

<p>Neutral Citation No: [2025] NICA 49</p> <p><i>Judgment: approved by the court for handing down (subject to editorial corrections)*</i></p>	<p>Ref: KEE12836</p> <p>ICOS Nos: 23/088054, 23/088052, 23/081412 24/014965 24/110032</p> <p>Delivered: 23/09/2025</p>
--	---

IN HIS MAJESTY’S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

OLIVER JAMES MacCORMACK

**IN THE MATTER OF A 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 Ms Pinkerton (instructed by the Public Prosecution Service) for
the Crown**

**Mr Duffy KC, Mr Chambers KC with Ms McMahon (instructed by Madden & Finucane
Solicitors) for the Respondent**

Before: Keegan LCJ, Horner LJ and O’Hara J

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

Introduction

[1] This is a reference brought by the Director of Public Prosecutions (“DPP”) in relation to a global determinate custodial sentence of seven years’ imprisonment, split equally between custody and licence, imposed by His Honour Judge Kerr KC, (“the judge”) on 10 April 2025.

[2] The DPP maintains that the sentence is unduly lenient.

Background facts

[3] The background facts were agreed and formed the basis of various bills of indictment in relation to the offending.

[4] In summary, the respondent was sentenced for 40 offences involving nine victims in relation to offending which spanned over seven years from 2015 to 2022. The offences were:

- (a) Four offences of either, with intent causing someone to become a prostitute (x3) or inciting someone to become a prostitute (x1).
- (b) Nine offences of intentionally controlling the activities of a person relating to prostitution.
- (c) Eleven offences of human trafficking, that being arranging or facilitating travel with a view to exploitation.
- (d) Seven offences of obtaining sexual services for payment.
- (e) Seven offences related to being concerned in or offering to supply Class A drugs.
- (f) One offence in relation to intimidation.
- (g) One offence in relation to perverting the course of justice.

[5] The background facts are set out in the reference as follows. An investigation conducted by the Police Service of Northern Ireland's Modern Slavery and Human Trafficking Unit began on 5 June 2020 into sexual exploitation of vulnerable young females in the greater Belfast area and led to the arrest and charge of the defendant. Other individuals have been convicted in separate proceedings in relation to similar offending. None of those cases have been referred to the Court of Appeal.

[6] Some of the victims in this case were as young as 17, 18 and 19 when offending began. The reference refers to the fact that one of the nine victims was lured into prostitution by the respondent. Whilst the respondent and the victims received financial reward from the clients of prostitution, the victims used their share to buy heroin from the respondent. This ensured that he was making money from both the clients and the victims.

[7] The victims describe that withdrawal from heroin is physically painful and causes the user to feel extremely unwell. Therefore, the prosecution maintain that the respondent capitalised on their drug use and lack of means to fund their drug habits and ingratiated his way into their favour. He organised meetings for them with men willing to pay for sexual services, regardless of the physical state of these

young women who were often high on drugs or in withdrawal. The respondent also drove them to their appointments.

[8] Regarding one victim, the offences of intimidation and perverting the course of justice pertain as the respondent repeatedly drove past her home after she had made a complaint to police and offered her money to withdraw her statement against him.

[9] A common circumstance in the lives of the victims was that they were all at a low place. Some were living between addresses, often in hostels. Some were estranged from their families and lacked the support that a family would bring and some had their children placed in care. Another victim had just left an abusive relationship.

[10] The prosecution maintain that all victims used heroin and the respondent was able to make himself indispensable to them, not only by organising their jobs as sex workers, but he would also have provided some with food, electricity cards and other items. This, the prosecution submit, led to the victims developing a dependency on the respondent.

The respondent's characteristics

[11] The respondent provided a false account at his police interviews as he denied the offending. He claimed that he was helping these vulnerable young females who were his friends and that he would give them lifts as he would not want to see them stuck. He said he would lend the girls money even though they never gave it back, and he would buy them food.

[12] The respondent was born in 1953 and was 71 years at the date of sentencing, he is now 72. He did have previous convictions in this jurisdiction but the majority were driving related. However, the respondent has a relevant drugs conviction for the Republic of Ireland which occurred during the currency of the offending on the bills of indictment for which he remains to be sentenced. At that time he was apprehended with heroin valued at 21,700 euros.

[13] The pre-sentence report on the respondent does not make good reading for him as it is clear that he has minimised his involvement in this offending. In particular, he made the case that he met one woman outside an establishment begging, became aware that she was a sex worker and helped her as a result of which he met other females who he said thought the world of him and who he said he helped.

[14] The author of the pre-sentence report assessed the respondent as presenting a high risk of reoffending but not reaching the threshold of significant risk of serious harm to members of the public essentially based upon his current position.

The judge's sentencing remarks

[15] The background facts of this case were largely agreed. That is because the aggravating features in this case were accepted, namely:

- (i) Number of victims.
- (ii) Multiplicity in range of offences.
- (iii) Offending involving a course of conduct involving multiple incidents of offending.
- (iv) Protracted period of time (the offending occurred from 2015 to 2022).
- (v) Offending only stopped by detection and arrest.
- (vi) Relevant criminal record.
- (vii) The vulnerability of the victims. This is primarily in respect of features of drug addiction, isolation and age. The vulnerability of the victims was known by the respondent and used against them to exploit them.
- (viii) The use of class A drugs to use, take advantage of and exploit victims.
- (ix) One victim was subject to witness interference by intimidation and the offer of money to withdraw her statement.
- (x) Should the court consider a global sentence – the offences aggravate each other.

[16] The defence written submission provided for the sentencing hearing suggested that the prostitution offences should be the headline offences, that there should be a significant credit for the plea and that consistency in sentencing was important with the other cases given that others who had been involved in this type of offending who were also apprehended by police received sentences of five years, six years, two years and a two-year probation order. The defence also raised personal mitigation given the respondent's age and some medical issues.

[17] From his sentencing remarks it is apparent that the judge did not accept the defence submission that prostitution should be the headline offence but rather decided that the trafficking should be the headline offence. He was correct to do so. The judge also referred to the linked cases of *R v Heaney, Rodgers, Brown and Harvey* and decided that where possible there should be consistency in sentencing. He also referred to remand time which is not a concern in this reference save to note that whatever sentence is imposed should operate from the earliest point since he has been in custody.

[18] The gravamen of the judge's sentencing remarks is as follows:

"I consider that the proper starting point for the trafficking offences in this case is nine years' imprisonment. I consider that the trafficking offences, as I have said, are the overarching offences which are aggravated by the other elements of the offending, which is the control of prostitution, his profiting from prostitution, paying for sexual services and the use of drugs in this case. Sentencing for the drugs offences, should be significant, because although this is not a case of large commercial supply, this was a supply to young women in circumstances where he was using the drugs as a way of controlling them. So, as I say, the starting point for the trafficking offences will be nine years' imprisonment. I have to consider then whether there is any personal mitigation. In cases of this nature with this extent of offending, it seems to me that there is very limited personal mitigation. I consider that the appropriate way to deal with mitigation relates solely to his age and medical conditions and acknowledging that will make his time in custody harder than it may be for somebody else.

Accordingly, I consider that the reduction in this case for personal mitigation should be 12 months, reducing the starting point before consideration of his plea of guilty to a sentence of eight years' imprisonment. I have considered whether or not, or what level he should be entitled to a reduction in his sentence for his pleas of guilty. On the one hand, here is a person who, having committed these offences then, and spoken to by the Probation Service, effectively denied his offending and refused to acknowledge it at all. However, on the other hand, the defendant has pleaded guilty by his pleas through his submissions on his behalf. He does accept the behaviour, and he now acknowledges that he was guilty of the offending.

In addition, there was a series of five trials which involved numerous victims having to give extremely distressing evidence. There were difficult circumstances in relation to the prosecution in relation to some of the witnesses. It seems to me that it is appropriate in this case for there to be a reduction in sentence of 25% accordingly,

in relation to the trafficking offences, the appropriate sentence I consider proper in this case is six years' imprisonment, that is 72 months.

Now, there will be lesser offences sentenced on a concurrent basis in relation to the other indictments in relation to all the prostitution charges there will be a sentence of three years' imprisonment. The same sentence will apply to the drugs offending. I will go through the various indictments shortly to ensure that we do not offend the principle that I have dealt with in terms of his remand time.

There are two offences which I consider should be treated slightly differently because they are not part and parcel of the general offending. That is, the charge of intimidation and the charge of attempting to pervert the course of justice. Both of those are serious matters. Both of them ordinarily, while not part of the main offending, should be considered separately and should lead to consecutive sentencing. I consider, in this case, that is the case in relation to them and I consider taking into account the principle of totality that a one-year sentence in respect of each should be concurrent to each other but consecutive to the sentence, the six-year sentence that I have imposed, and that will make a global total effective sentence in this case of one of seven years' imprisonment."

This reference

[19] The nature of a reference has been explained in numerous recent decisions of this court but, in particular, in the case of *R v Sharyar Ali* [2023] NICA 2. In that decision the court re-emphasised the fact that the reference procedure does not provide the prosecution with a general right of appeal. In addition, the court also said as follows:

"(1) The court may only increase a sentence that is unduly lenient and not merely because it is of the opinion that the original sentence is less than that court would have imposed, unless the disagreement results from a manifest error.

(2) Leave should only be granted in exceptional circumstances and not in borderline cases.

(3) Section 36 was not intended to confer a general right of appeal on the prosecution. The purpose of the regime has been stated as being to allay widespread public concern arising from what appears to be an unduly lenient sentence. A sentence will be unduly lenient where, in the absence of it being altered, it would affect public confidence or the public perception of the administration of justice.”

[20] We also reiterate the fact that the prosecution may not create a new case on a reference that was not before the lower court and we, in fairness, should only deal with matters that have actually been referred. In this case, the reference is on a discrete basis which is threefold:

- (i) That the sentence was outside the range for high culpability and high harm offending.
- (ii) That the sentence did not reflect deterrence.
- (iii) That there was insufficient aggravation of the headline offences of trafficking by virtue of the drug offending and the control of prostitution.

[21] We note that both the prosecution and the defence provided the judge with some written submissions prior to sentencing. These refer to analogous sentencing ranges in relation to these matters. However, it is fair to say that there is no direct guidance from the Court of Appeal in relation to trafficking offences of this nature. The judge was also referred to the England & Wales Sentencing Guidelines by way of guide although as prosecution counsel, Mr MacCreanor, accepted he did not suggest any particular range to the judge.

[22] The position of this court is that it does not offend prosecuting counsel’s duties to suggest a range. To our mind, if a range is suggested in the Court of Appeal, it is unfair on a trial judge not to have been cited upon that at first instance, particularly, as the first instance judge has carriage of the case for a much longer period than the appeal court with the associated advantages.

[23] This reference gives us the opportunity to provide some guidance in relation to human trafficking offences which are relatively new in our jurisdiction. We do so, by reminding practitioners that sentencing is fact sensitive and by reassuring judges that they have the flexibility to tailor sentencing to meet the requirement of reaching a just and proportionate sentence in a particular case.

[24] Counsel have raised some consistency issues with the England & Wales guidelines which are valid in relation to trafficking offences. However, they remain helpful in terms of potential aggravation and mitigation in this area. This appears to us to have been a high culpability case given the respondent’s role in the offending.

It was also a high harm case, although we do accept that there could be cases of even higher harm involving additional physical violence, coercion or servitude.

[25] In *R v ZB* [2022] NICA 69, this court has already provided guidance as to the correct approach to sentencing when there are multiple offences applying the principle of totality. This was reiterated in *R v Hutton* [2024] NICA 19 at para [58] as follows:

“[58] ... without suggesting an unduly mechanistic approach, we provide some guidance for our jurisdiction which we hope will assist sentencing judges when dealing with multiple offence, multiple victim cases in future as follows:

- (i) Consider the sentence for each individual offence and consider identifying a headline offence.
- (ii) Determine whether the case calls for concurrent or consecutive sentences. When sentencing for multiple offences a combination of concurrent and consecutive sentences may be appropriate.
- (iii) Consecutive sentences will generally be appropriate where there are separate victims against whom quite separate offences are committed over different periods.
- (iv) Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole and decide whether any downward adjustment is needed to reflect totality.
- (v) Apply an appropriate reduction for a guilty plea.”

[26] In this reference, we have not been asked to consider the reduction for the guilty plea or the judge’s application of some mitigation, although we have some reservations on both fronts, but most particularly in relation to personal mitigation which cannot be substantial in a case such as this.

[27] However the main issue, in this reference is the starting point for the headline offences of trafficking. As this court has consistently said, the methodology must be for a sentencing judge to consider an appropriate range. Then the judge must consider aggravating and mitigating factors. Then the judge must consider what the appropriate sentence is prior to reduction for a plea.

[28] In this case, the judge did consider the aggravating factors. However, we do not consider, in the circumstances where the court was imposing concurrent sentences that the judge fully appreciated how the drugs offending and the control of prostitution aggravated the headline offence. That is why, we consider, the range for this type of multiple offending, is as the prosecution suggested between 12-14 years. Considering aggravation and some mitigation the starting point should have been somewhere in the region of 12 years.

[29] In addition, it was appropriate to impose a consecutive sentence of one year concurrent on the two charges of perverting the course of justice and obstruction as these are distinct offences which should be sentenced in their own right. Then, applying a totality check then to the overall sentencing, the total sentence should have been somewhere in the region of 13 years. Applying a 25% reduction for the guilty plea, the final sentence comes in just over nine years.

[30] It follows from the above that the judge has fallen into clear error in that he has not appreciated that the trafficking was so aggravated as to bring it into a band of sentences between 12 and 14 years. Therefore, the sentence was not just lenient, it was unduly lenient. This offending involved a suite of predatory offending on vulnerable women which requires appropriate punishment and must reflect a need to deter this type of behaviour in our community and to soundly rebut the attitude of this respondent who portrayed himself as some sort of saviour rather than a calculated abuser of nine vulnerable young women. His attitudes have no place in our society.

[31] Mr Chambers KC asked us to consider not exercising our discretion to uplift the sentence should we find it unduly lenient, and he made the point that his client was due to be released in November and he would be sentenced in the Republic of Ireland thereafter for other drug offences. We are not attracted to that argument given the need to impose a just and proportionate sentence for these offences. Given that the respondent was due to be released the most that can be said is that a modest reduction for double jeopardy can be applied. This is accommodated within the nine-year sentence we have imposed.

[32] Finally, we are not attracted by an argument that was based on disparity in that the seven-year sentence should stand given that the co-defendants received lesser sentences. The sentence nearest in length to this respondent was that of Brown who received six years, although as Mr Duffy KC pointed out, he was also convicted of a non-consensual sexual offence. We are satisfied that a relative uplift of three years for this respondent is entirely appropriate given the additional number of victims and charges he faced. There can be no sense of grievance in relation to the different sentences imposed on other defendants as the increased sentence for this respondent is just and proportionate in the circumstances.

Conclusion

[33] Accordingly, for the reasons outlined, we grant leave and having found that the original sentence was unduly lenient, impose an overall increased sentence of nine years' imprisonment. The individual sentences will be altered accordingly in liaison with the parties.