

**Neutral Citation No [2012] NICC 23**

Ref:

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

Delivered: **13/06/12**

**IN THE CROWN COURT SITTING IN DUNGANNON**

**CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND**

**APPLICANT**

**And**

**JAMES FRANCIS McDERMOTT**

**RESPONDENT**

**CHIEF CONSTABLE OF THE POLICE SERVICE OF NORTHERN IRELAND**

**APPLICANT**

**And**

**OWEN ROE McDERMOTT**

**RESPONDENT**

**HIS HONOUR JUDGE MCFARLAND**

- [1] The Chief Constable of the Police Service of Northern Ireland has applied to vary Sexual Offences Prevention Orders (“SOPOs”) made in respect of James Francis McDermott and Owen Roe McDermott on the 18<sup>th</sup> June 2010.
- [2] The Respondents are brothers and were charged on the same indictment with numerous counts of a sexual nature. Both were held by the Court to be not fit to plead, and a jury subsequently found that they had committed the

sexual acts as alleged against them. In James Francis McDermott's case these were four indecent assaults against a male child, four acts of gross indecency against a second male child, and four acts of gross indecency against a third male child. In Owen Roe McDermott's case these were two indecent assaults against a female child, two indecent assaults and the attempted rape of another female child, and an indecent assault of a male child.

- [3] On the 18<sup>th</sup> June 2010 both Respondents received a Treatment and Supervision Order for a period of 2 years, and in addition they were each made the subject of SOPOs until further order. They were also subject to the notification requirements under the Sexual Offences Act 2003 for life. The terms of the SOPOs were that they were prohibited from having any unsupervised access to, or any association with, any person under 16 years unless an assessment has been carried out by Social Services and it approves in writing of such association; prohibited from being in areas of Donagh village designated on a map attached to the SOPO, save that they were allowed onto the premises of St. Patrick's GAA Club only in the constant presence of an adult approved of in writing by Social Services; and prohibited from undertaking any activity in a paid, private voluntary or charitable capacity which offers them access to any persons under 16 years.
- [4] Although there is a substantial degree of common evidence and similar background relating to the two brothers and their respective cases, each was made the subject of a separate SOPO, the applications to vary the SOPOs are separate applications and each case has been looked at separately. For convenience only this judgment covers both applications.
- [5] On making the initial SOPOs the Court was satisfied that it was necessary to make the orders for the purpose of protecting the public or any particular members of the public from serious sexual harm from the Respondents (s. 104(1)(b) Sexual Offences Act 2003). The application to vary is made under s.108 of the 2003 Act and the Court can only vary if it is again shown that it is necessary for the protection of the public or particular members of the public from serious sexual harm from the offenders.
- [6] When considering this issue a Court should ask itself the following questions:
- Is the making of an order (or in this case the variation of an existing order) necessary to protect the public from serious sexual harm through the commission of further similar offences?
  - If some order or variation is necessary, are the terms proposed nevertheless oppressive?
  - Overall, are the terms proportionate?  
(see **R -v- Smith & others [2011] EWCA Crim 1772**)
- [7] The Applicant's case is that both Respondents were made the subject of Supervision and Treatment Orders for the maximum permitted period of 2

years. Those Orders contained provisions that each Respondent reside at an address approved by their supervising officer. The Orders will expire on the 18<sup>th</sup> June 2012 and in order to protect the public from serious sexual harm it is necessary and proportionate that the SOPOs be varied to include a term that they be prohibited from living at an address other than one accepted as suitable by their designated risk manager. The notification requirement only requires the Respondents to advise the police of any new place of residence. It is unlikely that either will return to live in the village of Donagh so any new residence will be in a foreign environment with neither, given their limited intellectual ability, able to cope.

- [8] Mr. Reel, who represented the interest of both Respondents emphasised the need for the Court to consider the necessity to make the variation in light of the current position as reported to the court in the reports of Mr. Paul Quinn (in the case of James McDermott) and Mr. Niall Houghton (in the case of Owen Roe McDermott). In addition he questioned the nature of the prohibition which was in essence a mandatory requirement and therefore should not be part of a SOPO which must contain prohibitions.
- [9] In the case of both brothers, an earlier report from Dr. Michael Curran, Consultant Psychiatrist referred to the need for supervision and therapeutic intervention which he expected to extend over years. In making the Treatment and Supervision Order I indicated that I would have preferred to make such an Order for longer than the permitted 2 years, as there was a clear identifiable need to provide supervision and treatment to both the Respondents.
- [10] The reports of Messrs. Quinn and Houghton provide some background to what has happened to each Respondent over the past 2 years, and each gives an assessment of the current position. The contents of the reports are confidential in nature and I do not propose to quote extensively from them.
- [11] James McDermott is 62 and he engaged in this criminal conduct between 1969 and 1985. There is no reported repeat activity since this period. After the Treatment and Supervision Order there is a moderate risk of repeat activity. He is now considered compliant with the supervision and support services as well as court orders, residential rules and attendance at appointments. Mr. Quinn's assessment is that he remains of moderate to low risk of re-offending in the future, but that the current placement largely compensates for any remaining risk. Mr. Quinn is of the view that any new environment will require a further detailed assessment.
- [12] Whilst the general content of this report is positive, there are remaining concerns particularly as James McDermott has been virtually cocooned within the very safe and supervised environment of his present placement. This environment has the potential to change after the 18<sup>th</sup> June 2012. I consider in

the circumstances there remains a necessity to continue to protect the public from serious sexual harm.

- [13] Owen Roe McDermott is 55. He has also showed good compliant behaviour in what has been described as virtual 100% staff supervision. The assessment of Mr. Houghton is that he remains at the least a moderate risk and still presents with moderate dynamic risk factors. The potential of a change of environment is also regarded as a negative factor. After 18<sup>th</sup> June 2012 Owen Roe McDermott will also be free of any restraints under the Treatment and Supervision Treatment Order. As with his brother, there remains a necessity to continue to protect the public from serious sexual harm.
- [14] The proposed variation will prohibit either Respondent from living at an address unless approved by his risk manager. I consider that such an order is necessary as there remains a great uncertainty about where either will live after 18<sup>th</sup> June 2012, and what further risk they might pose. There is a requirement under the notification requirements to notify the police of any new address, although that would only go so far. It would, if complied with, alert the police to a new address.
- [15] I have considered whether the suggested prohibition is in reality a mandatory requirement. Some care needs to be taken when considering this type of order, but courts have declined to hold that such prohibitions are unlawful (see Para 29.17 Rook and Ward - Sexual Offences Law & Practice 4<sup>th</sup> edition). The authors suggest that there must be shown to be a demonstrated need for such an order. I believe that there is in this case. Both Respondents have a very low IQ. Both have committed multiple indecent acts in the past, and although they have responded well to the very strict supervisory role imposed over the last 2 years, this could now stop and any supervision will be on a voluntary basis. There is a risk that they will move to a new environment outside the direct supervision of the current regime and create a manifestly uncertain situation exposing children to risk in such a new locality.
- [16] Given the background to this case and given the nature of the regime that they have been living under for the last 2 years a requirement that they not live at an address unless approved by their risk manager is not oppressive or disproportionate. Should a situation arise in the future when compliance with this prohibition is potentially oppressive or disproportionate then it would be open to the Respondents to apply to the court to vary the SOPO.
- [17] In each case I grant the variation sought.