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

Delivered: **17/5/2007**

IN THE CROWN COURT OF NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

v

FL

ICOS NOS 05/63233

HART J

[1] The defendant, to whom I shall refer in this judgment by his initials in order to protect the identity of the complainants, has been convicted of a total of 18 counts of various forms of sexual and physical assault upon two of his children. In order that their anonymity can be preserved I propose to refer to them simply by initials. As they coincidentally share the same initial I shall refer to the eldest as E and the younger as EL. Nothing must be published which would reveal their identity.

[2] The charges relating to E are contained in counts 10 to 18 and I shall deal with those first because they relate to the earlier episodes, and counts 1 to 9 relating to EL cover a later period of time. It is unnecessary to refer in particular detail to each offence because they have been exhaustively described and considered in the course of the two week trial. Nevertheless, it is necessary to summarise the allegations which the jury found to be proved. Accepting as the jury plainly did the account of events given by E the offences covered three periods. The earliest occasion that she remembered occurred on her sixth birthday, and these events are the subject of counts 10 and 11. The defendant made her sit on his knee in the presence of two of his male friends who were drunk, and slipped his finger into her vagina, saying that she was his special girl. That is count 10. After the men had left he then

proceeded to beat her all over with a belt, using such force that she felt sore and could not sit down. He said that this was because she was a naughty girl, she had disappointed him and she was to go to her bedroom. That is count 11.

[3] Counts 12 to 15 are specimen counts covering the years when she was 7, 8 and 9. During this period he took advantage of her mother being out at work 3 or 4 days a week to make her commit various sexual offences on him, and he committed offences on her. He made her masturbate him and take his penis in her mouth; he felt her vagina; he licked her vagina; he put his finger into her vagina; and, as she put it, "tried to suck breasts that were not there". During the 3 years that this conduct continued he also beat her and called her names such as "whore" and "slut", saying she deserved what she was getting for being such a bad girl. She described him as repeatedly striking her and making threats that if she told anyone he would kill her mother.

[4] The picture she described and which the jury plainly accepted was that when she was between the ages of 6 and 9 he was a physically violent man who constantly used her for sexual gratification, dominating her and her family with his violence. She was so used to all of this that she thought it was perfectly normal.

[5] There was then a break of about 2 years when the defendant left the family home and went to live with another woman. The second period started when he resumed contact and started taking her out, ostensibly to clean his flat or go to the cinema. In reality he gave her treats and took her to a flat in an estate in Newtownards occupied by a man he named. Other girls of school age went there too. She described how she was made to strip naked and get into bed with the girls, as would the accused and the owner of the flat. She was made to touch the girls' breasts and vaginal areas. That conduct is represented by count 16.

[6] There was then a further break of about a year when the defendant stopped seeing E. However, in or around 1988 when she was 15, she had a row with her mother and ran away to the defendant who was by this time living in a different estate in Newtownards. This is the third period. She described how he was glad to see her, but then took her out one night and got her very drunk and she remembered waking up in bed the next morning. She described how she felt severe abdominal pain and stickiness and wetness in her vaginal area. It was evident, as the jury has accepted by its verdict, that the accused got her drunk and then brought her back to the flat where he had intercourse with her. This is count 17. She described how over the next 2 months whenever he came in drunk he would order her upstairs, take her clothes off and have intercourse with her. These rapes are represented by count 18 which is a specimen count.

[7] The defendant's conduct towards E was brutal and exploitive throughout. It is an indication of the way in which he distorted and corrupted her childhood that although she was drinking heavily by the time she was staying with him in the flat in Newtownards, she nonetheless thought that what was happening to her was what happened when fathers loved their daughters. She told the jury that at that time she still loved him very much, although she felt numb about what was happening.

[8] EL is a stepdaughter of the defendant. She described how when she was aged 6 to 11 a pattern developed whereby he started rubbing her vagina, then putting his finger into her vagina. This progressed to his getting into bed beside her, getting her to place her hand upon his belly and then move it down towards his genitals. This conduct is the subject of counts 1 to 7 which include specimen counts. The defendant's behaviour culminated in a single episode of rape which is the subject of count 8. This occurred when she was aged about 11 and her mother was working late. She was in bed upstairs when the defendant came up and got into bed beside her. Despite her efforts to wriggle away he had intercourse with her.

[9] As in the case of E, EL was subjected to repeated physical violence over the years. Count 9, assault occasioning actual bodily harm, refers to an occasion when he took a stick to her and struck her on the right thigh with such force that, despite the fact that she was wearing trousers, the skin split leaving a noticeable, thin, scar some 4cm in length. Although this has healed well it has left a thin white mark on her right thigh in a clearly visible position if she were wearing clothing which exposed her legs. EL was therefore also subjected to several years of repeated violence and sexual abuse by the defendant, abuse which in her case culminated in a single episode of rape.

[10] E complained to the police about the defendant's conduct towards her in 1994, but, she said, she had withdrawn her complaint because the defendant threatened her. EL first reported these matters to the police when she was 14 in 1999. For reasons which were explored at the trial, she did not feel able to pursue the complaints at that time, and it was therefore not possible for the police to take proceedings in the absence of a formal complaint. She was only 14 at the time and it is perfectly understandable that in view of all that had happened, and the family background, that she did not feel strong enough to pursue the allegations at that time.

[11] These offences were grave and represented a systematic course of physical and sexual abuse of these women when they were young children. It is evident that the defendant's predilection was towards young girls, and this is borne out by his conviction in 1975 for indecent conduct towards a female child of an earlier marriage. During the trial the defendant asserted that he was unable to remember the details of this offence.

[12] The defendant has a substantial record for a wide range of offences going back to 1969, including several convictions for assaults of various kinds. These are common assault, aiding and abetting assault, and assault on the police, as well as assault occasioning actual bodily harm in 1986, and grievous bodily harm in 1990, although the last two convictions were dealt with by way of fines and were therefore presumably relatively minor matters. The same cannot be said of the last entry on his record which was a conviction for wounding with intent which resulted in a sentence of 10 months imprisonment. In addition there was the conviction in 1975 for indecent conduct towards another daughter. The previous sexual conviction and the assault convictions are, in my view, an aggravating feature of the case.

[13] It is evident from the evidence given during the trial that E and EL each had a very unhappy upbringing, and that these events have had a profound effect upon both of them. I have had the benefit of detailed and helpful reports on them prepared by Dr Loughrey, a consultant psychiatrist.

[14] In his report on EL Dr Loughrey refers to her psychiatric symptoms and describes at page 2 the symptoms of her unhappy adolescence to which she referred during the trial.

“I was just torn apart completely . . . my life wasn't my own”.

She began drinking heavily when she was fourteen years old. She took various overdoses, “for attention”, she cut her arms regularly, and she also engaged in various risk-taking behaviours, such as running out in front of cars. When she was fifteen years old she tried to hang herself, but she gave up on this because she was in such physical discomfort. She says her head felt as if it was bursting.

She felt depressed then. “I just cried a lot . . . not happy at all . . . I just wanted my life to end”.

[15] The relevant parts of his summary and opinion are as follows.

She developed first a PTSD-type syndrome, the problems including recurrent dreams, sleep disturbance, avoidance behaviour and heavy drinking, and later this became a syndrome of depression, for which she is receiving a fairly typical treatment package from her GP, i.e. antidepressants, tranquillisers, CPN contact and regular follow-up. The prognosis for her syndrome is for gradual and

slow settlement in time. This prognosis depends to some extent on the outcome of the Court case, and, importantly, on the integrity of the relationship with her partner. I expect long-term problems with her susceptibility to depression and a marked degree of sensitivity to reminders.

[16] In his report on E Dr Loughrey refers to her past psychiatric history, which he discusses in detail and describes as “quite extensive”. He expresses his opinion in the following passages.

She describes typical features of post-traumatic stress disorder, a number of which continue to this day, and some of which are now viewed in hindsight. The specific problems associated with PTSD include re-enactment dreams, anxious preoccupation, sleep disturbance, anxiety in response to reminders, heavy drinking in the past, which has now resolved, and a significant degree of active suppression of thinking about this, and of avoidance behaviour. As far as depression is concerned, this is reflected, in particular, in low self-esteem, frequent acts of self-harm, low mood, poor concentration and feelings of despair about the future. As time has gone by, her syndrome of PTSD, which had its onset in her childhood, merged with the onset of overt clinical depression in her late teens or thereabouts, and since then she has been subject to a combination of PTSD and depression, with the PTSD being a diminishing factor as time has gone by. This has been reflected in a slight improvement in her mental health as time has gone by, allowing for a considerable exacerbation around the time of the trial. I think the fact that she has gone through with the trial is indicative of a certain degree of recovery and restoration of composure as time has gone by, but she is still subject to an active syndrome of depression, for which treatment using various drugs has proved necessary.

The type of abuse which she suffered, taken in the context of her family background, is particularly toxic as far as adult psychiatric illness is concerned. Her syndrome of PTSD and depression with low self-esteem, marked loss of motivation and frequent suicidal ideas is unfortunately typical of one end of the spectrum of problems which is seen in

circumstances such as this. She is severely disabled by her mood disorder, and the prognosis for this disabling mental illness is for a slight improvement with the ending of the Court case (depending on the final disposal), and then a gradual recovery over time, which may be punctuated by a certain worsening if there is news of this man's release. She is going to find rearing teenage children to be somewhat challenging, but, in general terms, I think it is likely that she will show a significant degree of gradual recovery over the next several years. She will be vulnerable to episodes of depression long term.

[17] On a number of occasions in recent years the Court of Appeal in Northern Ireland has considered the level of sentences in cases of rape, particularly where there has been more than one victim, notably in the Attorney General's Reference Number 2 of 2004 (Daniel John O'Connell) [2004] NICA 15. At [18] the court referred to the proposal by the Sentencing Advisory Panel in England and Wales that a 15 year starting point should apply to cases where the offender had repeatedly raped the same victim over a course of time, as well as to those involving multiple victims, and at [20] confirmed that sentencers in Northern Ireland should apply this starting point. Mr McCollum QC for the prosecution also referred me to R v DO [2006] NICA 7. Mr Ramsey QC for the defendant accepted that these are relevant authorities.

[18] There are therefore a number of aggravating features in the present case.

- (1) There were two victims.
- (2) The offences in each case started when they were very young.
- (3) The offences involved a serious breach of trust on the part of the defendant.
- (4) The offences were accompanied by acts of violence.
- (5) The defendant has previous convictions for a sexual offence and for offences of violence.
- (6) In the case of E the offences that were committed during the 2 months or so that she lived with the defendant in the flat in Newtownards can be properly characterised as a campaign of rape because the offences were repeated over a significant period of time. These were represented by counts 17 and 18.
- (7) The effects on the victims have been particularly serious.

[19] The only matter which can be suggested as a mitigating feature of the case is the defendant's health. A report from Mr Alastair Graham, a

consultant Cardiac and Thoracic Surgeon, has been submitted on behalf of the defendant. Mr Graham says:

[L] has a clinical diagnosis of angina. As this has not been substantiated by invasive testing I cannot be sure that he does have coronary artery disease. However the likelihood is that he has. He has a number of risk factors including hypertension, smoking and peripheral vascular disease. I have no evidence that there is any immediate risk to his life but the presence of these risk factors mean that his life expectancy is reduced compared to the general population. He would require regular medical supervision. In my opinion this should entail check-ups by a doctor at intervals of approximately 3 months in an out patient setting. If his symptoms of chest pain were to become more frequent or persistent these would need to be immediately investigated.

The defendant is 55. Although he must receive a lengthy custodial sentence, in view of Mr Graham's opinion that his life expectancy is reduced I consider that as an act of mercy I should take this into account and make some reduction in the sentence he would otherwise receive.

[20] The nature and number of offences of which the defendant has been convicted, and his conviction in 1975 for indecent conduct towards another daughter, require me to consider a number of orders in addition to the sentences of imprisonment I am about to impose. The first is an order that after his release he be on licence subject to the provisions of Article 26 of the Criminal Justice (Northern Ireland) Order 1996. I am satisfied that such an order is appropriate because there is a high risk of his re-offending against young girls, and I make an order under Article 26. Because the offences were committed when the defendant was over 18 and the sentence I am about to impose is over 12 months I am also obliged to consider disqualifying him indefinitely from working with children under Article 23 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (the 2003 Order). It is unlikely that he would work with children, and such order would in any event duplicate the sexual offences prevention order I am about to make under s.104 of the Sexual Offences Act 2003. I do not consider that an order under the 2003 Order is necessary. The Pre Sentence Report refers to the possibility of a sexual offences prevention order, and because of the defendant's conduct over the years I am satisfied that it is appropriate to make an order under s.104 in order to protect young girls from serious sexual harm from him in the future after his release. I therefore order that the defendant shall not have access to any female child under the age of 17

without the consent of Social Services until further order. I limit the order to female children as there is no evidence to suggest that he is a risk to male children.

[21] So far as the indecent assaults on E are concerned, these were committed when the maximum sentence for such offences was two years imprisonment, and the sentences reflect that. It does not mean that the offences were any less serious than the indecent assaults perpetrated upon EL. When considering the total sentence upon the defendant for these offences I must have regard to the totality principle, that is that the total be proportionate to the defendant's overall criminality. This could be achieved by making some of the sentences consecutive, in which case the individual sentences may have to be reduced to ensure that the total is not excessive; or by making the sentences concurrent. I propose to adopt the latter course.

[22] Taking both the aggravating and mitigating factors into account I sentence the defendant as follows.

Counts 1, 2, 3, 4, 5, 6 and 7, seven years imprisonment on each count.

Count 8, rape, 16 years imprisonment.

Count 9, 1 years imprisonment.

Counts 10, 12, 13, 14, 15 and 16, two years imprisonment on each count.

Count 11, six months imprisonment.

Counts 17 and 18, rape, 16 years imprisonment on each count.

The sentences will be concurrent and the total sentence is therefore 16 years imprisonment. Had it not been for the defendant's state of health the total sentence would have been 18 years imprisonment. The defendant is subject to the notification requirements under the Sexual Offences Act 2003 for an indefinite period.