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**IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT BELFAST CROWN COURT**

THE KING

v

GN

SENTENCING REMARKS

HIS HONOUR JUDGE REEL

Reporting restrictions are in place in relation to this case. The court directs that, pursuant to Article 22(1) of the Criminal Justice (Children) (NI) Order 1998 no report shall be published which reveals the name, address or school of the child or particulars likely to lead to the child's identification, and no picture of the child shall be published, except by direction of the court. The victim will be referred to as JP and her mother as KP and because of the familial relationship between the child victim and defendant, that includes the name and identity of the defendant.

[1] At the outset I want to thank counsel for their careful and measured submissions, written and oral, in what is a difficult sentencing exercise.

Offences to be sentenced

[2] The defendant was born in June 1993 and is now 33 years of age. He is to be sentenced for one offence:

Grievous Bodily Harm, contrary to section 20 OAPA 1861, 30 December 2017, against JP. The maximum sentence is seven years' imprisonment

[3] The defendant was aged 24 at the time of the offence.

Outline the history of coming to be sentenced

[4] The defendant was arraigned and pleaded not guilty on 27 August 2024. He was re-arraigned and pleaded guilty on 11 February 2026.

[5] Reduction for a plea of guilty (Article 33 of the Criminal Justice (NI) Order 1996).

[6] In this case the defendant argues for significant credit for his plea, which was entered shortly after all medical evidence was received, at which point, the defendant says, advice could be offered.

[7] Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 provides:

“(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence a court shall take into account -

(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and

(b) the circumstances in which this indication was given.”

[8] In *AG Ref (No.1 of 2006)* [2006] NICA 4 the Court of Appeal stated that, to avail of maximum reduction in sentence in consequence of a plea of guilty, the defendant must have pleaded guilty at the earliest opportunity. Indeed, in that case the Court of Appeal said that the court could look to the attitude of the defendant at interview. Kerr LCJ said:

“[19] ... In the present case solicitors acting on behalf of two of the offenders appear to have advised them not to answer questions in the course of police interviews. Legal representatives are, of course, perfectly entitled to give this advice if it is soundly based. Both they and their clients should clearly understand, however, that the effect of such advice may ultimately be to reduce the discount that might otherwise be available on a guilty plea had admissions been made at the outset.”

[9] I refer to that passage, not because my concern has been to examine the conduct of the defendant in interview, but because this defendant did not rearraign until all the defence medical evidence was complete. Faced with an arraignment, a defendant is at liberty to enter a not guilty plea and to prepare the defence case. Thereafter, the defendant is at liberty to reconsider his plea at any point, including at a juncture when all defence expert reports have been assimilated. Such an approach may have its advantages, it is possible that the preparation of the defence case will uncover issues that lead to a reduction in the charge that the defendant is facing, or indeed result in the termination of the prosecution entirely. But there are also cons. Such an approach

will ordinarily result in the diminution of credit for the defendant's plea, should such a plea eventually be forthcoming.

[10] That is the broad approach, but individual cases may require consideration of the issues that gave rise to the late plea. The reasons for a reduction of sentence upon a guilty plea is the context in which a late plea is assessed. Those reasons have been variously described in a number of decisions. In *Maughan* [2022] UKSC 13 the Supreme Court identified alleviating the inconvenience for witnesses, provision of vindication for victims and sometimes relief from anxiety.

[11] Whether remorse forms part of the rationale for a reduction in sentence on a guilty plea is a more complex matter. A plea of guilty is often associated with an expression of remorse and it is evidence to which the defendant can point to when advancing remorse as a mitigating factor, in addition to and separate from, the reduction in sentence in consequence of a plea of guilty, for example *Kasak* [2026] NICA 2, *R v WF* [2025] NICA 39.

[12] In this jurisdiction, unlike England and Wales, remorse is also seen as relevant to the issue of reduction in sentence for a plea. In *R v Ruddy* [2016] NICA 17, McBride J said:

“[23] When determining whether and to what extent a particular circumstance gives rise to a discount, it is necessary to consider the rationale behind giving a discount for a guilty plea.

[24] In *R v Connolly*, MacDermott J at pg.227, set out the rationale for a discount when a guilty plea is entered. He said:

‘A lesser sentence ... (is) appropriate to reflect the fact that the plea is an indication of remorse, has led to the saving of time and has inconvenienced witnesses who would otherwise have had to attend court.’

This reasoning is also set out in *R v Stewart* [2017] NICA 1, where Morgan LCJ said, when considering a trial judge's sentencing remarks:

‘[31] We accept the submission that the discount for the plea generally reflects an element of remorse. Accordingly, the degree of mitigation by way of discount for the plea can be higher than would otherwise have been the case if there is positive evidence of remorse. If,

however, such discount is included in the plea it should not be repeated by way of personal mitigation.'"

[13] It is worth noting that the E&W Sentencing Council's Definitive Guideline on determining the level of reduction for a plea provides for 1/3 reduction for a first opportunity plea. It lists three reasons for this reduction; the reduced impact on the victim; saving the victim from having to testify and; public interest in saving time and expense of investigations. However, it is quite clear about how remorse should be handled:

"Factors such as admissions at interview, cooperation with the investigation and demonstration of remorse should not be taken into account in determining the level of reduction. Rather, they should be considered separately and prior to any guilty plea reduction, as potential mitigating factors."

[14] In this jurisdiction remorse is seen as underpinning a plea of guilty. However, remorse is frequently and additionally identified as a mitigating factor, where there is evidence of remorse beyond that associated with the plea of guilty, for example, arising from the content of the pre-sentence report or otherwise from the defendant's actions after the offence.

[15] The timing of the plea is not the only factor to be considered when deciding on the level of reduction in sentence. As was considered in *Maughan*, the reduction of sentence might be lessened in circumstances where the defendant was caught red handed. Conversely, where a defendant has admitted responsibility for an offence and the sole issue between the defence and prosecution is the categorisation of that offence, for example whether the consequences of the defendant's actions meet the legal definition of grievous bodily harm or actual bodily harm, then the not guilty plea may only be the outworking of a legal argument, in circumstances where the defendant manifests remorse, an intention to save the court time and to convenience witnesses. That might lead to a more positive assessment of the degree of reduction to be afforded to the defendant, the defendant having demonstrated remorse from the outset.

[16] Turning to the instant case, the defendant did not admit inflicting force on the victim at interview. The defendant did not make such admissions in his defence statement, where he continued to deny contributing in any way to her condition, rather raising the possibility of some underlying issue being present with the victim from birth.

[17] The defendant continues this stance in his pre-sentence report in which he does not accept an act or omission on his part that contributed to the victim's injuries. Probation say, "He was unable to provide an explanation as to how any harm could have been caused to the victim that day and he denies being responsible for causing

harm to the victim.” He was asked why he continued to deny causing harm to the victim in light of his plea and he told probation that he had entered his plea on legal advice. “The defendant explained that he is accepting that he was solely responsible for the care of his daughter at the time medical experts state the injuries occurred. The defendant said he has been under scrutiny for many years and feels that all avenues including independent medical reports have been exhausted. He retains the hope that maybe in the future something will come to light to prove his innocence.”

[18] His counsel, Mr Magill KC, says that the defendant now accepts that he had sole care of the victim when the victim sustained her injuries and accepts that his actions must have been the cause of those injuries, although he cannot recall and is not aware of having done anything that would have caused them.

[19] In those circumstances, the issue of remorse is a nuanced one. I have no doubt that he has regret for the severe injuries and disabilities suffered by the victim and that he has regret for his own personal circumstance. I have no doubt that he keenly feels that regret every day of his life and is confronted by the consequences of his actions every time he sees or thinks about his daughter. To that extent he has remorse perhaps to a much greater extent than many defendants, who might be described as being remorseful, but perhaps only rarely consider the consequences of their actions. However, the essence of remorse in the context of its forming part of the consideration of the circumstances of the defendant’s plea, involves an acceptance of a connection between those two things, between the victim’s injuries and the defendant’s actions and that element is extant here in an equivocal form.

[20] The defendant has entered a late plea. I accept that this trial would have required the use of many expert witnesses and would have taken time and expense that the defendant has prevented. I am sure that it would have been distressing for KP, to that extent the defendant is entitled to credit for a plea but not at any raised level. I intend to allow the defendant a 20% reduction in sentence in consequence of his plea.

Prosecution outline

[21] The defendant is the father of the victim, JP, who was 22 days old at the date of the offence. KP is the victim’s mother. A specialist public health nurse attended at the family home on 20 December 2017. KP was pleasant, welcoming and receptive to advice. There was nothing about the house, JP or KP that caused concern.

[22] On 30 December 2017, KP had an appointment at a hairdresser, another child was dropped off with grandparents and the defendant was to look after JP. When KP left, JP was fed, changed and sleeping. She was due another feed at 2pm. The defendant sent KP a message, to say that JP had not woken for her bottle, she told him to change her nappy, which would usually wake her up. The defendant then messaged to say that she had done three big poos and fallen asleep. KP was surprised by this, as JP had been constipated from birth. She realised that JP had not had her

bottle, the defendant told her that JP was breathing funny. KP left the hairdresser early and returned home, where she found the defendant with JP in his arms.

[23] At first JP started to wake up and seemed ok, but then she started to smack her lips and her eyes were fluttering. KP's sister was also present and recognised this as a seizure and rang an ambulance. Paramedics responded. JP had reduced levels of consciousness, but vital signs appeared to be normal. One paramedic said that the parents appeared as two young parents who did not seem to understand what was happening. They transported JP to Royal Belfast Hospital for Sick Children. CT brain scans in the Emergency Department showed left sided subdural haemorrhage and right sided subarachnoid haemorrhage. A history was given by the parents, but it was benign, with no rashes, temperature or trauma.

[24] The defendant said that JP had been due her next feed at 14:00 hrs but fell asleep after the bowel motions and that he was unable to rouse her. Dr Murray, a Consultant Paediatrician, noticed a 1x1cm diffuse brown bruise overlying the left mandible. She pointed this out to the parents who had not previously noticed it and offered no explanation.

[25] JP deteriorated overnight. An MRI showed quite significant intracranial injury: subarachnoid haemorrhage and subdural haemorrhage with some intraventricular blood. There were multiple infarctions and a couple of tiny contusions. She was admitted to ICU, sedated and ventilated but continued to have seizures. She was discharged from Paul Ward on 12 January 2018. Extensive bilateral retinal haemorrhages were noted. It was the conclusion of a multi-disciplinary team of a Paediatrician, Paediatric Neurologist and neuroradiologist, that the findings were consistent with acute traumatic head injury and are not in keeping with birth related injury.

[26] Extensive medical opinions were sought both as part of the criminal investigation and also as part of concurrent family proceedings. They ruled out potential birth injury. The medical evidence is lengthy and complex. I will not repeat it all. However, so that the context of sentencing is understood, I will provide a summary.

[27] Professor Kevin Dalton, obstetric consultant, was tasked to comment on whether any part of JP's birth could have been a cause of her injuries. He did not consider that any aspect of the pregnancy, labour or delivery could have caused or contributed to her cerebral palsy or other injuries.

[28] A Consultant Neuroradiologist provided an opinion that the abnormalities depicted on scans of JP's brain can all be explained as being due to an episode of abusive head trauma with a likely mechanism of shaking. He said that majority medical opinion is of the view that what is likely to be required to produce such injuries is the repetitive backwards and forwards movement of the unsupported infant head, pivoting on the neck, with the head position alternating rapidly between

full extension and full flexion. The degree of force required is not known but, it is safe to conclude that the minimum degree of force required is likely to be such that an independent witness would regard it as being likely to lead to harm to the child ie it would be obviously inappropriate. He further said that there was likely to have been a change in behaviour of the child at the time of the event. The magnitude of the change in behaviour would, to some extent, reflect the severity of the brain injury. The child would not behave entirely normally after the causative event. The rate of progression of symptoms and signs would, to some extent, reflect the severity of the brain injury; and the causative event is likely to have occurred after the last time that the court finds the child was behaving within the bounds of normality.

[29] A paediatrician provided an opinion that the triad of intracranial haemorrhage, retinal haemorrhage and encephalopathy occurring acutely is as a result of an abusive head injury, in the form of severe shaking, with a violent to-and-fro motion (akin to whiplash) repeated several times with extreme force without supporting the head.

[30] A consultant clinical geneticist was able to exclude any genetic condition that could have predisposed JP to the cerebral bleeding, subdural haemorrhages or retinal haemorrhages.

[31] A consultant paediatric neurosurgeon provided an opinion that, whilst some intracranial injuries can have delayed symptoms, the extent of JP's bleeds and their distribution in different brain compartments are very likely the consequences of an event of such severity that JP would have exhibited obvious clinical signs and symptoms, with trauma in the form of shaking being the most likely cause, although he could not exclude direct impact. He also noted that the three bowel movements could have been a consequence of the injuries inflicted on JP as it is not uncommon for someone to wet and/or soil themselves during an epileptic attack.

[32] A paediatric ophthalmic surgeon concluded that the most likely cause of the retinal haemorrhages was shaking and/or impact type of head injury. The exact force required to produce the retinal haemorrhages was not known but the amount of shaking required to cause those injuries would be considered as unusually excessive or violent. It was likely that the retinal haemorrhages occurred at the same time as the brain haemorrhages.

[33] A consultant neuroradiologist said that the description given by the defendant, of JP becoming unwell was consistent with acute encephalopathy. The scan abnormalities could all be explained as being due to an episode of abusive head trauma. The mechanism of injury was likely to involve shaking. The scan abnormalities are not seen following normal handling, typical domestic trauma or rough play. It is not possible to determine the degree of force used or required to produce these injuries, but the minimum would be obviously inappropriate. Clinical manifestation of the injuries would have followed within seconds or minutes of the injuries being inflicted. There could have been more than one episode of shaking. The perpetrator would be likely to realise that the change in behaviour of the child had

occurred as a result of their actions but would not necessarily think that the change was due to a brain injury.

[34] Both parents were arrested and questioned by police on 31 December 2017. The defendant said that on Saturday 30 December, JP slept until about half one and she was due (a bottle) at 2pm. She had woken up, she was perfectly normal and not distressed, she had done a big bowel movement and, then ten minutes later, she did another one, followed by another one about five or ten minutes after that one. Although he made a bottle for her, she was out for the count, and he could not get her eyes open. He said this was not like her. He put her in her swing, and she was swinging away. Her eyes still were not open and he got her up, trying to get her a bit of wind up over his shoulder and knee. He put cold water on his hand and put it on her head and her eyes opened for a second but closed straight back again. At the start he thought that she was just really, really tired. Just before KP came home JP started doing a 'click' of her lip and her eyebrows were going at the same sort of time. He texted KP to say that JP was breathing a bit weird.

[35] He said there was no reason why he might have got frustrated with JP. Asked if he shook JP at any point, he stated, 'no, definitely not.' He said he did not drop her or bump her off anything. Asked if he had her shaken her when trying to rouse her, he states, "No, like, that's what I am saying like I had her up trying to get a bit of wind up and stuff and she was, that's what I said to KP too like, she looked nearly awake with her eyes closed, you know that way, except for her wee head, but she seemed to be alright ..." He went on to say that she still reacted to his touch but she just would not open her eyes. He said he would definitely have told police if something had happened. He said JP was awake and alert during the poos and then just, 'boom.' There was nothing prior to that he could think of that could have happened.

[36] The next interviews took place on 10 May 2018. Again, he denied having shaken JP. He maintained that he would have told the hospital on the very first day if anything at all happened to JP. He said he had been in good form on 30 December. He denied getting frustrated at her pooing three times or crying when he was changing her. He said JP had not screamed for her bottle that afternoon.

[37] He was asked about messages sent between him and KP when he appeared to be changing JP and texted, "Fuck sake she's done another shit and I'm only after changing her," he denied being annoyed and said this is just the way he would have talked. He stated he would have been in the living room with JP and with their other child in the bedroom. He was asked about messages sent between him and KP on 30 December, which referred to financial issues, but he said that he had been confused about his bank balance but was not upset or concerned.

[38] It was put to him that Google history has him searching for things like, 'baby not opening eyes' and 'baby not waking up' while this was happening. Asked if he thought about contacting his mum or a doctor, he said that she had done three large

poos. She had never done three large poos that size before and he thought it just literally knocked her out.

[39] A final interview was carried out on 21 May 2019. It was made clear to him that police are of the view that he caused the injuries. He said that they have been doing their own research into people who have been accused of this and he queried why there would not be marks or a broken neck, he queried the bruise that was seen by Dr Murray and why it had just disappeared. He denied that anything untoward had happened to JP during the time she was in his care. He denied shaking her or throwing her down or losing his temper. He was asked if he had smoked much cannabis that day and he said, “yeah” at one point but at another stated that he did not have anything to smoke that day.

[40] The defendant has not advanced an account of how the offence was committed. However, he has pleaded guilty to a criminal offence of inflicting grievous bodily harm on the victim. Having read the medical evidence in the case I am satisfied that the defendant inflicted the injuries on the victim by vigorously shaking her such that her unsupported head moved rapidly from full flexion to full extension. I am satisfied that he shook her with sufficient force that any reasonable bystander would have realised that it was inappropriate and likely to cause some form of injury. Quite why he did it I do not know, but I suspect that it was in a momentary period of anger perhaps caused by having to change a nappy on multiple occasions or by the difficulty feeding the victim and perhaps contributed to by other stressors acting on the defendant at the same time. I do not sentence him on the basis that there were multiple incidents of shaking because there is insufficient evidence to make that conclusion and I do not sentence him on the basis of any consumption of illicit substances on his part having played a role in the incident, for the same reason.

[41] I do find that very shortly after the vigorous shaking the victim’s condition would have begun to manifest itself to the defendant and that he did not seek immediate medical attention for her but rather sent messages to the victim’s mother. However, I have no evidence that even immediate treatment would have changed the victim’s outcome at all. Ms Walsh KC on behalf of the prosecution does not suggest that the defendant delayed treatment of JP but rather accepts that he did rapidly contact KP and inform her of the changing condition of JP.

[42] I am satisfied on the medical evidence that, from the outset, the degree of force applied to JP and the rapid development of her symptoms thereafter was such that the defendant must have been at least aware of the possibility that what he had done to JP had caused her injuries.

The offender

[43] The defendant is now 33 years of age and married. He has a three-year-old child with his wife. They are currently living with their parents because they are saving to buy a house.

[44] The defendant had been in a relationship with KP from his teens. When this offence was committed, they were engaged to be married. He had become a father at the age of 17. Their first child is now aged 14. The victim was their second child. Their relationship broke down after this offence. For a period of time both children were removed from the care of KP and placed in kinship care until KP engaged with social services and parenting assessments were carried out and the children returned to her care.

[45] The defendant had an uneventful childhood. He obtained qualifications in joinery and then became a community tutor. He worked in this voluntary role for seven years. Part of that role included working with disabled children. At the moment he is working as a delivery driver and earning a reasonable salary. The defendant pays maintenance for his two children with KP, including JP and is saving for a deposit on a house. The probation officer says that it is evident when speaking to the defendant that he has been deeply affected emotionally by the events of the past eight years and his mother has suggested he seek professional counselling.

[46] He tells probation that he was a regular cannabis user at the time of the offence but he stopped using cannabis at that point. He has no relevant criminal record, he has two motoring matters and two cautions. He is assessed as being at a low likelihood of reoffending and there are strong protective factors in his current situation, which includes family support, his full-time employment, the fact that he has no unsupervised contact with his children, which he has voluntarily arranged, he does not take drugs, there is no recent offending and he says that he is willing to work with probation and social services. There are no further matters pending. Probation do not believe that probation supervision is required for this defendant.

[47] I have been provided with three references from family members on behalf of the defendant. They all speak of a quiet and well-mannered person, who is reliable and hard working. I have no reason to doubt those statements, which all accord with the probation assessment of the defendant. The three statements refer to the bond between the defendant and JP; that he spends time at the weekend washing and drying her hair and trying to style it; his aunt talks of the deep love that he demonstrates for JP; his wife talks of the time that he spent on holiday with JP in Spain, playing with her for hours in the swimming pool. I am told that, as a family, the defendant has taken JP to Disney.

[48] The Probation Board have not identified any need for probation supervision with the defendant.

Victim impact

[49] I have a statement from a social worker, Ciara Stitt, with the Children with Disability Team summarising the position of JP as of 2023. She has a diagnosis of progressive cerebral palsy, epilepsy, brain injury and autism. She attends a Special

School and requires specialist therapies in this setting including OT, physiotherapy and speech and language therapy. She can engage in injurious head banging when her requests are not met. She has issues with mobility and requires the use of a wheelchair when in the community. This is likely to decline over the years due to the progressive effect of her cerebral palsy. She cannot access upstairs and she needs assistance with washing and eating and drinking. She is non-verbal, can have poor sleep and needs support to engage in play. Her conditions are life long and progressive.

[50] I also have a statement from KP. JP continues to suffer from seizures, she is difficult to get to sleep. She has developmental delay, she is almost nine but has the mental age of a two-year-old. She is becoming difficult to manage. She walks with a limp and requires a wheelchair for longer distances. She remains non-verbal and is incontinent. KP had to leave work to care for JP full time. The strain of this long running case is set out. KP acknowledges that the defendant has regular contact with both children. They visit him once a week for four hours and then once a week over night. Her statement is a poignant one. She clearly explains the impact of the injuries on JP and her life but expresses no bitterness towards the defendant.

Sentencing principles for cases of this nature

[51] I have been referred to *R v Orr* [1990] NI 287, *R v Mitchell* [2005] NICA 30, and two first instance decisions of *R v Anderson* [2011] NICC 28 and *R v LG* [2023] NICC 13.

[52] In *R v Orr* the appellant was 18 years old and was convicted of a section 20 offence against his six-week-old daughter. He had been left to care for the child but then phoned his father to say that the child had sustained an injury, the child was immediately taken to hospital. There was a fractured clavicle, fingertip bruising and contusion to the brain. The child suffered seizures, but at the time of sentencing it was not clear whether there would be a brain injury resulting in long term sequelae. In interview the defendant admitted dropping the child, which he suggested was the cause of the injuries. The matter proceeded to trial and he was convicted by the jury. He had a previous criminal record which included a number of convictions for shop-lifting and burglary, three convictions for possessing an offensive weapon in public and two assaults occasioning actual bodily harm. On behalf of the appellant, it was accepted that there had been a momentary loss of control. The appellant did not seek to hide the fact that the baby had been injured but had taken the child immediately to hospital, although he had then given a false account. At that time the maximum sentence was five years' imprisonment. The court said:

“In this case we think it would be helpful to state our views as to the factors which a judge seeking to determine the appropriate sentence in a case of this kind should bear in mind.

1. Cases of serious injury to a young child giving rise to a conviction under section 20 must always be classified as serious cases and those under section 18 will be treated as even more serious as a conviction under the latter section presupposes an intention to injure. In nearly all cases an immediate custodial sentence will be inevitable.

2. One very important feature of cases of this nature is the need for the courts to protect little children and to deter those parents and others who might cause them serious physical injury. This court agrees with the principle stated by the Court of Appeal in England in *R v Boswell* [1982] 4 CAR(S) 317 at 318:

‘But where one has a helpless child, only a few weeks old, the only protection which can be given to such a helpless infant is that the law steps in and makes it quite plain that such cases like this have to be met with severe sentences.’

3. A plea of guilty will always be a most significant factor because it will indicate remorse on the part of the accused. In this case the attitude of the applicant to the offence remains, we are told, that it was an accident. This attitude on the part of the applicant concerns us, as no doubt it did the trial judge.

4. Subject to one qualification we consider that the guideline observations of Lord Lane in *R v Durkin* [1989] 11 CAR(S) 313 at 315 are most helpful:

‘It is perhaps worthwhile to pause for a moment to consider the basis upon which the Court must try to arrive at the proper sentence in cases such as these, which are amongst the most difficult which a judge has to deal with so far as sentencing is concerned.

First of all, it is necessary of course to punish someone who has committed this sort of offence.

Secondly, it is necessary to provide some sort of expiation of the offence for the defendant.

Thirdly; it is necessary to satisfy the public conscience.

Fourthly, there is the necessity to deter others from committing this sort of offence, by making it clear that this sort of behaviour will result in condign punishment.

So far as the last matter is concerned, a sudden loss of temper case like this, deterrence of others does not come into it. Certainly, so far as this man is concerned, we are quite satisfied that he will never do anything like this again. So there is left the question of punishment and the question of the public conscience. What is the least sentence which in those circumstances is required?’

We have some difficulty, with respect, in understanding how the deterrent element in a sentence does not come into a sudden loss of temper case - in our opinion little children do require to be protected from ill-tempered adults and the public should be made aware of this and should realise that ill-temper will not be accepted as an exculpatory explanation.

5. Cases of repeated assault are much more serious than a single incident. We would adopt what Lord Lane said in *R v Gayle* [1989] 11 CAR (S) 435 at 436:

‘As has been said on other occasions, these cases of assaults on little children present notoriously difficult problems for the sentencing court. One of the most important considerations so far as the extent of punishment is concerned is the degree of persistence with which the attacks were committed. A single act arising out of a momentary loss of control, precipitated no doubt by the child’s aggravating behaviour, is one thing. A series of assaults committed on separate occasions is quite another. The former is to some degree forgivable: the latter can regrettably excite little sympathy.’”

[53] In *Orr* the Court of Appeal decided to follow the sentencing range that had been set down in a number of carefully considered decisions in England and Wales.

The court said that there was no reason why there should be a different range of sentences in Northern Ireland unless local circumstances indicated the stiffer sentences were required. The court imposed a sentence of three years' detention in a Young Offenders Centre.

[54] *Mitchell* was an unusual case. The defendant was initially charged with section 18 but pleaded guilty to section 20 as soon as the reduced charge was made available. The defendant had had an appalling life, she had been abused as a child, raised in care and suffered from a personality disorder. Six of her children had been taken into care by social services and it was the court's view that she was totally incapable of dealing with modern life rather than being a criminal person in the conventional sense of the word. A medication change was found to have been a precipitating factor in her actions. The case involved her child, then aged 11 months. The child was found to have eight rib fractures. The defendant provided unrealistic explanations as to how they might have been accidentally caused, but in interview admitted to the police that the child had been crying, she had been unable to soothe him, she lost control and she shook the child. She said this went on for about 20 seconds but she had not intended any harm.

[55] She had previous convictions including one for common assault of another child, for which she had received a conditional discharge. The court said that it had no doubt as to her remorse and that she had already paid a high price in the loss of her family. The court considered the decision in *Orr* and commended it to other sentencing judges, including the determination that deterrence was required in these sentences. The court said:

"In deciding which sentence is appropriate one must therefore start, as a matter of principle, from the position that an immediate custodial sentence will nearly always be inevitable."

[56] However, in that case, the court was able to conclude that it was dealing with an exceptional case. The court was influenced by the defendant's personality disorder and the withdrawal of her medication immediately prior to the incident. The court imposed a sentence of 15 months' imprisonment suspended for two years.

[57] In *Anderson* the defendant was convicted by a jury of a section 20 offence, the trial had initially commenced as a section 18. He was also convicted of child neglect. The defendant was 27 years of age. The victim was his child, then aged five months. The child's mother had been away at a driving lesson, but when she returned, she found the child unwell. The child was taken to hospital where a brain haemorrhage was found, the child required intensive care treatment. The child was transferred by air ambulance to London. There was significant brain damage. The child was blind with quadriplegic cerebral palsy. The doctors had said that it was important for them to know what had happened to the child, they were considering other possibilities, such as sepsis. The defendant said nothing.

[58] The child had been in the sole care of the defendant when the injury took place. He initially denied knowledge of anything untoward having happened. Although the defendant contested the charges, he did not give evidence at trial. The defendant had previous convictions but none of relevance and none for violence. By the time of sentencing the maximum sentence for section 20 had been raised to seven years in this jurisdiction but remained five years in England and Wales. The sentencing court considered the decision in *Orr*. The court found no genuine remorse on the part of the defendant and aggravation in terms of the failure to seek immediate medical evidence, although there was no suggestion that the delay had caused a change in the ultimate condition of the child. The court sentenced the defendant to five years' imprisonment.

[59] In *LG*, the same judge dealt with a very different case. This defendant was 39 and the victim 12 weeks old, he was the first child of the defendant and his wife. On the day of the offence a telephone call was made the emergency services. The child was not breathing and the defendant himself carried out CPR on the child. The child had suffered retinal haemorrhages. There were extensive subdural and subarachnoid haemorrhages. The victim was left with an acquired brain injury and disordered movement of all four limbs with cerebral palsy. He was effectively blind and profoundly disabled. The defendant initially pleaded not guilty but rearraigned and pleaded guilty. He had a clear criminal record. He admitted to probation that he had held the child and shook the child for a moment. He accepted that this had been a deliberate act but said that he had no thought that he might injure the child. He had no history of violence or aggression and was at a low likelihood of further offending.

[60] He had immediately contacted the emergency services and sought assistance for the victim. The court concluded that there was no doubt that since that night the defendant had continued acting as a loving father to the victim in many ways. The defendant remained an integral and indeed essential part of the package of care of the victim. Although he and the victim's mother were no longer together, she described him as making a huge difference to her and said that he was a big part of the life of their children. The defendant had reflected on his actions and accepted that what he did was wrong. The court had no doubt that there was a very substantial remorse. The court considered that without him it would be very much harder for the victim and his mother and their wider family. The court considered the decision in *Mitchell* and *Anderson*. The court said that five years' imprisonment was the type of sentence that the defendant would have received, had he contested the charge. The court concluded that the factual matrix of the case was exceptional and sentenced him to two years' suspended imprisonment.

The offence

[61] The level of culpability in this case must reflect the vulnerability of JP and the trust reposed in the defendant. I sentence on the basis that there was no prolonged shaking of JP but that it was enough to be obviously vigorous to a bystander, it was in all likelihood a momentary lapse, when one sets it against what the court knows

about the defendant's character. Culpability is moderate. This is an offence of high harm, the child received life changing injuries.

[62] Although these factors bear on the assessment of culpability and are not free standing, it is important to acknowledge the following aggravating factors:

- (i) Vulnerability of the victim, JP was only weeks old
- (ii) Breach of trust, the defendant was her father and she was placed in his sole care.
- (iii) Severity of injury – JP has suffered profound and lifelong injuries. She has been robbed of any prospect of a normal life

[63] This court finds the following mitigating factors:

- (i) Plea
- (ii) The good character of the defendant before and after this offence.

Dangerousness

[64] The offence in relation to which the defendant is to be sentenced is a specified violent offence pursuant to the Criminal Justice (NI) Order 2008. I have considered whether the defendant represents a significant risk to members of the public of serious harm occasioned by the commission of further specified offences. I have concluded that he does not. He has no record of violence.

Custody threshold

[65] The only appropriate starting point is one of custody. You shook a child, who was only weeks old and, in so doing, caused her irreparable harm, essentially robbing her of any chance of a normal life. I have no doubt that you regret and will always regret what you did and must surely be moved when you see your child and realise what you have done to her. However, your limited acceptance of responsibility makes it difficult to give you credit for remorse.

[66] I take into account your previous good character, there was nothing to suggest, even to you, that you would have been capable of such an action. I take into account your subsequent good record and the efforts that you have made to keep your other children safe. I take into account your current situation and the fact that imprisonment will have an impact on your wife. You have pleaded guilty, your comments to probation notwithstanding.

[67] I take into account that this is now a seven-year maximum sentence offence and was a five-year maximum sentence offence at the time of *Orr*. The minimum sentence

that is appropriate is one of four and a half years' imprisonment. You are entitled to a 20% reduction in sentence by reason of your plea. That results in a sentence of 43 months' imprisonment.

[68] I then have to consider delay.

[69] The issue for the court is whether there has been a breach of the defendant's article 6 right to trial in a reasonable time. By your denials you set the course of an investigation that would be complex and require multiple medical reports that would obviously take time. Nevertheless, a defendant who pleads not guilty is still entitled to trial in a reasonable time, even if they answer no questions at any stage. This offence occurred in 2017 and we are now nine years later. You are a young man with no record before or since and who has moved on with your life, getting married, starting a new family, getting a job and saving for a house, only now to have the consequences of your acts nine years ago visited upon you.

[70] I have read the prosecution chronology. There were regular steps taken, however the overall picture is of a slow investigation in which the cumulative effect is just far too slow a prosecution, particularly in the first six years of the case. So, I do find a failure to bring this case to trial in a reasonable period of time, amounting to a breach of the defendant's article 6 rights. I find this to be the type of case that does call for a reduction in sentence in consequence of the delay, and I have regard to the length of the delay and the defendant's record and subsequent lifestyle in assessing the appropriate response to the delay, which it seems to me must be at the upper end of reduction in sentence.

[71] Further, I consider the impact of any sentence that this court might impose on innocent third parties, for the reasons set out in *R v Petherick* and *R v Devlin* [2023] NICA 71. In that regard, I note the maintenance that the defendant pays to KP, in relation to both of their children and I note the care that the defendant affords to JP on a weekly basis. Those would both be lost to KP by the imprisonment of the defendant. I also note, not only the effect of imprisonment on the defendant's other children, but more particularly on JP herself, who would lose her father, with whom she has a strong bond, from her life for a period of time and for a reason that she would not comprehend.

[72] You will therefore be sentenced as follows:

Count 1 – section 20 – 2 years, 10 months.

Practical effect of sentence

[73] The next question is whether such a sentence must be of immediate imprisonment or can be suspended. As *Orr* sets out, this is a sentencing exercise that calls for deterrent sentences, and pursuant to the dicta of the Court of Appeal in a line

of cases, of which *Shauna Wilson* [2021] NICA 38, [2022] NIJB 116 is one, imprisonment should only be suspended in exceptional circumstances.

[74] The factors that I consider in this case are that this offence was a momentary loss of control, set against an otherwise pro-social background, the defendant continues to care for the victim and has paid a heavy price personally, in the constant reminder of what he has done to someone he clearly cares for, the damage that imprisonment would do to the victim and her circumstances, without any counterbalancing requirement to reform the defendant and the exceptional time that it has taken to bring this case to trial, during which time the defendant has sought to lead a blameless life.

[75] While none of these factors might be thought exceptional on its own and while I do struggle with the defendant's attitude to the causation of the injury to the victim, taken together, in what is a very difficult sentencing exercise and by the finest of margins, it seems to me that the interests of society, and the victim are best served by suspending the sentence and that these factors taken together do amount to exceptional circumstances.

[76] The sentence that I pass on you is one of two years 10 months' imprisonment suspended for four years. If in the next four years you commit any offence you will be brought back to court and it is likely that this sentence will be brought into operation.