Neutral Citation No: [2026] NICA 2	*Ref:*	**KEE12941**
	ICOS No:	**25/39897/A01**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**09/01/2026**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

_____

THE KING

v

SEBASTIAN KASAK

_____

Mr Stephen Campbell (instructed by Paul Campbell Solicitors) for the Appellant
Mr Mark O'Connor (instructed by the Public Prosecution Service) for the Crown

_____

Before: Keegan LCJ, Treacy LJ and Smyth J

_____

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

Introduction

[1] This is an appeal brought with leave of the single judge from a sentence imposed by His Honour Judge Irvine KC ("the judge") on 14 November 2025, for one count of attempted sexual communication with a child under 16, contrary to Article 3(1) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and Article 22A of the Sexual Offences (Northern Ireland) Order 2008. The sentence followed a guilty plea at arraignment and was an immediate custodial sentence of 12 months' imprisonment split equally between custody and licence. A five-year Sexual Offences Prevention Order ("SOPO") was also made and various ancillary orders followed by operation of law. The maximum sentence is two years' imprisonment.

[2] We have heard this as an expedited appeal given the short sentence of imprisonment which was imposed, two months of which has now been served. We have had the benefit of helpful written arguments from Mr Campbell and Mr O'Connor and impressive oral arguments from both counsel which have assisted us greatly in determining this appeal.

[3] In essence, the appeal is mounted on the basis that the sentence imposed was manifestly excessive and wrong in principle on two fronts:

(i) that the judge erred in concluding that a community-based sentence could not be considered in this case; and

(ii) that the judge erred in choosing a starting point of 18 months before reduction for the guilty plea which was too high.

Factual background

[4] The index incident occurred on 13 July 2024. The offence was committed as the appellant engaged in sexual communication via Facebook with a decoy profile operated by a paedophile hunter group called Child Online Safety Team. The decoy profile claimed to be 14 years of age. A brief conversation took place and the appellant engaged in some offensive messaging and sent a photograph of his penis to the decoy. He was then informed of the decoy's age but sent another photograph of his penis and asked that she comment on it. He claimed to be 17 initially but then stated that his real age was 26. The matter was reported to Cheshire police who linked the Facebook profile to the appellant's address. He was arrested and interviewed and made immediate admissions to this offending.

[5] The probation report sets out the antecedents of this appellant. In particular, it highlights the fact that he has no previous convictions; that he has a stable relationship with his parents with whom he lived; that he had been in employment with a bakery for seven years. During the course of this appeal, we have seen correspondence from the appellant's employer which confirms that his employment remains open and that this appellant was "a model employee."

[6] The report assesses the appellant as low risk of general reoffending. The report also referred to the potential for probation supervision or a combination order as the appellant consented to that course if the court deemed it appropriate. Significantly, the probation service refers to victim awareness and regret on the part of the appellant and stressed that this offence did not, in the opinion of probation, represent a pattern of behaviour.

[7] The judge's sentencing remarks refer to the above and the appellant's background. The judge refers to aggravation being the disparity in age, and mitigation as the plea, the lack of previous convictions and the early admissions at the police station by this appellant. The judge also records the appellant's good work history and his low risk.

[8] Then the judge discusses the one "guideline" case that was put to him of *R v Watson* [2022] NICA 71, which is a decision of this court. This was a case involving five offences spanning attempted sexual communication with a child, attempted causing a child to watch sexual activity, attempted inciting the taking of an indecent image of a child and attempted inciting the distribution of an indecent image of a child. The critical paras are paras [12], [13] and [14]:

> "[12] We consider that all offences which involve the sexual exploitation, or attempted sexual exploitation, of children are serious offences and must be met with appropriate sentences which will include elements of retribution and protection for the public, particular the younger members of the public.
>
> [13] The full circumstances of this offending clearly justify the imposition of a custodial sentence.
>
> [14] Given the seriousness of the offending, we reject the argument that a community-based penalty would have been appropriate. We note that, in any event, the appellant would not have been able to undertake such a penalty given his physical debility."

Consideration

[9] We agree that these are serious offences. However, analysing the import of this decision, paras [13] and [14] above clearly state that for the specific offending in that case a custodial sentence was warranted. The transcript of the sentencing remarks in this case does not make any factual distinction. Thus, it may be, that there was an interpretation by the judge that in this case the custody threshold was automatically passed, and that the same immediate sentence was warranted. That approach is erroneous, as each case depends on its own facts. The *Watson* case involved, as Mr O'Connor accepted, a much greater level of offending. It also involved offending which attracts a maximum penalty of 14 years. Paras [13] and [14], when properly analysed, refer to the full circumstances of the offending in *Watson* justifying the imposition of a custodial sentence (which was ultimately suspended). This is a fact specific assessment. We also point out that in *Watson* a community option was not on the table due to the disability of the appellant and so the observation that "given the seriousness of the offending we reject the argument that a community-based penalty would have been appropriate" was obiter.

[10] Whether the custody threshold is met in a given case is governed by Article 5(2) of the Criminal Justice (Northern Ireland) Order 2008 which provides:

> "A court must not pass a custodial sentence on an offender unless it is of the opinion that the offence was so serious that neither a fine alone nor a community sentence can be justified."

[11] In addition, it is important to remember that even if the custody threshold is passed in a particular case a further exercise is required on the part of a sentencing judge when a short custodial sentence is arrived at. Whether a community-based

option is appropriate will depend on the facts of the case and whether there is compelling evidence that rehabilitation can be achieved. Whilst sexual communication with a child is undoubtedly very serious and requires proper punishment there may be cases where a community option is merited and in fact has greater benefit to the community to prevent recurrence and thereby enhance public protection.

[12] The factors that point in that direction will be set out in the probation report and other material that the court may receive. Without providing an exhaustive list of factors in favour of rehabilitation they include where there is a clear record, one-off offending, remorse, victim empathy, evidence of stability in the community by way of employment and family support. Delay in a case being progressed may allow an appellant to provide the necessary evidence. In addition, youth has always been recognised as a factor in favour of rehabilitation in this jurisdiction.

[13] Given the issue this case has identified, we provide the following guidance to sentencing judges going forward:

(i) *R v Watson* was a fact specific determination and so paras [13] and [14] should not be read or treated as a rigid rule which should be followed in every case in terms of the imposition of an immediate custodial sentence. Each case will turn on its own facts. Offending of this nature is undoubtedly serious however a sentencing court must reach a proportionate sentence in each individual case.

(ii) In cases involving sexual activity with a child consideration of a non-custodial option will properly arise if a sentence of 12 months or less is contemplated or the circumstances demand it per *R v Pacyno* [2024] NICA 3. That case goes on to say that a judge should explain why a certain option is chosen. We stress that this requirement applies both ways, in other words, where a short sentence is arrived at a judge should articulate why a non-custodial option is rejected or why a non-custodial option is accepted.

[14] An outworking of the above approach is found in *R v Sholdis* [2024] NICA 4, where the court also considered the imposition of community-based sentences in the area of sexual offending in circumstances where a short determinate custodial sentence of 12 months had been imposed. Para [14] of that decision pointed out the greater emphasis on community-based sentences where rehabilitation is possible given the benefit of education which can prevent reoffending going forward and in that case the Court of Appeal substituted a probation order.

[15] Returning to the facts of this case, there are factors of significance in favour of the appellant as follows:

(i) this was a one-off offence by a relatively young man;

(ii) this was a case of clear record on the part of the appellant;

(iii) this was a case of remorse and victim empathy;

(iv) this was a case where there was rehabilitation potential; and

(v) this was a case where there was a strong employment history and family support.

[16] The appellant does not dispute that the custody threshold was passed. However, the case is made that the chosen starting point of 18 months, reduced to 12 months for the guilty plea was manifestly excessive given the factors outlined above. We agree.

[17] What the judge appears to have done is import the same sentence from the *Watson* case without true reflection on the different facts in this case. This was an erroneous approach. In our view, a sentence of no more than eight months imprisonment would have been appropriate after a guilty plea. As an aside we note that in England and Wales the sentencing guidelines for this type of offence suggest a six month maximum imprisonment to a medium community order which are lower than in our jurisdiction.

[18] Also, having been addressed on the issue of an enhanced combination order and having reached an end point of 12 months' imprisonment himself, the judge does not discuss the issue of potential community disposal at all. That is notwithstanding the fact that he was faced with a person of clear record who committed a one-off offence and who had the benefit of what, all counsel in this case accept, is a very positive probation report, a job and family support. Again, the judge has fallen into error in this respect. This is particularly so given that the probation report itself strongly references the utility of probation stating that:

> "such an order would support the appellant to develop the necessary personal risk management he needs to demonstrate given his sexual conviction, a system to maintain a positive balanced lifestyle and support him to avoid developing sexual preoccupation again."

[19] Furthermore, given that the fact that this case could only ever attract a short custodial sentence under 12 months it was incumbent on the judge to consider whether a community-based option was viable.

[20] It follows from what we have said that the judge should have given more active consideration to a community-based sentence in this particular case. He was obliged to consider an enhanced combination order as that had been put to him by the defence and/or other community disposals and explain why such a disposal was not appropriate. He was also equipped with compelling positive evidence in the

probation report. To our mind, if the judge had taken some further time to undertake the necessary analysis, he would have reflected the strengths of probation supervision in his ultimate sentence.

[21] We repeat the view expressed by many courts before us that probation is not a soft option. In fact, the order that we intend to make requires engagement with probation by the appellant for a longer period than the sentence originally imposed and it sets demanding obligations for structured engagement to address the index offending which carries a rehabilitative purpose.

Conclusion

[22] Having considered the arguments made we will substitute a two-year probation order for the determinate custodial sentence that was imposed. The probation order which we will impose has the benefit of strong conditions which are set out in the probation report which will be applied to it. In a case with the characteristics of this one, we consider that a two-year probation order has much more utility in preventing a recurrence of this type of offending than the continuation of a short prison sentence.

[23] The outcome we have reached in this case does not detract in any way from how seriously the courts take this type of pernicious offending. Indeed, the appellant has served two months' imprisonment which is a deterrent in itself. In addition, if there were to be any breach of the probation conditions or the SOPO, the appellant is liable to prosecution and could be returned to prison

[24] We allow the appeal and substitute a two-year probation order. The SOPO remains in place, and the ancillary orders will follow as a matter of law.