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Judgment: approved by the court for handing down (subject to editorial corrections) *	**Delivered: 21/04/2023**

IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT LAGANSIDE

THE KING

v

THOMAS McKENNA

HER HONOUR JUDGE SMYTH

Introduction

[1] You are to be sentenced for a campaign of sexual offending which spanned almost 30 years. You targeted boys and young men, 23 in total, manipulating them to the point where they felt utterly powerless and unable to disclose what you had done. The psychological harm that you have inflicted is immeasurable and there is no sentence that this court can pass that will repair that damage.

[2] At the outset, I want to acknowledge the victims whose names do not appear on any charge on the indictment. They are the parents who entrusted their children to your care. They wanted their children to take every opportunity to succeed in life and in the small community of Crossmaglen, GAA and in particular, Crossmaglen Rangers Club was the bedrock.

[3] You manipulated those parents just as you manipulated their children. You befriended them, disguising your true nature under the mask of respectability. You were the post man, a director in the credit union and part of the very fabric of the club. It is the experience of these courts that there is no stereotypical perpetrator of sexual abuse and that sexual offences can take place in almost any circumstances. It is a myth that child abusers are loners or strangers or people instinctively to be avoided. In truth, as this case demonstrates, they are people to whom you would entrust your life. No parent bears any responsibility for the harm that their children have suffered. They, and their sons are completely blameless.

[4] The control that you exercised over these boys and young men for decades, did not end when you were finally caught. The way in which you chose to defend these charges is further evidence of that coercion. In respect of many of the charges, you denied that anything of a sexual nature had occurred, accusing your victims of lying and fabricating accounts in an attempt to harm you. In respect of many other charges, you alleged that the sexual activity was consensual. There was a third aspect to your lying defence, namely that innocent horseplay had been misinterpreted as inappropriate behaviour. Every aspect of your defence was an attempt to continue the psychological power games you had played for years.

The impact on the victims

[5] Before I deal with the charges and the nature of your offending, I turn to the young men who have survived the abuse and who have written to me to explain the impact it has had on every aspect of their lives. A mother, a father and a wife have also written to me. It may offer some comfort if I say that none of the men are alone in feeling fear, anxiety and hopelessness. So many described those emotions, along with a loss of trust in people generally caused by being forced to lie to parents and close partners in order to conceal the abuse. Some relationships ended and some may never recover. Addiction issues have been endured, suicide attempts made, intimacy in personal relationships affected, education disrupted, lifetime events such as weddings, marred by your presence, a necessary pretence, and the delight at so many Gaelic successes is now absent because all are reminders of the abuse.

[6] A sense of guilt and shame permeates many of the accounts. Guilt that it happened, young men tortured with thoughts that they were somehow to blame, when in truth they bear no responsibility. Guilt that it was not disclosed for years, haunting many of these young men that they might have saved others from the same fate when the truth is that most victims do not disclose abuse immediately, and sometimes not at all. Guilt of loved ones that they did not spot what was happening, when the reality is that sexual abuse is almost always invisible. Shame that it was easier to initially defend the abuser than disclose the abuse when in truth this was a psychological response to trauma. Shame that images recorded covertly might be viewed by any number of strangers when in truth, this reflects only on the abuser.

[7] Amid the darkness of these emotions, some accounts express pride in the courage of each of you coming forward and refusing to back down despite the pain of disclosing intimate details and the obstacles placed in your way. One account describes pride that each of you is surviving, knowing what you have been through, despite the daily struggle. Many express relief that guilty pleas were entered although, as for many victims, that initial "euphoria", as it was described, fades and the abuse remains the reality.

The charges

[8] There are 162 charges which encompass six types of criminal offence :

(i) Indecent assault contrary to section 62 of the Offences Against the Person Act 1861, - maximum sentence 10 years.

(ii) Indecent assault on a male contrary to Article 21(1) of the Criminal Justice (NI) Order 2003 maximum sentence 10 years.

(iii) Sexual Assault contrary to Article 7(1) of the Sexual Offences (NI) Order 2008 – maximum sentence 10 years.

(iv) Sexual Assault by penetration contrary to section 6(1) of the Sexual Offences (NI) Order 2008 – maximum sentence life imprisonment.

(v) Gross Indecency contrary to section 22 of the Children and Young Persons Act (NI) 1968 – maximum sentence two years (28/7/2003 date of sentence increase).

(vi) Voyeurism – maximum sentence two years.

Ten of the original counts on the indictment were left on the books on the usual terms.

Two additional charges were taken into consideration relating to one of the victims. These were offences that occurred in RoI.

[9] The charges represent masturbating these young victims, performing oral sex upon them often to ejaculation, masturbating yourself, touching and squeezing their genitals, digitally penetrating anuses over and under clothing, simulating sex against them, kissing, and licking their genitals, kissing them, groping them, and grabbing their genitals. There are specific and specimen counts which means that some counts relate to repeated offending of the same type of behaviour, while others relate to a single occasion when a particular act was committed. Not all victims were subjected to the same abuse. I have set out the nature of the abuse in this way so as to ensure that the privacy of each victim is respected, but those bare facts do not reflect the enormity of the psychological harm you have caused.

[10] A single complaint that you were using your phone to take photographs of a player in the club was the catalyst for a tsunami of sexual complaints. You had refused to stay out of changing rooms after the initial complaint was made, justifying your behaviour, and brazenly alleging that complaints were motivated by ill-will. When your devices were seized, a large amount of images and videos depicting young men naked or partially clothed in various locations doing private acts such as washing, going to the toilet, or changing was discovered. There were also images of young men training and in social settings. The images appear to focus on the genitalia or bottoms of the males, and all appear to be recorded

covertly. They were created by you right up to the time of your arrest in 2018 and form the basis of the voyeurism counts.

[11] You befriended each of the victims as they progressed through the GAA club, building a rapport with them, recruiting many of them to help you carry out your duties as a postman as you travelled around in your van. They would be paid sums of money up to £30. You engaged in playful wrestling or playfighting with them which progressed to sexual touching, convincing them that this was part of "team building" or "team bonding" and that it was good enough for older team members who you named.

[12] You had a key to the Credit Union, carrying out offences after persuading your victims to help you with your duties. You carried out offences in the Gaelic club and there, you covertly recorded the young males for your own sexual gratification. You carried out offences in hotels when you were travelling with the club, at pubs and toilets, in Northern Ireland and in the Republic of Ireland, in your home and in the home of some the victims.

[13] You used sexualised language with many of the young males, buying alcohol for many of them, facilitating credit union loans and telling some of them that you could help their football careers and get them promoted to the senior team.

The aggravating factors

[14] It is accepted that there is a level of abuse over and above that which was perpetrated in this case. However, the sheer scale and duration of your offending elevates this case to an unprecedented level. The defence correctly point out the need to avoid double-counting of aggravating factors given that you fall to be sentenced for each of the offences. For that reason, many of the offences shall be concurrent and the total sentence shall reflect the overall seriousness of your offending taking account of the totality principle. As well as the scale and duration, the following are aggravating circumstances:

(i) You groomed and manipulated these boys and young men.

(ii) Some of them were particularly young and vulnerable for that reason.

(iii) You used your position within the community and the Club to provide you with opportunities for abuse.

(iv) You abused the trust that parents reposed in you to safeguard their children when involved in sporting activities.

(v) In relation to the voyeurism counts, videos as well as still images were recorded and stored and the nature of those images.

(vi) The very significant harm caused to the victims.

The PSR and Mitigation

[15] Both the prosecution and the defence on your behalf have highlighted portions of the Pre-Sentence Report ("PSR"). The prosecution draws attention to the probation officer's assessment that the sexual offending was ingrained in all parts of your life. You preyed on the vulnerabilities of the victims and the level of manipulation and control was such that abuse that had started in childhood continued in some instances into adulthood. Your approach to the abuse of potential victims, as recounted by you, is chilling - "if it worked out fine, if not go on to the next one." You spoke of your offending being out of control, getting an instant lift from sexual offending, which accords with some descriptions of you being frenzied when aroused and getting a kick from risk- taking behaviour.

[16] While you stated that you now recognise that the children would have been fearful and embarrassed, which stopped them telling anyone, you were completely indifferent to the harm you were causing for decades. The probation officer notes the clear evidence of sexual preoccupation over an extended period, and the fact that the abuse was only stopped by your arrest, is a particularly serious concern.

[17] The defence draw attention to your explanation in the PSR for your offending, namely your inability to accept your gay sexual orientation. You knew that you were gay from your teens but felt unable to reveal it due to cultural and religious influences. Even when emotional issues drove you to seek medical help, you could not bring yourself to reveal the true cause because the GP was from the community and was also a member of the club. When you began to take alcohol in your late 20s, its disinhibiting effect resulted in overtures towards adult males which were rebuffed leading you to use teenagers and young men to satisfy your sexual urges. It is ironic that while you felt that being gay was wrong, you do not appear to have had any compunction about sexually abusing children.

[18] The Probation Board for Northern Ireland ("PBNI") consider that you now have some awareness of the harm you have caused and that you have expressed a willingness to access counselling regarding your sexuality upon your release. You have expressed regret and appear to have some understanding of the reasons for your offending.

[19] You are 62 with a clear criminal record. Of course, that has to be seen in the context of serious offending over a period of almost 30 years. You had a full work history until your retirement and while it is correct that you were heavily involved in the community and the Club on a voluntary basis, it was that very involvement that provided you with a vehicle for your offending. What might have been regarded as important mitigation is very significantly diminished in this case.

The approach to sentencing

[20] In *Attorney General's Reference (No2 of 2001)* [2002] NIJB at 117 at 122a the court stated:

> "It is a prime function of criminal justice to impose condign punishment on those who attack vulnerable members of society in order to deter others from following their example."

That observation is of particular relevance to those who are entrusted with the care of young people in the context of voluntary sporting activities.

[21] Sentencing authorities in Northern Ireland have recently been considered in the DPP's Reference, *R v GT & HT* [2020] NICA 51 at paras [45]-[47] where the court referred to the guiding sentencing principles:

> "[45] Next, we turn our attention to certain unremarkable sentencing principles of application in cases of this kind. It is trite that every sentence must reflect the requirements of retribution and deterrence. During recent years the path which the sentencing of offenders for abhorrent sexual offences has taken has been informed by a combination of legislative intervention and judicial decision making. In this way the general considerations of retribution and deterrence have undergone some refinement and are now the subject of more focused analysis and attention. This has seen the emergence of a now entrenched sentencing principle that the court must consider *the degree of harm to the victim, the level of culpability of the offender and the risk posed by the offender to society*: see for example Attorney General's Reference Number 3 of 2006 *(Gilbert)* [2006] NICA 36 and, more recently, *R v GM* [2020] NICA 49 at [36].
> (emphasis added)
>
> [46] In similar vein it is instructive to recall this court's uncritical acceptance of the following submission made on behalf of the Attorney General in a case of indecent assault on a child:
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> > 'Counsel for the Attorney General submitted that the course taken by the judge was excessively lenient and that it failed to reflect the gravity of the offence, the need to deter others, the obligation to protect the most

> vulnerable members of society, the grave public concern and revulsion aroused by this type of offence and the importance of maintaining public confidence in the sentencing system. He pointed to the remarks of this court in Attorney General's Reference (No 3 of 2001) (2002, unreported) at p 8, where we placed renewed stress on the necessity for the courts to mark emphatically the abhorrence of acts of child abuse, which he submitted were, mutatis mutandis, entirely apposite to the present case and had not been taken into account by the judge…'
>
> [47] We consider that this passage enshrines well established sentencing principles to be applied in every case of this kind. This court is also alert to the radical statutory developments in the realm of the configuration of sexual offences and the marked increase in punishments which have been features of the past two decades in this jurisdiction."

[22] The appropriate sentence for art 6 penetrative offences has recently been considered in the Court of Appeal in *R v Byrne and Cash* [2020] NICA 16. In that case, the court stated as follows:

> "[14] It was common case that where the offence of digital penetration contrary to Article 6(1) of the 2008 Order is committed without aggravating or mitigating factors the appropriate sentence is two years. We agree and that conclusion is amply supported by the relevant case law. Of course, the starting point before making any allowance for a plea of guilty, has to take into account the aggravating and mitigating factors which could vary considerably in any such case. Where there were no aggravating factors, and the mitigation was very strong the appropriate sentence for this offence could be a determinate custodial sentence of 12 months."

[23] In this case, the digital penetration formed part of the campaign of sexual offending and the appropriate sentence must be seen in that context. Whilst every case is fact – specific and I have already referred to the unprecedented scale of offending in this case, I have been referred to the cases of *R v DO* [2006] NICA 7, the AG ref in 2005 re *Martin Kerr 2005* [NICA] 33, *R v Curran* [2013] NICA 1, and *R v Gerald O'Hara* [2021] NICA 1 which I have found of assistance. Each of those cases involved similar sentencing issues, multiple victims, multiple offences,

protracted offending, and breach of trust. The application of the totality principle, which is the vexed question in this case, is perhaps the most helpful aspect of all of those cases.

[24] The Prosecution submit, the offending in this case is such as to require the Court to consider consecutive sentences. In *R v DH [DPP Reference]* [2021] NICA 36, a case involving eight counts of rape, nine of indecent assault in respect of one complainant and one count of perverting the course of justice, Morgan LCJ, agreeing with the approach of the sentencing Judge said the following:

> "[12] The learned trial judge noted that he was dealing with multiple offences over a period of ten years. They involved indecent assaults, rapes and perverting the course of justice as an aggravating feature. He noted that the court could decide the sentence on a consecutive basis or concurrently. Either was appropriate providing the court applied the principles of totality of sentencing being commensurate with the behaviour which has been proved. Where there are multiple victims, the court considers consecutive sentences normally appropriate as it allows individual victims to know that the case was individually considered. We agree with this summary of the proper approach."

The question of dangerousness

[25] The relevant statutory provisions dealing with dangerousness are set out in Articles 13 to 15 of the Criminal Justice (Northern Ireland) Order 2008 and involves consideration of whether you pose a significant risk of serious harm by the commission of further specified offences to others in the future. The assessment of the PBNI is that the test has been met in your case. The delay in sentencing in this case was due to a specialist report being sought on your behalf, but in the event, none was relied upon, and the issue was conceded. In light of the nature of the offending, its circumstances and the information that is known about you, there is no question that you pose a danger to others, and young males in particular. (see *R v EB* [2010] NICA 40)

[26] In respect of those offences which, apart from these provisions would render you liable to a life sentence, I am required to determine whether the seriousness of these offences justifies such a sentence. If not, I must determine whether an Extended Custodial Sentence (ECS) would be adequate to protect the public from further specified offences. If I am not so satisfied, I must impose an Indeterminate Custodial Sentence (ICS). There is no dispute that a life sentence is not required and that an ECS would be adequate for the purpose of protecting the public. In light of your age, now 62, and the powers of the Parole Commissioners to refuse to release

you at the normal half-way point if you remain dangerous along with the protection offered by an extended licence period, I agree that an ECS is adequate.

The Appropriate Sentence

[27] The task is to pass a global sentence which takes account of the totality principle. Whether that global sentence is arrived at by consecutive or concurrent sentences is not material, so long as the sentence is just and appropriate in the circumstances. While it is normally appropriate to impose consecutive sentences where there are multiple victims, the outworking in this case, involving 23 victims, would result in disproportionately low sentences which would cause further distress to those who have already suffered so much.

[28] I intend to identify the global sentence which reflects your overall criminality and apply an appropriate reduction for your guilty pleas. I will then identify two groups of victims: those who were under 16 when the abuse began and those who were subjected to penetrative offences. All of those victims were subjected to a variety of sexual offences justifying a variety of individual sentences. In respect of some offences the maximum sentence that can be imposed is less than others.

[29] I will consider each victim in turn and in line with normal sentencing principles, impose a sentence on the most serious count which reflects the overall level of offending towards that victim, subject to totality, and all other counts shall be made concurrent. The overall sentence imposed in respect of those who were subjected to penetrative offences shall be consecutive to the overall sentence imposed in respect of those who were under 16 when the abuse began. Where a victim who was subjected to penetrative offences was also under 16 when the abuse began, I shall impose the full sentence on the most serious count. Overall sentences in respect of those who do not fall within either group shall be made concurrent.

[30] Your culpability is extremely high, the harm to your victims is very significant and the risks you pose to the community are reflected in the fact that you are a dangerous offender. The global starting point, before reduction for a plea, shall be 20 years in prison. The approach that I should take to reduction for a plea in a sexual offence case is set out in *R v GM* [2020] NICA 49, at [11]. At [10], the court referred to an observation in *R v Maughan and anor* [2019] NICA 98 at [70], later approved by the Supreme Court ([2022] UKSC 13) that:

> "A plea at the door of the court is likely to obtain a significantly lower discount. However, in circumstances where there is a late plea in a rape case, the benefits **may** lead to a greater discount than those available in other cases because the victim is saved from the particularly distressing emotional trauma of giving public evidence as to the circumstances of the offence …"

The court then said:

> "[11] We have highlighted the word "may" for the purpose of illuminating what this court considers to be the import of this passage in Maughan. We consider the correct analysis to be following:
>
> (a) The generally acknowledged credit, or discount, of up to 33% for a plea of guilty where an offender accepts his guilt at the first opportunity, is normally not available in cases where an offender is either "caught red-handed" or "the evidence is overwhelming."
>
> (b) However, there are no hard and fast rules. The reason for this is that the circumstances of every case are infinitely variable and the sentencing court is accorded a reasonable margin of appreciation accordingly.
>
> (c) Thus, in a rape case - and we consider, by extension, other cases of sexual offending - the benefits which are achieved or promoted by a plea of guilty may justify a more generous approach to the issue of credit for a late plea of guilty than in other cases.
>
> (d) The key word is "may." Whether an approach more generous than that generally applied is justified and appropriate will always be a matter for the discretion of the sentencing judge which will be exercised according to the particular facts and circumstances of the individual case."

[31] In this case, the prosecution submits that I should take into account the fact that you denied all allegations at interview, then made some very limited admissions in a police statement but continued to make false denials, admitted only the voyeurism counts along with four counts of sexual offending at arraignment and entered guilty pleas to the remainder of the counts very shortly before the first trial was about to begin.

[32] While the prosecution accepts that you did make earlier offers to plead guilty to fewer and less serious offences, it submits that this should not be taken into account in your favour because it resulted in widespread concern and offence to the victims.

[33] The defence submits that this is a case where a more generous approach to a reduction for a late plea is justified in light of the time and expense that has been saved in this particular case and the distress and anxiety that the victims have been spared. It is submitted that the complexities of this trial required time to work through the issues and the pleas should be seen in that context.

[34] It is correct that a number of the victims have spoken of their relief that the proceedings are concluded and that they have been fully vindicated. This trial would have attracted a great deal of public interest and the victims would have found the court process enormously distressing. The prosecution has gone to great lengths to protect the victims' confidentiality by using random cyphers to ensure that the description of the abuse that each victim has suffered remains private. That is an indicator of the degree to which a public hearing would have caused enormous additional distress.

[35] On the other hand, the lateness of the plea means that these young men had the spectre of a trial hanging over them for a very considerable period of time with the anxiety increasing as the date of the first trial loomed ever closer. Even for those involved in subsequent trials, the reality that these allegations were going to be contested would have impacted them significantly. I do not accept that the number of allegations is a reason for the delay in accepting guilt. You knew what you had done, and you decided to meet the allegations through a mix of denials, assertions of consensual relationships and innocent horseplay misinterpreted. Thereafter, you engaged in a calculated attempt to limit the inevitable punishment by partial and incremental offers to plead guilty.

[36] In all the circumstances, a reduction of 20% is appropriate. I reject the submission made on your behalf that there were triable issues in this case. Had you contested the charges, you would have given false instructions and challenged honest accounts from victims. If you had accepted your guilt at the outset, a reduction in sentence of at least 1/3 would have been allowed.

[37] I am passing an Extended Custodial Sentence (ECS) of 16 years with an extended licence period of seven years. That shall be made up as follows. The overall sentence in respect of those who you abused before they were 16 is eight years and the overall sentence in respect of those who suffered penetrative offences shall also be eight years, imposed consecutively. The overall sentence in respect of those who were both under 16 when the abuse began and who were subjected to penetrative offences shall be 16 years. The individual sentences in respect of each count will be provided in a separate annex to this judgment.

[38] This is not a normal sentence because the normal rules of remission do not apply. When you have served half of the sentence, the Parole Commissioners will consider whether you continue to be a dangerous offender. If so, you will remain in

custody until you are no longer deemed dangerous up to a period of 16 years. Thereafter, you will be subject to the additional licence period.

[39] You will be on the Sexual Offenders Register for life and your name be on the barred list for children and vulnerable adults. You are disqualified from working with children.

[40] There is an application for a Sexual Offences Prevention Order (SOPO), which, by agreement will be dealt with at a later stage.

[41] Finally, I would like to thank counsel for the prosecution and counsel for the defence for the very helpful way in which they have conducted this sentencing exercise. It has been of enormous assistance to the court.