

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

JOHN ATKINSON

HART J

[1] The defendant is before the court to be sentenced on his plea of guilty to 57 counts of various sexual offences over a period of three years. The offences range from 13 offences of rape, 2 of attempted rape, 11 of compiling indecent photographs of the two children who were subjected to the other sexual offences, 3 of gross indecency, 14 of indecent assault, and a further 14 counts of making separate indecent images of children.

[2] The principal charges relate to offences committed against two sisters, to whom I shall refer by letter in order to protect their identity. N is now 20 and S is now 16. It is clear that the defendant ingratiated himself into the confidence of the parents of N and S, and such was the trust they reposed in him that he was permitted to take children of the family, including N and S, to his home and later to the north coast on holiday. He started taking the children out swimming, and as time went by took advantage of the trust placed in him to commit offences of increasing gravity in relation to N and S. Many of the offences which he committed were recorded by him in photographic form, either still photographs or on video, and it is clear from these photographs and his statements recorded on the video film that he gained sexual gratification from these photographs. The photographs were ultimately to prove his undoing, because when N and S felt able to make complaints about the defendant in April 2007, a search of his home by the police revealed a large quantity of photographs and video film on which his sexual activities with these girls were recorded, as well as some items of adult lingerie.

[3] A common feature of the defendant's activity is that on video he is heard offering them money for taking part in these activities. It is also clear that on many occasions the defendant pressed ahead with his sexual offending despite their obvious distress and objections.

[4] It is unnecessary to describe in any detail the nature of the various offences which the defendant has admitted, these are set out in the very extensive transcripts of the various video films which have been exhibited to the committal papers, and upon which the prosecution framed the charges to minimize the prospect of the girls having to give evidence. However, Counts 10-15 which relate to the activities described at pages 282 to 285 of these transcripts merit particular mention, both as an indication of the general nature of the defendant's behaviour and because of one matter in particular to which I shall refer later. Counts 10-15 are two charges of indecent assault, two charges of gross indecency, one of rape and one count of making an indecent photograph. These offences were all committed during the course of one episode, and the transcript reveals in graphic detail how the defendant's sexual activity with N progressed from indecent assault to gross indecency and then to rape, and he forced her to make a photograph of his behaviour. Throughout it is clear that N is in considerable distress and protesting against the defendant's behaviour. These offences were committed when N was between the ages of 10 and 12.

[5] Of particular significance is a remark which the defendant made whilst he was getting N to take Polaroid pictures of this sexual activity. He said "I sell them to men over in Holland they get big money." Mr Kerr QC (who appears for the prosecution with Miss McColgan) said that the police had been unable to establish the truth of this assertion, and whether the defendant did make a profit. However, the prosecution rely on the dissemination of the photographs as an aggravating factor.

[6] Mr Kieran Mallon (who appears for the defendant with Miss MacDermott QC) said that the defendant was simply showing off when he said this, relying upon the defendant's explanation recorded at page 4 of Dr O'Kane's report. However, that explanation was advanced in a different context, namely the defendant having said that he had been involved with two hundred children. What Dr O'Kane said was "he kept the images but did not regularly view these or share them with others" (emphasis added). Whether or not the defendant made any profit is of less significance, what is important is that he volunteered that he passed the images to others. I can see no reason for him to say this to N unless it was true, and there is no evidence to the contrary. Not only that, but he kept the photographs he made, and kept and downloaded other indecent images, yet he denied regularly viewing those he kept or ever looking at those he downloaded. In view of his own words and the other evidence I am satisfied beyond reasonable doubt that he did disseminate the photographs to others.

[7] The defendant has pleaded guilty to thirteen offences of rape against N, seven indecent assaults, taking six indecent photographs of her and three offences of gross indecency. These offences were committed when N was between the ages of 10 and 13.

[8] The offences against S were committed over a period of two years when she was between the ages of 7 and 9. The defendant has pleaded guilty to six indecent assaults, five offences of taking indecent photographs and two offences of attempted rape relating to S. The nature of the defendant's conduct towards S can be seen from the evidence relating to Counts 43 (attempted rape) and 44 (taking an indecent photograph). The defendant took video film of the exposed vagina of S and then is seen to attempt to insert his erect penis into her vagina.

[9] The descriptions of the remaining counts by the prosecution have not been disputed by the defendant. Count 49 is a specimen count relating to N's allegation that the defendant started his abuse by inappropriate touching of her in a swimming pool. Counts 50-64 are counts relating to indecent photographs found on the defendant's computer. Count 50 relates to an offence described as a level 5 offence, namely sadism or bestiality. Count 51 is a specific count relating to level 4 activity, namely penetrative sexual activity between children and adults. Counts 52 and 53 are specific counts representative of sexual activity at level 2, being sexual activity between children or solo masturbation by a child. Counts 54-63 are specimen counts representative of level 1 offences, namely movie clips or still images depicting erotic posing with no sexual activity.

[10] I have been provided with victim impact reports on both N and S in the form of reports dated 27 October 2008 prepared by Ms Ann Kelly, a chartered psychologist.

[11] She records that N complains of a number of symptoms which lead her to conclude that N is suffering from post-traumatic stress disorder. She records complaints of post-traumatic hyper arousal involving feelings of anxiety and anger. N also complains of physical symptoms of anxiety such as dizziness and heart pounding. There are also complaints that she is blocking out aspects of the trauma from her memory, although forgotten memories are still emerging. She also complains that she is re-experiencing by way of reliving memories or feelings about trauma and says that she finds them "horrific". Ms Kelly concludes:

"The symptoms which she reports are those of post-traumatic stress disorder (PTSD) with all of the accompanying symptoms outlined herein. She also suffers from co-morbid clinical depression. The

development of her ability to trust has been damaged as has the development of her self-esteem and also her sexuality.”

[12] Ms Kelly also reports that N abandoned her third level studies because the defendant followed her to technical college, and when the proceedings started gave up other studies because she found the reactivation of memories increased her symptoms and she found she could not cope with them.

[13] I consider that the effects of what can only be described as a campaign of rape and other forms of sexual abuse of N are therefore very considerable, and although the report gives no indication as to how these effects will last, hopefully the defendant’s pleas of guilty and the conclusion of these proceedings will play a part in enabling N to overcome, or at least make progress towards overcoming, the effect of these experiences.

[14] Ms Kelly says that S is suffering moderate post-traumatic symptoms such as physical anxiety, and is re-experiencing these events in the form of nightmares and displays symptoms of avoiding the experience. She concludes that S suffers from mild clinical depression. An effect of her experiences is that it is recorded that S drank at weekends in her early teens in order to try to “block out” her distress. Ms Kelly concluded that S does not meet the full PTSD criteria, but does suffer from mild clinical depression.

[15] There are therefore a number of aggravating features of the defendant’s conduct.

- (i) There were two victims.
- (ii) Both N and S were very young at the time these offences were committed against them.
- (iii) Both were groomed with money to submit to these offences.
- (iv) There are a very large number of offences, particularly in the case of N where the defendant has pleaded guilty to no fewer than 13 offences of rape over a total period of 3 years. In her case this amounts to a campaign of rape.
- (v) These offences involve a gross betrayal of the trust placed in the defendant by the parents of N and S.
- (vi) The effects on N in particular have been very substantial.
- (vii) The defendant made films and images of this sexual activity, and stated that he had passed the films to others.
- (viii) He has also admitted the specimen and other counts of making indecent images represented by counts 50-63.

[16] So far as mitigating factors are concerned, the defendant pleaded guilty to virtually every charge upon arraignment and to a number of other charges shortly afterwards. I therefore consider that he should be given the maximum degree of credit for an early plea of guilty. However the extent of

that credit has to be assessed in the context of the overwhelming evidence against him from the pictures which were seized in his house. The defendant had no conceivable defence to these charges. Therefore, whilst he is entitled to some credit for his plea of guilty and consequently some reduction in the appropriate sentence, this must be less than otherwise would be the case. See R v Pollock [2005] NICA 43 at [18].

[18] A further mitigating factor is the defendant's age and health. He is now confined to a wheel chair, having had bilateral knee replacements, and also suffers from arthritis, heart problems, fibromyalgia, depression and follicular lymphoma. A report from Dr El-Agnaf describes the lymphoma as "a low grade lymphoma and is of an indolent nature and usually does not require treatment". He states

"The patient usually survives for a long time. Median survival is about 10 years. The disease, however, is characterised by remissions and relapses and with each relapse the patients become less responsive to therapy. They usually require about 3 lines of therapy during the course of their illness. The patient had 4 doses of Rituximab at weekly intervals completed on 16th August 2007."

[19] As the committal papers show that the defendant was in custody at that time I infer that he can have the necessary treatment whilst serving his sentence. Nevertheless, as he is 66 and the median period of survival is about 10 years, it is reasonable to infer that the lymphoma will have some effect upon his life expectancy, and that most of the rest of his life will be spent in prison. Age, poor health and reduced life expectancy are matters which the court can take into account and reduce a sentence as an act of mercy. See R v Bernard [1997] 1 Cr. App. R. (S) 135.

[20] Mr Mallon submitted that the defendant has shown remorse, particularly by his pleas of guilty. The pre-sentence report records that he expressed remorse but also observes that he has limited insight into the effect of his offending upon his victims. Dr O'Kane's account of his remorse is somewhat more extensive and I accept that he has shown regret for his offences towards N and S. In her report she refers to the sexual abuse that he says he suffered as a child. Neither this, nor his clear record and good work history can count for much in view of the number and gravity of the charges to which he has pleaded guilty.

[21] The pre-sentence report concludes that the defendant presents a medium risk of re-offending and I agree with that assessment, despite his age. I consider that the risk of re-offending is such that this is an appropriate case for an order under Article 26 of the Criminal Justice (Northern Ireland)

Order 1996 in order to protect others in future and I therefore order the defendant to be subject to licence under Article 26 upon his release.

[22] The risk of further offending is such that I also order that he be subject to the prohibitions suggested by the pre-sentence report under s. 10 of the Sexual Offences Act 2003, namely that:

(a) he has no unsupervised contact with children unless otherwise approved by Social Services; and

(b) he is not to have access to the Internet through the use of a computer or other storage media facility either in his home or at any other location.

[23] I order the destruction of the exhibits on the list handed into court by the prosecution, the order not to take effect if the defendant lodges a notice of appeal within 28 days of the date of this order, in which case the order will not take effect without further order of the Crown Court or the Court of Appeal.

[24] I have been referred to several authorities, notably the decision of the Court of Appeal in R v DO [2006] NICA 7, and to R v Oliver [2003] 2 Cr. App. R. (S.) at p. 64 . I have to take into account that offences were committed against two victims, and that in addition to the rapes and attempted rapes there were other offences of indecent assault and gross indecency. In passing sentence I also have to ensure that the cumulative sentence does not exceed a total which properly reflects the defendant's overall criminality. A further complication is that some of the offences of making indecent images relate to dates before 11 January 2001 when the maximum sentence was three years imprisonment, such as count 35; whereas those from count 50 onwards carry a maximum of ten years imprisonment. The fact that the sentences on the later offences are heavier should not be taken as any indication that the court regards the earlier offences as less serious. The offences of gross indecency were committed when the maximum penalty was only two years imprisonment. I propose to reflect these different considerations by making all the sentences in respect of N concurrent with each other, and those in respect of S concurrent with each other but consecutive to those in respect of N.

[25] These were very grave offences despite the mitigating factors to which I have referred. Had the defendant pleaded not guilty and been convicted I consider that the total sentence would have been not less than 22 years imprisonment. Taking into account his plea of guilty, his remorse, his age and ill health I sentence him as follows.

- (1) 10 years imprisonment on each count of rape against N.
- (2) 5 years imprisonment on each count of count of indecent assault against N.

- (3) 18 months imprisonment in respect of each count of gross indecency against N.
- (4) 2 years imprisonment in respect of each count of making an indecent photograph of N up to and including count 26.
- (5) 3 years imprisonment in respect of the counts of making an indecent photograph between counts 50 and 63 inclusive.

The sentences at (1) to (5) will be concurrent with each other.

- (6) 6 years imprisonment in respect of the attempted rapes of S.
- (7) 5 years imprisonment in respect of each count of indecent assault of S.
- (8) 2 years imprisonment in respect of each count of taking an indecent photograph of S.

The sentences at (6), (7) and (8) are to be concurrent with each other but consecutive to the sentences on the sentences at (1) to (5).

The effective total sentence is therefore one of 16 years imprisonment.