiety attacks. He reported that he had suffered from Kienbock's disease for many years which involves limited movement of his wrists. Finally, the respondent reported that he received support and visits from his wife, mother and sister which he said he was extremely grateful for. In the report, the respondent denied the offending.

[20] In addition, the judge had the benefit of a considerable body of victim statements which he faithfully summarises in his judgment. He says as follows:

> "While I have read each of the victim personal statements and have taken their contents into account in considering the sentencing exercise, I do not intend, in this public forum, giving respect to your victims' privacy, to outline all of the numerous ways your victims or their immediate relatives have set out how they say your actions have caused harm."

[21] The judge noted that the statements were not independent reports, but he gave each of them due weight accordingly, notwithstanding any lack of independent verification. The judge also remarks that he has, having heard from the victims giving evidence at trial, understood how some of them expressed their feelings in and around the time of the offending. They spoke of their unease and feelings of being uncomfortable and that the respondent's actions "felt weird." The judge goes on to provide a brief summary in relation to each victim in his sentencing remarks. These summaries reflect the impact of this offending on all of the victims in terms of their personal functioning, their loss of faith with persons in authority and the challenges they face going forward.

[22] Furthermore, the judge had the benefit of experienced counsel presenting this case before him and the judge had written submissions from both the prosecution

and defence on sentencing. It is important to reference what exactly was submitted before the judge to determine whether there is merit in the reference.

[23] The judge was referred to sentencing authorities which set out the general principles, including *Attorney General's Reference (No.2 of 2022)* [2022] NICA 40 which states that in child abuse cases there should be appropriate punishment imposed. The court also was referred to several more recent cases, in particular, *R v QD* [2019] NICA 23, which described the need for a sentencing judge to consider the degree of harm to the victim, the level of culpability of the offender and the level or risk posed by the offender to society. The prosecution written submissions which were before the judge acknowledged that although these cases often concern younger children, most of the victims in this case were still children in the eyes of the law.

[24] The prosecution presented the aggravating factors as follows:

(a) Abuse of a position of trust and authority.

(b) Vulnerable victims.

(c) Significant disparity in age.

(d) Grooming/significant degree of planning.

(e) Deliberately isolating victims.

(f) Steps taken to prevent victims reporting the offences.

(g) Multiple offences over a protracted period of time.

(h) Multiple victims.

(i) Continued offending after what ought to have been salutary warnings.

[25] The prosecution submitted that culpability is high. When dealing with harm, the prosecution referred to the victim impact and stated as follows:

> "The court will be aware of the level of harm that has thus far been expressed by several of the victims in evidence. The full impact of the defendant's acts will be shown in the victim impact statements from all victims that are being sought."

[26] The prosecution took issue with the fact that there should be any mitigation in this case. The prosecution then left the issue of dangerousness to the court and made the case for various ancillary orders which are not disputed.

[27] The defence submissions took no issue with the high culpability assessment. However, the defence made the point that some matters were not made out in relation to every victim. The defence also stressed that none of the convictions related to contact which was unambiguously sexual: it variously took the form of hugging, tickling, non-intimate kissing and non-penetrative touching. The defence stressed the context of this case arguing that many of the incidents which later became complaints were considered at the time as accidental, or even well-intentioned. Also, stress was put on the fact that in January 2023, when a second complaint was made to the school, safeguarding officials did not deem it necessary to involve police.

[28] In relation to victim impact, the defence accepted that the respondent's conduct had the potential to have an impact upon the injured parties and this must be considered. Reference was then made to the respondent's clear relevant record, his diagnosis with medical conditions and that he was assessed as a medium likelihood of reoffending and a low priority for supervision, in that probation determined that he did not present a risk of serious harm.

[29] The defence referred to an authority of *R v GM* [2020] NICA 49, in its assistance provided to the judge, particularly para [49] which states as follows:

> "This court does not consider it appropriate to devise sentencing guidelines for offences contrary to Article 14 of the 2008 Order. The task for the sentencing court in every instance will be to tailor the sentence which it considers appropriate, giving effect to the requirements of retribution and deterrence, in the fact sensitive context of each case. Courts should derive assistance from the analysis of the decided cases and the review of the evolution of sexual offending and punishment contained in this judgment."

[30] Therefore, the defence accepted high culpability but maintained that the risk posed by the respondent was at medium, his need for supervision was in the low priority category and he did not pose a risk of serious harm in the future. It was acknowledged that the custodial threshold had been passed but the court was asked to take into account the following in mitigating a penalty:

> "The respondent will pay a heavy price for his wrongdoing: he has been a man of good character with positive professional reputation. He has now lost his standing in the community as well as his career prospects. He looks to the future in a realistic way by seeking to maximise his potential with significant family support, he is well motivated, and he is willing to engage with

probation supervision: this will offer the opportunity for victim insight and effective rehabilitation."

The judge's sentencing remarks

[31] These are of high quality. The judge refers to all of the case law that was put to him by counsel. It was not disputed that the nature of the actual contact in this case was at the lower end for this type of offending**.** However, the judge also considered the aggravating factors the prosecution put forth. Save for one specific factor, the judge finds all of this aggravation in the case and determines that it is a case of high culpability for the following reasons which we set out as follows:

> "Having reflected on this case as a whole and having reflected on both the oral and written submissions made, I find the following aggravating factors in this case. Your offending did involve an abuse of trust in authority, whether as an army cadet instructor or as a welfare officer at Lagan College. In the cadets, you had a particular authority in a generally hierarchical structure. At Lagan College, you were entrusted with responsibility for more vulnerable pupils in school.
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> Secondly, in this case, your victims were vulnerable. There are two aspects to their vulnerability: they were vulnerable by reason of their tender years. They were all of secondary school age, and I note that four of the nine were aged 16 and over. I accept that to different degrees, all of the victims had their own particular characteristics that contributed to their vulnerability. The prosecution have sought to summarise what the prosecution say these vulnerabilities were in their written submissions. I do not intend, in this public forum, to recite what the prosecution has said. The defence on your behalf have acknowledged that there were vulnerabilities and they are careful not to dismiss or downplay this aspect, but they do ask the court to note, as Mrs Ievers put it in her written submissions, that there is limited supporting material. Having reflected on this aspect of your offending, Mr Beckett, I am satisfied that when you offended, you did know about each of your victims' circumstances and that you knew they were vulnerable by more than just their tender years.
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> Thirdly, in terms of the aggravating features, there was in this case a significant disparity in age between you and your victims.

> Fourthly, I am satisfied that there was an element of grooming in relation to your offending. In some cases, you tried to befriend your victims, some you complimented their looks, others you bought them various coffees or hot chocolates or gave them chocolates, and there were suggestions made that you would collude with them to break some of the rules that your victims were otherwise confined by.
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> Fifthly, I am satisfied that you took steps to prevent some of your victims reporting the offences and I note the comments made to the two army cadets victims that if they raised complaints, their progression in the cadets would be impeded.
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> Sixthly, in this case there are multiple offences occurring over a lengthy period of time.
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> Seventhly, there are multiple victims – I have already reminded you that there are nine in this case.
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> And finally, in terms of aggravating features, there was some continued offending after you had been made aware firstly of one victim's allegations – you first becoming aware of those in July of 2020 and, secondly, following complaints made to Lagan College by two pupils in October 2022, when you were given very specific retraining by the school principal."

[32] On this reference, Mr MacCreanor could only point to one issue by way of criticism of this ruling which was that the judge did not refer at all to the deliberate isolation of victims. We have considered the point carefully. It is true that the judge does not specifically refer to the deliberate isolation of victims. However, we consider that this aspect of the offending behaviour is implicit within the aggravating factor which he does find, which is grooming and a significant degree of planning. It could not be established that deliberate isolation was proven in respect of all victims. So, viewed in the round, the omission is not material.

[33] High culpability was accepted by the defence, and it was the basis upon which the judge sentenced. Therefore, the prosecution argument that we should increase the sentence based on the judge's mischaracterisation of culpability is unsustainable. Rightly, the judge did characterise culpability as high, and he was aware of all the serious aggravating features in this case. The first ground upon which this reference is based fails.

[34] The second ground upon which the reference is based is in relation to harm. On that issue, the only point that could be made by Mr MacCreanor was that the judge did not categorise the harm qualitatively as high, medium or low. However, the prosecution's submission which we set out at para [30] above did not quantify the harm in any of these brackets either. Added to this is the fact that the judge read the victim statements, decided to deal with them sensitively in his ruling, and heard from all of these victims. In those circumstances, there can be no proper critique of the judge's assessment of harm in this case. He was obliged to consider the level of offending. He was also entitled to take into account the victim statements. We find this aspect of the reference to be without merit and unsubstantiated given the comprehensive way in which the judge did deal with the harm aspect of this case.

[35] The third ground of the reference is whether the judge has strayed beyond a reasonable range for this offending. The prosecution did not dispute the wide range open to a sentencing judge depending on the nature of the offending or ask us to recalibrate it. It was not disputed that the nature of the actual contact in this case was at the lower end of the range. There was also no dispute that the judge took into account the legal principles that were put to him.

[36] The only possible concern is whether on a totality basis, given the number of complainants the judge has reached a sentence which is outside of a reasonable range. We are not so persuaded. The judge has considered totality. There is no criticism of the judge applying a mix of consecutive and concurrent sentences. There was no issue that the custodial threshold was passed even on a first offence and even where the defendant is of good character. In addition, the judge had the unique benefit of hearing the evidence and the victims in this case. The prosecution did not dispute the law which refers to a wide range given the varying nature of this type of offending.

[37] Mr MacCreanor's argument that some of the individual sentences, in particular, the sentence for grooming on count 1 is too low, is not an argument that we are attracted to because this sentencing exercise was conducted on the basis of totality. If you disaggregate the sentence for the first victim on grooming as a single sentence, it would have likely resulted in a prosecution in the Magistrates' Court and/or the potential for a probation supervision order to avoid further offending of this nature and educative interventions. Therefore, we consider that the judge has not strayed outside range in the overall circumstances for this and the other offending. The sentence should be viewed as a three-year sentence to cover all of the offending, rather than broken down into individual elements. Therefore, we also reject the third argument made grounding this reference.

Conclusion

[38] We return to the nature of a reference which is not a general right of appeal. Sentencing is also an art and not a science, as many judges have said before. Each case is fact sensitive. This judge was uniquely well placed to deal with a

complicated sentencing exercise having heard the evidence over a protracted period. It is not enough in a reference to satisfy any member of the court that a higher sentence might have been imposed. Rather, the sentencing judge's analysis must be proven to be beyond a reasonable range based on the nature of the offending and the information made available to him. We do not so find. Therefore, we refuse leave and dismiss this reference.

[39] Our final words are for the victims and their families. The victims have been entirely vindicated by the convictions returned by the jury which have not been appealed any further. No sentence can fully fix the effects of this type of offending on the lives of young girls at a formative stage. However, in addition to the custodial sentence which the respondent will have to serve in prison and then on licence with strict conditions he will also be subject to a SOPO, restraining orders, placed on the barred list from working with children and disqualified from working with children. These orders are entirely merited to protect the victims in this case and the public. This case will also serve as a stark reminder of the need for robust safeguarding measures to ensure that there is no repeat of this type of offending in future.