

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)*

Delivered:	26.9.03
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**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

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**REFERENCE BY HER MAJESTY'S ATTORNEY GENERAL FOR  
NORTHERN IRELAND (NO 12 OF 2003) (JAMES SLOAN)**

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**Before: Carswell LCJ, Campbell LJ and Higgins J**

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**CARSWELL LCJ**

[1] The offender, a man now aged 39 years, pleaded guilty on the morning of trial before His Honour Judge Markey QC to a substantial number of charges of rape and indecent assaults committed on two girls, most of which took place while they were in their teens. On 25 June 2003 at Belfast Crown Court the judge sentenced him to seven years' imprisonment on each of the rape charges and two years on each of the indecent assault charges, to run concurrently, the effective sentence therefore being one of seven years. The Attorney General sought leave to refer the sentences to this court under section 36 of the Criminal Justice Act 1988, on the ground that they were unduly lenient. We gave leave at the hearing before us on 12 September 2003 and the hearing proceeded.

[2] The victims are half sisters, C, born on 16 June 1979 and E, born on 24 March 1985. When C was about eleven or twelve years of age the offender started to commit indecent assaults on her. He commenced by touching her genital area, and progressed to digital penetration. When she was aged fourteen he first had sexual intercourse with her, against her will, which caused her pain and distress. From then until she was seventeen he constantly compelled her to have intercourse with him at various places. By that time she had commenced to live with her boyfriend, but the offender continued to have sexual intercourse with her, albeit on a reduced frequency. On one occasion when she was sixteen he compelled her to commit an act of fellatio on him and ejaculated in her mouth. The offender regularly gave her sums of money and at Christmas and birthdays bought her expensive presents.

[3] The same pattern of offending occurred with E from the age of twelve until she was sixteen. From the time when she was thirteen he had regular and frequent intercourse with her. He gave her money and presents and on one occasion paid for her to have a holiday in Bulgaria.

[4] The offender told the victims not to tell anyone about the offences and they did not come to light until 2001, when he was still committing them against E. The victims informed their mother and sister, who confronted the offender. He made admissions to them, though he may have intended later to deny either that he made them or to claim that they were the result of coercion.

[5] The offender was charged with six specimen counts and one specific count of indecent assault against C and fourteen specimen counts of rape against her. He was charged with five specimen counts of indecent assault and nine specimen counts of rape against E. He denied all the charges at interview and maintained a plea of not guilty up to the time when the jury was sworn for his trial, when he changed his plea to guilty of all charges.

[6] The effect of the abuse on the victims has been serious. Both started from a rather weak emotional base, and the abuse has caused a deterioration in the emotional health of each girl which will take time, perhaps a long time, to retrieve. Each victim was seen earlier this year by Dr Alice Swann, who reported on them in May. C had an unhappy and disturbed childhood, and the abuse took place when she was young and vulnerable. She has a very strong sense of betrayal and stigmatisation as a consequence of the offences. She has abused drugs and alcohol to a material extent, which Dr Swann also attributes to the offences. She has suffered from anxiety and fear, with sleep problems, flashbacks, decrease in appetite and some sexual difficulties. Dr Swann expressed her conclusion about the long term prognosis as follows:

“6.1 It is my opinion that the long-term prognosis for [C] ultimately is fairly good. However, it will be a significant period of time before she has a significant recovery and I predict that she will need professional input from time to time. She does have good insight and, if she can develop positive relationships and be able to put a barrier up with the relationships that are destructive, she should progress well. I would commend her for her courage in the manner in which she has sought to address these issues.”

[7] E had difficulty in describing the effects of the abuse, but Dr Swann had no doubt that she had been affected. She had a strong sense of self-blame in the past and suffered from anxiety and fear, with some sleeplessness and eating problems. Dr Swann expressed her view of the long term prognosis as follows:

“6.1 [E] is making very slow progress. I am not surprised that she feels worse following the court case, but hopefully that will begin to settle.

6.2 However, I do feel her prognosis ultimately is only fair. She does not seem to have much emotional strength and, because of the difficulties within the family, it is difficult for her to get the support that she needs. I do feel that it will be a long time before she has a measure of recovery.”

[8] The offender has a fairly extensive criminal record going back to 1979, mostly involving road traffic offences, but with some convictions for offences of dishonesty, one concerning assaults and one involving drugs. There were no sexual offences on his record. He had a good work record until his arrest in March 2003. The opinion expressed by the probation officer in her presentence report gave us some cause for concern, and we must quote extensively from the report:

“In discussion the defendant accepts responsibility for the offences as outlined in the depositions acknowledging the unlawful nature of his actions given the young age of the victims. He nevertheless struggled with offering any explanation for his actions attributing his own need for sexual gratification as the main motivating factor. The defendant had difficulty identifying antecedents to his offending behaviour or for repeated offending given his initial realisation that his actions were unlawful. Knowing the actions were unlawful it is my view the defendant’s own need for sexual gratification overrode any feelings of concern for his victim or family.

In interview Jim Sloan expresses remorse for his actions demonstrating some insight into the immediate and long term impact they would have

for his [victims]. He is aware of the stress and anxiety his offending has caused for his wife ...

The defendant informs me that his remand in custody has been a salutary experience for him, and has triggered him to think more clearly about the seriousness of his actions and the long term impact they may have for his victims. I understand he has made enquiries within the prison regarding a counselling service recognising that he requires assistance to begin to address the seriousness of this offending behaviour.

### **Risk of Harm To The Public And Likelihood Of Re-offending**

Given the

- Seriousness of the present offences
- the repetitive nature of the present offences
- the defendant's lack of insight into antecedents to his offending
- history of drug misuse
- previous convictions for violent offending
- limited victim awareness

he is considered to be at high risk of reoffending. The defendant's willingness to accept responsibility for committing the present offences and to participate in an appropriate treatment programme both while in prison and on his release from custody are factors which would serve to somewhat reduce this risk.

Given the seriousness and the extent of the charges being faced by the defendant and lack of internal strategies which would prevent his involvement in further similar offending he is in my assessment considered to be at risk of harm to the public."

[9] Evidence was given to the court by the offender's wife about the effect on her and her family. She has stood by him, but this has caused a rift with her mother and siblings, to whom she had been close. She and her children have suffered abuse and attacks in consequence of the offender's conviction, and the financial consequences of his imprisonment and her inability to continue working have been severe.

[10] In his sentencing remarks the judge said that if the offender had not pleaded guilty and saved the victims from having to give evidence he would have imposed an extremely swingeing sentence. He was as merciful as he could be in the circumstances, and imposed an effective sentence of seven years' imprisonment, ordering that the offender be subject to the licence requirements of Article 26 of the Criminal Justice (Northern Ireland) Order 1996 following his release.

[11] In paragraph 4 of the reference the Attorney General set out the aggravating factors:

- “(a) The victims were very young when the offences commenced.
- (b) The conduct persisted over a period of approximately 10 years.
- (c) There was more than one victim.
- (d) The victims were groomed with offers of money and presents.
- (e) The Defendant inserted himself into a position of trust in order to commit the offences.
- (f) The course of conduct of the Defendant demonstrated premeditation and careful planning in the execution of the offences.
- (g) Each of the victims sustained very considerable damage as a result of the offences.
- (h) The Defendant has a criminal record and some of the offences were committed when he was subject to suspended sentences in relation to dishonesty offences and drugs offences.”

The mitigating factors were listed in paragraph 5:

- “(a) The Defendant pleaded guilty albeit only at the last moment when the jury had been sworn.

- (b) Although the Defendant had a criminal record he had a good work record.
- (c) As a result of the detection of the offences the Defendant's wife and children have been subject to criminal damage attacks and abusive letters."

[12] Mr Morgan QC submitted on behalf of the Attorney General that the sentences of seven years for rape were unduly lenient, given the seriousness of the offences, the risk to the public and the late plea of guilty. He drew to our attention the fact that all of the indecent assaults were committed after the maximum sentence was raised from two to ten years and submitted that the sentences on these counts were altogether too low.

[13] Mr Donaldson QC for the offender maintained that the plea of guilty was unexpected, the offender having denied his guilt throughout the investigation, and submitted that he should receive full credit for the plea. The offender was fully remorseful and this should be taken into account as a further mitigating factor.

[14] The levels of sentences for rape were reviewed recently by the English Court of Appeal in *R v Millberry and others* [2003] 2All ER 939. The court approved the advice given by the Sentencing Advisory Panel in May 2002. In its advice the Panel set out the three dimensions to consider in assessing the gravity of an offence of rape, the degree of harm to the victim, the level of culpability of the offender and the level of risk to society, an approach approved by the court. In paragraph 36 of its advice the Panel endorsed the length of sentence of 15 years as the starting point for a campaign of rape and proposed that it should apply to cases where the offender has repeatedly raped the same victim over a course of time, as well as to those involving multiple victims. This advice was specifically accepted by the court at paragraph 22 of its judgment. The court also dealt with the discount to be given for a plea of guilty, which has always been recognised as especially important where it saves the victims from the ordeal of having to give evidence. It stressed that the maximum credit should only be given for a timely guilty plea.

[15] It is right to observe that the levels of sentencing in rape cases have historically been higher in this jurisdiction than in England, which was confirmed by this court in *R v McDonald* [1989] NI 37 and subsequent cases.

[16] We have to regard this as a very serious case of child abuse. We are unable to accept at face value the proposition advanced by the offender's counsel that he did not plan a campaign of abuse of the sisters, but drifted into the offences and kept repeating them. This does not in our view fit the

facts and the chronology of indecent assault, followed in respect of each girl by rape when she reached her early teens, nor does it square with the regular pattern of presents, which seems to us to be a clear indication of deliberate grooming of his victims.

[17] As we have regularly said, sentencing is not a mathematical exercise and there is limited value to be obtained from comparing and analysing numbers of reported cases. The sentencer has to look at the quality of the acts committed by the offender and determine by reference to the generally accepted parameters of sentences for the type of offence where the case should lie. We have no hesitation in holding that on the facts of this case the proper sentence on a contest would have been a heavy one. We even gave consideration to the possibility that the circumstances justified the imposition of an indeterminate life sentence with a specified minimum term, because of the continuing risk presented by the offender. We eventually decided against this course, on the ground that the risk fell short of the level required (see the discussion in the judgment of Hutton LCJ in *R v McDonald* [1989] NI 37 at 45-6). It is clear, however, that the case requires a lengthy determinate sentence, together with the protection to the public afforded by the licence provisions of Article 26 of the Criminal Justice (Northern Ireland) Order 1996. In our judgment the proper sentence on the rape counts on a contest would have been of the order of fifteen years, while the indecent assault counts should have attracted a sentence of seven years.

[18] The proper discount for pleas of guilty was debated during the hearing of the reference before us. We are conscious of the importance of giving a significant discount in the case of sexual offences in order to recognise the relief from strain and distress if the victims do not have to face the ordeal of giving evidence. Where, as here, the plea of guilty is entered at the last minute, for whatever reason, the victims will be spared some of that strain and distress, but by no means to the same extent as they should. It is universally accepted that the discount should be materially less in such cases. We consider that the proper sentences on the facts of the present case would have been of the order of twelve years and five years respectively for the rapes and indecent assaults.

[19] We are accordingly satisfied that the sentences imposed were unduly lenient and we shall quash them. Taking into account the element of double jeopardy, we shall substitute sentences of ten years on the rape counts and four years on the indecent assault counts, all to be concurrent. We affirm the order made under Article 26 of the 1996 Order. The Secretary of State has power under Article 26(3) to impose conditions on the licence, and we have no doubt that he will consider the recommendation contained in the pre-sentence report that the offender be required to attend and actively participate in a sex offenders programme.