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IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

DAVID JOHN ANDREWS

**Mr Hunt KC with Mr Sherrard (McLaughlin Solicitors) for the Applicant
Mr Weir KC with Ms Walsh KC (instructed by the Public Prosecution Service) for the
Crown**

Before: Keegan LCJ, Treacy LJ and Rooney J

KEEGAN LCJ (*delivering the ex-tempore judgment of the court*)

The provisions of the Sexual Offences (Amendment) Act 1992 (as amended) apply to protect the victims of the sexual offences to which this judgment relates. Accordingly, no matter should be reported which is likely to lead members of the public to identify each of those persons as a victim of one or more offences.

Introduction

[1] This is a renewed application for leave to appeal against a sentence imposed by His Honour Judge Miller KC (“the trial judge”) on 10 December 2024. The total sentence that was imposed on the applicant was 27 years’ imprisonment with a five-year extended licence. That sentence was imposed for a range of offending including four attempted rapes, sexual activity by an adult with a person with a mental disorder, causing or inciting a person with a mental disorder to engage in sexual activity, causing a child under 13 and children between 13 and 16 to engage in sexual activity, sexual activity with a child, indecent image possession and distribution, harassment and blackmail.

[2] These offences are comprised over three bills of indictment. Leave was refused by the single judge, Mr Justice Scoffield, in a single judgment dated 8 May 2025. Various grounds of appeal were raised but only three are correctly grounds of appeal. One has now been abandoned which was that it was submitted that it was wrong of the judge not to consider a discretionary life sentence. But, in effect, two other substantive grounds of appeal are now put before this court for consideration.

[3] The first ground, we broadly categorise as a submission that it was wrong of the trial judge to impose consecutive sentences on the three bills, and the second ground of appeal is that the overall sentence was disproportionate taking into account the principle of totality and specifically that the starting point for the attempted rapes was too high.

Background

[4] The facts of this case are shocking and disturbing. They are set out comprehensively by the trial judge in a written judgment. In summary, following reports filed with police in Derbyshire on behalf of several child victims, the applicant's IP address was identified as the source of communications, grounding complaints of so-called "catfishing" which is better described as sexual abuse, corruption and intimidation of young children online. The applicant's home was searched, he was arrested and when interviewed he made admissions to this offending including posing as a 14-year-old boy to effectively trap a young girl referred to as KA aged 13 and then sending images of a sexual nature which he circulated to her school mates and using threats to this girl and other children who he also extracted images from. This type of offending spanned across Northern Ireland and other parts of the United Kingdom and abroad including one instance traced to America.

[5] The offending that we have summarised above, resulted in an indictment regarding a child victim in Northern Ireland and associated offending of other victims in Northern Ireland.

[6] The second indictment involving what the prosecution say are 39 child victims aged eight to 17 years of age across the United Kingdom and beyond at some unknown locations.

[7] A third indictment concerns RG, a young woman just over 30 years of age, who has severe mental disability. The applicant sexually abused her over a period of some seven years. The offending against RG may be broadly categorised as specimen vaginal and oral rapes, engaging and inciting sexual activity, the taking of images of her and sending those to others.

[8] On the first bill concerning KA and others there were 43 counts, of which the applicant pleaded guilty to 24. On the second bill there were 132 counts involving multiple victims of which the applicant pleaded guilty to 90. There were 20 counts

on the third bill in relation to RG of which the applicant pleaded guilty to 16 and the remaining four counts were left on books in April 2024.

[9] The aggravating and mitigating factors in this case were fully considered by the trial judge, they are set out in his judgment at paras [70]-[72]:

“Aggravating and mitigating features

[70] Mr Weir and Ms Walsh contend that the following aggravating features arise in relation to the abuse of RG:

- (i) Abuse of position of trust.
- (ii) The fact that this is a persistent course of offending against RG and not a single incident.
- (iii) Whilst the sexual offences concerning a victim who has a mental disorder, factor in the victim’s vulnerability, this is not the same for the offences of attempted oral and vaginal rape of RG. As a result of her mental health diagnoses, the victim was acutely vulnerable and is utterly dependent on the care of those around her.
- (iv) The fact the defendant recorded, by way of photographs, the abuse he perpetrated against RG.
- (v) The fact the defendant distributed images of RG to individuals he had met online.

[71] To these features specific to this case, the court takes account of the extent of the abuse perpetrated by the defendant against the dozens of victims as set out in the two related bills of indictment. The coercive control, mental torture of KA, leading she and others to humiliate themselves, all to satiate Andrews’ perverse sexual desires, amount to the core additional aggravating factors.

[72] By way of mitigation, it is acknowledged that the defendant has a significant history of poor mental health with several diagnosed conditions evident for many years. Nevertheless, it is also noted that his compliance with his medication regime was poor, and his voluntary use of cocaine appears to have exacerbated his desire for sexual activity. The admissions made at interview, including to offences of which, at the time, the police had

no knowledge, represent the most salient and compelling mitigating factors.”

[10] Rightly no issue has been taken with those factors in this appeal. To be clear, we should say that we see no merit in the implicit suggestion made by Mr Hunt that there was some further mitigation available that should have been applied in this case to the applicant by virtue of his background or mental health difficulties. That is an argument that was always bound to fail.

[11] In addition, there is no issue taken with the fact that the applicant is a dangerous offender. That finding is unimpeachable.

This appeal

[12] This appeal comes down to a criticism of the trial judge’s approach to sentencing which was as follows. The four specimen attempted rapes against RG were understandably isolated as headline offences. The judge then raised the 15-year starting point that he settled on for those offences to 20 years taking into account the aggravating features in this case. The question is, was he correct to do so?

[13] In assessing the correctness of his approach the trial judge was entitled to use the case of *R v Kubik* [2016] NICA 3 as a guide. This is a rape case which provides assistance as to the aggravating factors that may increase sentences at para [17]:

“[17] In either case a number of aggravating factors were identified which would result in a sentence above either starting point:

- (i) the use of violence over and above the force necessary to commit the rape;
- (ii) use of a weapon to frighten or injure the victim;
- (iii) the offence was planned;
- (iv) an especially serious physical or mental effect on the victim; this would include, for example, a rape resulting in pregnancy, or in the transmission of a life-threatening or serious disease;
- (v) further degradation of the victim, e.g. by forced oral sex or urination on the victim (referred to in *Billam* as ‘further sexual indignities or perversions’);

- (vi) the offender has broken into or otherwise gained access to the place where the victim is living (mentioned in *Billam* as a factor attracting the 8 year starting point);
- (vii) the presence of children when the offence is committed (cf. *Collier* (1992) 13 Cr App R (S) 33);
- (viii) the covert use of a drug to overcome the victim's resistance and/or obliterate his or her memory of the offence;
- (ix) a history of sexual assaults or violence by the offender against the victim."

[14] In addition, a sentencer is entitled to impose a sentence outside range to meet the facts of a particular case so long as this is explained. Para [15] of *Kubik* refers as follows:

"[15] It is important to remember, however, the advice in *R v Molloy* [1997] NIJB 241 that sentencers should not view starting points as fixed tariffs for rape cases. In *R v Millberry and others* [2002] 2 All ER 939 the English Court of Appeal approved the recommendations of the Panel but emphasised that guidelines can produce sentences which are inappropriately high or inappropriately low if sentencers merely adopt a mechanistic approach. It is important to stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Guideline judgments are intended to assist the judge in arriving at the current sentence but they do not purport to identify the correct sentence. Doing so is the task of the trial judge."

[15] The single judge's analysis on whether the trial judge has gone too far in his 20 years sentence for the headline offences is a good assessment of this case which we adopt. At para [25] of the single judgment, the single judge concluded that the trial judge was entirely correct to categorise this offending as a campaign of attempted rape, attracting a 15-year starting point. In addition, that the judge was right to treat the attempted rapes as seriously as the full offence applying a decision of this court as far back as 2006, *R v DO* [2006] NICA 7.

[16] The single judge also, rightly in our view, found that there was an additional element to this offending, that was the planning and orchestration in the attempted rape offences, over and above their mere repetition, which could appropriately be

treated as additional aggravation. Thirdly, it is correct to say that this was a lengthy period of abuse over many years, not merely a short-lived campaign, such that the aggravation provided by that factor may not have been adequately reflected in the 15-year starting point.

[17] Finally, we agree with the single judge's analysis that it is also clear that the trial judge considered a number of additional factors as aggravating the headline offences against this vulnerable young woman. These included the manipulation and posing of her and the affront to her dignity by the actions of the applicant, as well as all of the other factors mentioned by the trial judge, not least a factor rightly raised by Ms Walsh, that is the gross abuse of trust as an adult that the applicant displayed and the acute vulnerability of the victim. The photographic recording of the incidents and the later distribution of such images are another aggravating factor.

[18] When all of that is taken into account, we can readily see why the trial judge reached a final point of 20 years for the headline offending which was numerous attempted rapes. He also, had to take into account the fact that on this indictment in relation to RG there were other offences. He did not sentence consecutively for those. So, on an overall view, we consider that the judge has not made any error of principle in terms of how he dealt with the third indictment.

[19] The next appeal point is whether the trial judge has made an error of principle in applying consecutive sentences to reflect the different types of offending on the other indictments against different victims and whether that was wrong in principle. We have considered the point and listened carefully to what Mr Hunt KC has said and we have analysed the trial judge's methodology.

[20] Having done so we are of the view that the nature and level of offending on the first and second bills was sufficiently different to allow for consecutive sentencing. There were more victims and younger victims on the second bill which meant that this had to be sentenced differently from the first bill, albeit these bills both involved the same type of offending. Hence, we reject an argument that the judge has fallen into error or made an error of principle in applying consecutive sentences.

[21] In truth, the only credible appeal point is whether the totality principle was properly adhered to. This principle is well-known to sentencers. It was also raised with the trial judge in the comprehensive and impressive prosecution submissions that were placed before him. Reference was made to the relevant decisions of this court in cases such as *Hutton* [2024] NICA 19, *ZB* [2022] NICA 69, and *Playfair* [2024] NICA 21, which refer to the need to consider totality.

[22] In simple language, what this means is that any judge must stand back in a multiple victim, multiple offence case and ensure that the overall sentence is proportionate to the crimes involved. An appropriate methodology is provided in

the various cases that we have mentioned, but it must not be forgotten that sentencing is an art and not a science and a measure of discretion must be afforded to a trial judge in the organisation of a sentence as complicated as this.

[23] Hence, assessing the substantive appeal point in relation to totality, we can see from the sentencing remarks that the trial judge did consider sentencing individually for all of the victims who were affected by this offending, but he expressly said that if he did so the sentence would be manifestly excessive given the number of victims that there were. He, therefore, took an overall view of indictments 1 and 2 to reach what he considered was a proportionate sentence on each. Whilst this results after reduction for a plea, in a 12-year sentence for the offending comprised in bills 1 and 2, in our view, this cannot be said to be manifestly excessive for such persistent abuse and corruption of multiple victims who were young children.

[24] Overall, we are not convinced that the trial judge has made an error of principle or reached a sentence which is manifestly excessive. He rightly described this offending as a high-level catalogue of serious offending which was prolific and chilling in equal measure and he observed that many victims caught up in this type of behaviour in this web of deceit may well be unknown. We do not underestimate the effects of such abuse on young children.

[25] In addition, the abuse of RG was particularly sickening given the breach of trust involved and her extreme vulnerability. That offending cannot be mitigated as has been tentatively suggested. We also reiterate what we have said in previous decisions of this court including *R v Pacyno* [2024] NICA 3 about the nature of this type of offending that because some of it occurred over the internet does not mean it is less serious. This is a modern scourge of high seriousness directed at vulnerable young children which needs severe punishment.

[26] So whilst a high sentence was imposed in this case, it is entirely justified, in our view, to reflect the offending in total in this case and to properly reflect our society's condemnation of this type of invidious sex offending characterised by domination and control over young girls. We have, in this regard, read the compelling victim impact account which has been given by RG's carer and other victim statements which speak for themselves.

[27] Finally, we see no reason to interfere with the five-year extended licence period. The effect of this sentence for a dangerous offender is set out in a number of recent cases including *R v Shaun Hegarty* [2022] NICA 55. What the extended custodial sentence means, is that at the appropriate stage, a risk assessment will be conducted by the Parole Commissioners to determine whether the applicant can safely be released on licence once he has served half of his sentence. If the Parole Commissioners do not support release due to risk to the public, the applicant may have to serve the entirety of the 27-year period. At the end of that period, or after

any earlier release, he remains subject to a five-year licence and is liable to be recalled to custody should he breach any of the licence conditions.

Conclusion

[28] The overall sentence was appropriate and justified as a sentence in response to the offending in this case. Accordingly, we refuse leave and we dismiss the appeal.