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IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

WF

**Mr MacCreanor KC with Mr Farrell (instructed by Reid Black Solicitors) for the
Appellant
Mr O’Hara (instructed by the Public Prosecution Service) for the Crown**

Before: Keegan LCJ and McBride J

KEEGAN LCJ (delivering the judgment of the court)

Introduction

We have anonymised the appellant’s name to protect the identity of the complainants. The complainants are entitled to automatic anonymity in respect of these matters by virtue of section 1 of the Sexual Offences (Amendment) Act 1992. The appellant is referred to as a cypher to avoid jigsaw identification of the complainants.

[1] This is an appeal with leave of the single judge, McLaughlin J, from a sentence imposed on the appellant by His Honour Judge Kerr (“the judge”) on 13 June 2025, for historical sexual abuse offences. The sentence under appeal is a two-year custody probation order comprised of 12 months’ imprisonment (six months in custody, six months on licence) and 12 months on probation for five counts of sexual abuse. These were in relation to two complainants. The appellant pleaded guilty to one count of indecent assault in relation to the first complainant and four counts of gross indecency in relation to the second complainant.

[2] The appeal is pursued on two grounds as follows:

- (i) That the judge paid insufficient regard to mitigation/low culpability given the offending occurred when the appellant was himself a child in law.
- (ii) That the judge erred in refusing to suspend the sentence.

Background

[3] The offending in this case occurred within a period from 1988 to 1991. During the relevant time, the appellant was aged between 14 years 11 months and 16 years 11 months. There was no dispute before the lower court that all of this was offending during the time when he was a minor. The first complainant was approximately 10 years younger than the appellant and so was aged between five and seven at the time of the offending. The appellant's mother was a childminder for this complainant's family, and he and his sister went to the appellant's home for that purpose. The offending took place in the appellant's bedroom. The appellant showed the complainant pictures from pornographic magazines which he had. Then he engaged in oral sex with the complainant. The complainant had no recollection of the appellant ejaculating. The appellant also pressed the complainant against the cheeks of his bottom however, the complainant does not recall if there was penetration.

[4] Self-evidently, this offending has made a profound impact upon the complainant during his life. He is now a man in his 40s who has only in the last number of years been able to speak about this abuse. He states in his victim personal statement that he blocked out these events during his childhood. However, from his teenage years onwards he became very anxious in personal and intimate situations. He was confused by the memories, but he considers that he has had long-term effects which have resulted in some difficulties although his position is happily positive in that he has engaged in therapy and is now not experiencing ongoing effects.

[5] The offending in relation to the second complainant occurred within a similar period. He is also a man in his 40s. This complainant was identified as a result of the first complainant's evidence. His parents were friends of the appellants' parents, and the appellant was his babysitter. This offending all took place in this complainant's own bedroom in his parents' house and occurred on a number of occasions over a 12-18-month period. The offending consisted of the appellant placing his penis in this complainant's mouth on several occasions. He did not ejaculate. The appellant also masturbated to completion in front of this complainant. The appellant also attempted to persuade the complainant to place his penis in appellant's anus, however, the complainant recalled being afraid and was unwilling to do so.

[6] In his victim personal statement, this complainant describes how the sexual abuse had a significant impact on his life and relationships, in particular, his relationship with his young son, niece and nephews.

[7] Following formal complaints by both of the victims, the appellant was invited for police interview in May 2022. The night prior to the interview, however, he was admitted to the ICU unit in hospital due to a serious incident of self-harm. The interview was further postponed on several occasions on account of illness. When eventually interviewed in February 2023, the appellant denied the abuse and was unable to explain why the allegations had been made. This was maintained in a defence statement on 14 May 2023. The appellant pleaded not guilty at his arraignment on 4 June 2024. A trial was listed on 14 October 2024. This was, however, adjourned until the following day as the appellant was unwell and, again, had attempted self-harm by way of taking tablets. Both complainants had attended the trial, however, it did not proceed at this time. The case was then listed for trial on 24 March 2025. It was on 10 March 2025 that the appellant was rearraigned and pleaded guilty to amended counts on the indictment. Count 2 in relation to the first complainant and counts 4, 5, 6 and 7 in relation to the second complainant.

The pre-sentence report

[8] The contents of the pre-sentence report are highly significant given the factors in favour of the appellant which it highlights and which were not disputed by the prosecution as follows. The appellant is an unmarried man with no children. He had a good home life and was brought up with his two younger sisters. He currently lives with his elderly and dependent parents. The report, however, explains that he had an extremely poor educational experience insofar as he suffered bullying at school and left school aged 16 without any GCSE qualifications. We note that education welfare was involved with his case. He had a normal teenage pre-occupation with sex and used pornographic magazines, but also as the report states, was socially isolated, did not have friends and felt rejected by his peers. Notwithstanding this, the appellant found meaning in life by virtue of employment in that he worked in a factory for a number of years but left after experiencing allergies with the material he was working with. His most settled period was when he later found employment as a school caretaker which was without any adverse incident and gave him meaning in life. He has now lost this employment.

[9] In terms of mental health, the appellant has attempted suicide on three occasions. On one occasion he drank antifreeze which required hospitalisation for a week. The most recent occasion was in 2022, during the currency of the police investigation in criminal proceedings.

[10] The report also points out that since the index offences, so for over 30 years, the appellant has lived his life without further offending and has undertaken a care role for his father at home who suffers from dementia. Significantly, the report states, that the appellant expressed “genuine remorse for his actions” and did not attempt to minimise what happened or discredit the victims’ personal statements. He informed the probation officer that he is disgusted at himself and overwhelmed by feelings of shame.

[11] In terms of risk, the report also opines as follows:

“Using PBNI’s improved assessment tool, ACE, the appellant is currently assessed as presenting a low likelihood of generic reoffending. The appellant has no previous convictions, and the criminal record reviewer informs that there are no pending matters. The offences occurred over 30 years ago and there has been no evidence of further offending since 1991. Criminogenic risk factors such as alcohol/substance misuse, negative associations, pro-criminal attitudes and lack of stable accommodation are not present in this case. In light of the sexual nature of the matters before the court, further assessments have been completed. The Stable-2007 was developed to predict recidivism, assess change in risks, status and identify interventions for those adult males who commit sexual offences against identifiable victims. When combined with the Risk Matrix 2000, it provides a composite assessment of risk/needs and estimates sexual recidivism. The appellant’s composite assessment places him in the low priority category for supervision and intervention at this juncture.”

[12] The report concludes as follows:

“However, whilst not wishing to minimise any harm caused, or diminish the seriousness of the matters before the court, the appellant is not currently assessed by PBNI as posing a significant risk of harm to others. The offences took place over 30 years ago and there is no evidence to suggest that the appellant has engaged in further offending behaviour since this time. Furthermore, based on the information available at this time, he is assessed as presenting a low likelihood of generic reoffending and the assessments completed in respect of sexual recidivism place him in the low priority category for supervision and intervention.”

The undisputed expert evidence

[13] In addition, the defence obtained a report from an expert namely a Chartered Clinical Psychologist, Dr Tracey Reid. This report bears some careful analysis. As it states in the preamble it was required before a pre-sentence hearing to comment on the defendant’s culpability, ie his moral and legal responsibility for the offence and risk. The report also points out that this is a historic sex case for the offender, who

was a child at the time of the commission of the offence. The primary considerations before sentencing include several factors such as the offender's culpability, the harm caused to the victims, and the risk of harm from the offender in the future. Notably, also 34 years have elapsed since the offence, during which the appellant has not committed further offences, playing a crucial role in evaluating the long-term risk the appellant presents. This report deals then with presenting problems in some detail. In particular, Dr Reid refers to the fact that the appellant was academically competent. However, the challenges he faced in his fourth and fifth years, particularly repeated bullying, exacerbated his existing anxiety.

[14] The expert report points out that at the age of 23, the appellant experienced substantial anxiety that adversely affected his occupational functioning prompting a visit to his general practitioner and subsequently underwent evaluation by consultant psychiatrists who diagnosed him with social anxiety disorder. Also, from May 2022 to October 2024, Dr Reid points out that the appellant consistently reported symptoms indicative of a deteriorating mental state characterised by both anxiety and depression. This resulted in two impulsive suicide attempts both of which were somewhat regretted. The opinion of the psychologist is "these actions underscore the profound internalised shame evoked primarily at this time by a deep-seated fear of the negative evaluation of others."

[15] The psychologist says that upon evaluation, the appellant demonstrated symptoms consistent with ICD 11 criteria for social anxiety disorder. Notable manifestations include pervasive anxiety in situations where he might be subject to scrutiny, whether during occupational responsibilities and/or social contexts. His interactions are marked by avoidance or endured with significant anxiety stemming from fears of negative judgment, potential embarrassment, humiliation, and rejection. This anxiety substantially impairs his social and interpersonal functioning.

[16] The expert also states that the appellant meets the criteria for a major depressive episode under ICD 11. She says he exhibits a persistent depressed mood most of the day, nearly every day, characterised by subjective feelings of hopelessness, sadness, regret, embarrassment, shame and humiliation. There is also a marked loss of interest and pleasure in all aspects of his life, in contrast with previously positive interactions with pupils, parents, and staff at work, and social connections with trusted friends and family, albeit limited.

[17] The expert also provides some further history in relation to the bullying which she refers to in para 2.3 of her report, that around the ages of 13-14 the appellant encountered bullying that severely impacted his emotional well-being. The bullying episodes were characterised by humiliation, discomfort, and a persuasive sense of powerlessness. Lacking the resilience or skills to defend himself, he began to feel increasingly alienated from his peers, ultimately leading to school refusal. This period, in the opinion of the expert, "marks a critical point where his anxiety evolved into a more debilitating condition, influencing his social interactions and educational engagement."

[18] At para 10.2 Dr Reid refers to educational psychology interactions with the appellant in and around the time of this offending as follows:

“In February 1989, an educational psychologist provided insights that shed light on the appellant’s difficulties during this period. Descriptions emphasise that the appellant experienced challenges in adjusting to adolescent school life, partly due to a low level of perceived masculinity that isolated him from his peers. His interests diverged from those common amongst classmates, creating barriers to communication and connection, which made social interaction particularly challenging.”

[19] Para 10.3 also reads:

“The appellant was characterised as a loner at school, with limited friendships outside of the academic environment. He reportedly related better to older individuals and younger children. Groups where he presumably felt less threatened and more accepted.”

[20] These observations highlight a complex interplay between social dynamics and identify issues which influenced his educational trajectory and social experiences. As the expert said, the appellant’s educational journey took a difficult turn at the age of 14 as during his fourth year he stopped attending school. Still, he continued to maintain the façade of regular attendance until the school eventually contacted his parents who were unaware of his truancy. This period, as the expert states, marks a significant disengagement from formal education, driven by a culmination of anxieties and pressures that the appellant struggled to navigate. He perceived that the school had given up on him, a belief that further eroded his confidence and sense of belonging within the academic environment. The subsequent arrangement of weekly tutoring sessions at home alleviated some pressure but did not address his underlying fears about academic performance. Ultimately, this resulted in the appellant not sitting his GCSE exams and leaving school after the fifth year, marking the end of his conventional schooling.

[21] Dr Reid refers to a particularly vivid memory for the appellant which involved being bullied in the showers by other boys, an experience that left him feeling vulnerable. She refers to the fact that the development of asthma afforded him an escape from PE, reducing his exposure to such traumatic encounters in the showers. But as he continued through school, the increasing isolation intensified the bullying, perpetrating a cycle of social withdrawal and victimisation. The opinion of the expert is that these experiences left an indelible mark on his psyche, shaping his perceptions of self-worth and social interaction. Dr Reid also opined that the social

isolation he faced likely contributed to longstanding issues with self-esteem, anxiety and self-confidence in social settings.

[22] Of note is Dr Reid's assessment of the appellant's remorse which she describes as follows.

"His empathy is evident in his reflections about the victims, acknowledging their suffering and expressing a desire not to further burden them, his focus on their experiences indicates a mature perspective, prioritizing their healing over his own need for absolution."

[23] The opinion of Dr Reid is found at para 13 between 13.1 and 13.9 as follows and must be read in full:

"13.1 This gentleman's longstanding struggles with anxiety and social challenges can provide insight into his psychological state at the time of the offences and his behaviour thereafter. This understanding might be used to assess his levels of intent, awareness, and control during the historic offences. He was between 14 years 11 months and 16 years 11 months when he committed the offences. He had a difficult time at school and during the offending period, which was characterised by relentless verbal and physical abuse.

13.2 The appellant was unable to think about what changed for him after the offences, and if he had any sense of the harm he caused the young boys and noted that he did not have any further motivation or thoughts of further offending.

13.3 The appellant's case highlights the importance of contextualising offending behaviour within a broader psychological framework, taking into account the appellant's experiences of bullying and social isolation that contributed significantly to his feelings of inadequacy and alienation. These negative interactions likely impacted his self-esteem and perception of social norms, potentially distorting his understanding of healthy peer relationships.

- 13.4 The emotional challenges stemming from the loss of his grandfather, academic pressures and social rejection could have exacerbated feelings of vulnerability and confusion during this developmental phase. Such feelings can impair judgment and emotional regulation, influencing his behaviour.
- 13.5 His disengagement from school led to increased exposure to structured environments where pro-social behaviour and moral reasoning are commonly reinforced. The lack of guidance and mentorship during this period may have hindered his moral development. Given these developmental and social factors, evaluating the appellant's sense of moral responsibility involves considering his cognitive and emotional maturity at the time. Adolescents are in a phase of developing cognitive functions that support long-term planning and impulse control. Disruptions in his educational and social settings may have delayed this development, impacting his ability to fully appreciate the consequences of his actions.
- 13.6 While it is essential to acknowledge that adolescents can distinguish right from wrong, the appellant's ability to do so might have been impaired by the conversions of social isolations, on addressing notional needs, in the absence of a supportive educational framework.
- 13.7 Evidence of atonement in this case would involve demonstrable actions or behaviours that reflect genuine remorse, accountability and efforts to repair harm caused by the offences. Given the appellant's guilty plea, remorse and offence free life since the incidents, the following could serve as evidence of atonement.
- 13.7.1 The appellant has accepted legal responsibility by pleading guilty at this stage. He would like to apologise to the complainants sincerely and to acknowledge the severity of the harm he has caused them throughout their lives.

- 13.7.2 He has lived a stable, productive lifestyle with consistent, successful employment and healthy relationships. As a result of the victims coming forward, he has gained insight into the harm caused by his offending. Through this assessment, he has demonstrated a greater understanding of why the offences occurred, including factors such as immaturity, social alienation and poor coping mechanisms. He has also shown empathy towards the victims, articulating how they were impacted, confirming his remorse, and highlighting a 34-year offence free period which indicates sustained self-control and commitment to lawful behaviour.
- 13.7.3 His age (below 18) at the time of the offences and documented struggles (bullying, social isolation) may contextualise his capacity for judgment and growth. During adolescence, individuals undergo significant cognitive and emotional development that affects their capacity for impulse control, moral reasoning, and understanding of consequences. The appellant's age (between 14 years and 16 years) is particularly critical for the development of these abilities, which external stressors can easily hinder. His experiences of persistent bullying and social isolation could have impeded the normal progression of these developmental processes, impacting his judgment in decision making.
- 13.8 In conclusion, the appellant's plea of guilty, and acknowledgement of the harm caused to his victims demonstrates an acceptance of legal and moral responsibility. His expressions of remorse and expressed desire to apologise to his victims, reflect an empathetic response and understanding of the long-term impact of his actions. His insight into the factors contributing to his offences, along with a 34-year period of offence-free and socially productive behaviour, indicates personal growth. The sustained period of lawful behaviour and evidence of stable social and professional engagements underscores his commitment to social responsibility.

- 13.9 The appellant's culpability during the time of his offences can be viewed through the lens of his developmental stage, psychological state, and the adverse circumstances he faced. These factors likely impeded his ability to fully understand and control his actions. However, his subsequent behaviours and expressions of remorse suggest a commitment to atonement reflecting an understanding and acceptance of his past wrongs."

Our conclusions

[24] This was a difficult sentencing exercise given the circumstances of the offending we have just discussed. The challenges faced by a sentencing judge when sentencing adults who have lived otherwise unblemished lives for sexual abuse offences which they committed when they were children cannot be overestimated.

[25] The criminal law must provide appropriate punishment, but it must also consider rehabilitation and risk when sentencing. In this case, it is accepted by all that the future risk is at the lowest possible level. That assessment is bolstered by the probation report and the report of Dr Reid and is an assessment with which we entirely agree. The appellant in this case, we are confident, is no risk to the public or children, evidenced by the pro-social life he has led including employment. Against that, it is also accepted, however, that two victims who were very young children have experienced the adverse effects of this abuse, and so, this is unquestionably a case of high harm.

[26] The judge referred to all of the above in his sentencing. However, he did not define the appellant's level of culpability, and he expressly said there was no personal mitigation in this case. We have some difficulty with this approach. The latter finding conflicts with the prosecution submissions for sentencing which we have read which accept mitigation, in terms of the guilty plea, and the age of the appellant when this offending occurred. The judge was wrong to express himself in the way that he did as there was clearly personal mitigation in this case. We, therefore, find the first aspect of the appellant's argument on this to have merit.

[27] Whether this failing is material depends, however, on the judge's assessment of culpability as that is the key issue in this case. The judge recognised that this was a difficult issue. He referred to the case of *R v ML* [2013] NICA 27 and Dr Reid's report. However, to our mind, he did not actually analyse what the expert was saying or make a clear finding as to culpability on that basis. This was in circumstances where he gave no indication that he rejected the expert report and there was no contrary evidence.

[28] The expert report is, to our mind, an impressive piece of work. It is thoughtful and balanced and deals comprehensively with the difficult issue of child

offenders. It refers, in unambiguous terms, to the appellant being at a very formative stage of his life when the offending began (aged 14-16), having left education, and that his severe bullying at school would have likely affected his maturity and ability to fully control his actions.

[29] This assessment holds significant weight within the context of the guidance in *R v ML* which this court has approved in a case of *R v Allen* [2024] NICA 24. In *R v ML* at para [20], the court said as follows:

“[20] When assessing the appropriate sentence in an historic sex case for an offender who was a child at the time of the commission of the offence we suggest that the following factors should be taken into account:

- (i) The statutory framework applicable at the time of the commission of the offence governs the scope of the sentence which may be imposed;
- (ii) The sentence should reflect the sentencing guidelines and principles applicable at the time at which the sentence is imposed;
- (iii) The primary considerations are the culpability of the offender, the harm to the victim and the risk of harm from the offender in the future;
- (iv) Where the offender was young and/or immature at the time of the commission of the offences that will be material to the issue of culpability. It is appropriate in considering that issue to consider what sentence would be imposed today on a child who was slightly older than the offender was at the time that he committed the offences;
- (v) Despite the observations of this court in *Bateson* on the case of *Cuddington* the court should not seek to establish what sentence might have been imposed on the offender if he had been detected shortly after the commission of the offence. Those remarks were not material to the outcome in *Bateson* and were, therefore, obiter. Such an exercise is of no benefit in fixing the appropriate sentence as sentencing policy and principles may well have altered considerably in the interim;

- (vi) The passage of time may often assist in understanding the long term effects of the offences on the victim;
- (vii) The passage of time may also be relevant to the assessment of the risk of harm. If the court is satisfied that the offender has led a blameless life after the commission of the offences that will be relevant in assessing future harm;
- (viii) The attitude of the offender at the time of disclosure or interview by police is significant. The offender at this stage will be of full age. In these cases the immediate acknowledgement of wrongdoing by the offender provides vindication for the victim and relief at being spared the experience of giving evidence at a criminal trial. Such an acknowledgement will attract considerable discount in the sentence."

[30] In *R v ML* the Court of Appeal clearly considered that the youth and immaturity of the appellant at the time of the commission of the offences made it a case of low culpability. In that case the evidence indicated that the appellant did not present a future risk of harm to children or others in the future and the remarks of the trial judge in relation to his resuming his relationship with his children were entirely apposite. In *R v ML* the court said that had he faced up to his responsibilities at an early stage, a non-custodial outcome may have been possible, however, as the appellant made the complainant endure the rigours of a trial the court considered that a sentence of 12 months' imprisonment was appropriate after a contested trial.

[31] Having decided to accept the expert evidence in this case; the judge should have paid greater regard to it. He should have made a positive finding of low culpability. In addition, whilst the guilty plea was late we consider that the judge dismissed Mr MacCreanor's argument as to why that was too readily. Plainly, it would have been very difficult for the appellant to process his offending given his poor mental health. This is supported by the medical report of Dr Reid which maps the appellant's difficulties in childhood and diagnoses social anxiety disorder and depressive disorder. Added to that is the fact that the appellant exhibited suicidal ideation and engaged in suicidal attempts. Yet the judge does not evaluate what the effects of this chronic presentation would have been upon the appellant. In addition, it is striking that the appellant has exhibited real and genuine remorse for his actions. Such expressions of remorse are rarely forthcoming in cases of this nature. The appellant also has the support of his family who attended at court. When all of these factors are taken together it becomes clear that the judge has failed to make adequate adjustment for personal mitigation and low culpability.

[32] As an aside, the judge has also made a mistake in relation to the concurrent sentences he placed on the four counts for the second complainant as they were the maximum for the offences notwithstanding a guilty plea.

[33] Thus, whilst we cannot argue with a judge's conclusion that a five-year sentence would have been acceptable for an adult for this type of offending, a much lesser sentence should be applied to an offender who was a child at the time of the index offending and as *R v ML* makes clear in some cases of this nature a non-custodial sentence will be appropriate. Crucially, there is an additional feature of this case which was not appreciated by the judge in that the appellant has presented in a psychologically vulnerable state as validated by the expert report of Dr Reid.

[34] The above analysis leads us to consider whether the sentence should have been suspended. A sentence can be suspended in exceptional circumstances. In this regard a telling part of the judge's sentencing remarks reads as follows where he says, "in my view a non-custodial sentence may have been possible had the defendant accepted his failing when made aware of it." Mr MacCreanor argued that the appellant's psychological make-up made that difficult. There is merit in this argument given the strong medical evidence which highlights the appellant's vulnerability.

[35] We consider that the question of a suspended sentence is more finely balanced than the judge thought given the particular circumstances of this appellant. However, a proper balance has to be struck between the high harm caused to two young victims and the fact that this appellant presents a low risk to the public and was a child at the time of the offending which means that he would likely not have received a custodial sentence had he been sentenced at the time.

[36] We conclude that, had the judge properly analysed the appellant's personal circumstances and the undisputed evidence of Dr Reid he should have settled on a custodial sentence in the region of 18 months after full reduction for the guilty plea. The judge should then have considered non-custodial options in greater detail given the fact that the appellant was a child himself when the index offences were committed and the low risk involved in this case. Whilst not requiring a sex offenders programme the judge considered that probation would be of value given the appellant's personal difficulties. However, he did not ask what the likely length of probation input should be in order to achieve most benefit. We have asked that question during this appeal hearing, and probation has helpfully told us in an updated report that 18 months would be required.

[37] Accordingly, whilst we consider that a case can be made for the existence of exceptional circumstances which would result in suspension of any custodial sentence, we will instead make a probation order for 18 months as recommended (on the basis that the appellant consents to this). This places an onus on the appellant to

ensure completion of the necessary rehabilitative work which is on offer. Given that the appellant has now served some months in prison we see no benefit in a further short custodial period and much more benefit in an extended probation order. We allow the appeal only to this extent.

[38] Finally, we stress that this outcome is only made possible by the particular combination of factors present in this case, namely that the appellant was himself a child when he committed these offences, his remorse, probation support, family support, and the strong medical evidence contained in the report of Dr Reid. Nothing we have said detracts from the suffering which the two victims will have felt as a result of what happened to them when they were children.