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*(subject to editorial corrections)**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

TERENCE McKENNA
AND
MICHAEL SEAN QUINN

HART J

[1] The defendants have pleaded guilty to various charges arising out of events on Black's Road, Belfast in the early hours of 6 August 2005, and are now before the court to be sentenced. The offences relate to a number of young people and because each is still under 18 I shall refer to them only by their initials. Nothing must be published which would enable them to be identified. KMcK was born on 3 December 1989. WO was born on 9 November 1989. SC was born on 1 November 1989. RR was born on 13 November 1989. Each was therefore 15 at the time and is now 17.

[2] KMcK is a young girl from England who had visited Northern Ireland as a result of establishing a friendship with RR over the internet, and was staying with him and his family. RR, SC and WO are all from the area in which these events occurred.

[3] Terence McKenna has pleaded guilty to four counts of robbery, and four counts of false imprisonment, relating in each case to KMcK, WO, SC and RR. He pleaded not guilty to two counts of aiding and abetting the rape of KMcK by Quinn and, following Quinn's plea of guilty to the charges of rape of KMcK, the prosecution did not offer any evidence against McKenna and he was accordingly found not guilty of the charges of aiding and abetting the rape of KMcK. Although McKenna appears first on the indictment it is

appropriate to deal with Quinn first as he was clearly the dominant actor in the events which took place and faces the most serious charges.

[4] Quinn has pleaded guilty to four counts of false imprisonment of KMcK, WO, SC and RR, as well as one count of indecent assault and two counts of rape of KMcK.

[5] The circumstances giving rise to these charges have already been outlined at some length by Mr McCollum QC on behalf of the prosecution when he opened the case to the jury at the beginning of the trial, but it is necessary to refer briefly to what occurred in order to place these matters in context.

[6] At about 3.00 am on the morning of Saturday 6 August 2005 the four young people were walking down Black's Road intending to go to Creighton's garage on the Lisburn Road. As they passed the entrance to the Colin Valley Golf Club they were confronted by Quinn and McKenna. McKenna was carrying a piece of metal piping which can be seen in the photographs, and they demanded money and cigarettes from the four young people.

[7] Quinn then proceeded to make unwanted sexual advances to KMcK, pushing himself against her and trying to kiss her. He then forcefully took KMcK across the road on to the forecourt of the BP garage. He threatened her with a screwdriver and proceeded to indecently assault her by forcing his penis into her mouth. He then raped her for the first time.

[8] Whilst this was happening, McKenna prevented the three boys from crossing the road to help KMcK. At one point when RR attempted to break away he was threatened with the metal bar or pipe. McKenna forced the three boys to empty their pockets and then led them across to the garage where he demanded further belongings from them, including necklaces. He forced them to strip off their upper clothing which was thrown over the fence and later found in adjoining gardens.

[9] Quinn made his way over to the three boys whilst McKenna went to where KMcK was sitting and demanded her property from her. She handed over a necklace, a ring and two mobile phones and whilst the ring was returned, her mobile phone was not.

[10] This ended the first stage of this ordeal for all four young people, but instead of being released they were then led across the road, made to climb over the locked gates of the golf club and then led on to the golf course. It appears that they were made to walk some considerable distance along a somewhat neglected laneway which is seen in the photographs because the next series of offences were committed at or near the golf club buildings.

Quinn remained with KMcK and led her on to the golf course and there raped her for a second time. At this time McKenna was detaining the three boys, repeatedly inviting them to wrestle or fight him. However, SC managed to break away and escape down the golf course towards his home, despite being pursued by both McKenna and Quinn. When they failed to catch him they realised that help would be sought and made off towards the Old Golf Course Road, leaving the other two boys to make their way back to KMcK and then help her back to RR's house. RR, KMcK and RR's elder sister then went to Woodburn Police Station and reported what had happened. Constable Grace Hewitt gave evidence that when she first met KMcK she was sitting on the bench with her knees up and her arms round her knees in the foetal position. Constable Hewitt described her as crying, shaking and she believed from KMcK's whole demeanour that she was extremely upset.

[11] The police enquiry ultimately led the police to identify Quinn as a suspect and his home was searched in the absence of himself and his family as they were on holiday. During the search KMcK's mobile phone was found in his bedroom.

[12] A particularly unpleasant aspect of this deplorable episode was that the mobile was used later on the morning of Saturday 6 August to make phone calls which were properly described in the agreed statement of facts as being calls of a vindictive nature to KMcK's mother in England and undoubtedly added to her distress at what had occurred. Although there must be a strong suspicion that the phone calls were made by one of the defendants, during the Rooney hearing the prosecution accepted that whilst it could be inferred that it was one or other of the defendants, the prosecution cannot say which. In those circumstances, neither can be held responsible.

[13] When McKenna heard that Quinn's home had been searched he went to the police, and during interview he admitted his role in these events. Quinn was arrested upon his return from holiday. During interview he admitted having both oral and vaginal sex with KMcK but was emphatic that the sexual activity between them had been consensual. He blamed McKenna for the robberies and the assaults on the three boys.

[14] McKenna, who admitted his role in these events when questioned, pleaded guilty to the charges on which he is now to be sentenced when he was arraigned on 17 September 2006. Quinn pleaded not guilty and maintained that stance until the third day of the present trial when he asked to be rearraigned on counts 5-11 and pleaded guilty to them. This was not the first attempt to proceed with the trial of these charges because the accused were originally returned for trial to Craigavon Crown Court where the trial was scheduled to commence on Monday 29 January 2007. On that day the jury was sworn but the accused were not put in charge and the jury, together with a number of reserve jurors were being instructed to return on the next

morning when Quinn started shouting at the jury and he ultimately had to be removed from the court because of his conduct. It became apparent when the reasons for his outburst were investigated later that day that he was not in a proper state to stand trial on that occasion and the trial was ultimately adjourned. The trial was transferred to Belfast and a new trial date was ultimately fixed and the trial commenced with the swearing of the jury on Monday 16 April. Due to difficulties with the video equipment it was only possible for the case to be opened to the jury on Tuesday 17th and a number of relatively uncontroversial witnesses to be called on that day.

[15] On Wednesday 18th, following discussion with his counsel, Quinn asked for a Rooney hearing to be held, as the result of which I gave an indication as to sentence in the event that the accused was to plead guilty to the charges to which he ultimately pleaded guilty. He then asked to be rearraigned and pleaded guilty to counts 5-11 on the indictment. By doing so he removed the need for KMcK or the three young men to give evidence about these events, but it is obvious that she in particular had to prepare for not just one but two court appearances. Whilst Quinn's change of plea meant that she and they did not have to give evidence this change was made at the latest possible stage of the proceedings.

[16] It is clear that Quinn was the principal actor in these events, and in assessing the appropriate sentence to be imposed upon him I have sought to follow the guidance contained in the decision of the Court of Appeal in the Attorney General's Reference No. 3 of 2006 (Gilbert) [2006] NICA 36. The effect of that judgment is that the starting point for sentencing in rape cases is a sentence of five years' imprisonment where the case is contested, although if a number of individual features are present the starting point increases to eight years. One of those features is where the offence has been repeated against the victim and as KMcK was raped on two separate episodes of rape, the higher starting point of eight years applies. In addition, there are a number of aggravating factors which have to be taken into account.

(i) KMcK was forced to undergo oral sex and thereby suffered the indignity of having a further sexual attack perpetrated upon her.

(ii) The series of events which included these separate episodes of rape lasted quite some time.

(iii) Initially KMcK was threatened by Quinn with being stabbed with a screwdriver and there was therefore a threat of force over and above that involved in the sexual offences themselves.

(iv) KMcK was a young girl of 15 at the time. Given her youth, the fact that she was a visitor to Northern Ireland at the time and therefore was unable to have the immediate support of her mother until her mother was able to travel

from England to Northern Ireland must have increased her distress in the immediate aftermath of these events.

(v) Finally, there is the effect of these matters upon her. I have had the benefit of a report upon her from Emma Chapman, a qualified social worker and systemic practitioner in Nottinghamshire, who says she has worked with KcMK since November 1995. This is obviously an error as correspondence from Ms Chapman in KMcK's copy GP notes held by the court as part of the third party disclosure procedure shows that she first saw KMcK in November 2005 as a result of the events giving rise to the present charges.

(vi) The report describes how her sleep is affected, her desire to eat affected and her mood feels numb or low most of the time. There was also a period when she was self-harming, although at the time of the report she is managing that well. She has found her every day activities difficult, and during the period since these events she had to take her GCSEs. Although she found these difficult due to her limited concentration, she gained the required grades to progress to the A levels she wanted, although she has postponed the first stage of her A level exams because of the court date. In her personal life she has found it difficult to trust people , and there have been difficulties with family relationships, resulting in arguments. Ms Chapman concludes

> It is my opinion that [KMcK] may continue to experience further mental health difficulties once the court case has been completed. This will possibly [be] in the form of Post Traumatic Stress Syndrome and further therapeutic intervention will need to be undertaken in order to enable [KMcK] to explore her feelings associated with the incident and further work on her resilience to move on in her life.

[17] The false imprisonment of WO, SC and RR is a matter that also has to be taken into account. Whilst Quinn's role in this was significantly less than that of McKenna, nonetheless Quinn was the dominant figure throughout these events and he was party to the false imprisonment of these three young people, as well as of course detaining KMcK throughout. I have victim impact reports on WO, SC and RR, and I will refer to these when sentencing McKenna.

[18] I also have to take into account such mitigating factors as there are in relation to Quinn. The principal mitigating factor is his plea of guilty. A plea of guilty is always recognised as a very significant factor in sexual cases in particular because it spares the victim from the unpleasant and stressful experience of having to recount in detail in court matters of a very private and sexual nature. However, the maximum allowance for a plea of guilty is reserved for those who make it clear at the earliest opportunity that they

accept their guilt for the offences in question. As the Court of Appeal has frequently emphasised in recent years this means that the accused must not only plead guilty at the first appropriate opportunity, but must make their acceptance of guilt plain when questioned by the police. In this case McKenna made his guilt plain at the very earliest stage, but Quinn did not do so until a very late stage of the proceedings. WO, SC and RR also had to prepare themselves for not one but two separate trials. Therefore, whilst I give Quinn credit for his plea of guilty, that credit is significantly reduced because of the late stage at which his pleas of guilty were entered.

[19] He was 16 years and 10 months of age at the time and his youth is relied upon as a mitigating factor. However, the Court of Appeal in Gilbert's case pointed out that in this jurisdiction the proper approach is to regard the youth of the offender as having "a variable effect on the sentence according to the nature of the crime and the awareness of the individual defendant of the nature of the offending behaviour". In the event in Gilbert's case the defendant's good record and youth were taken into account in his favour. Whilst Quinn's record is not such as to amount to an aggravating factor, his previous convictions mean that he does not have a good record.

[20] There is little evidence to indicate that Quinn feels any genuine remorse for his conduct on this occasion, although Mr McCartney QC for Quinn said that his client had instructed him to express his heartfelt remorse for what had occurred. As against that, whilst the probation officer records that Quinn "expresses regret for his actions and shows some insight into how this may have impacted on the life of [KMcK] both in the long and short term", she also commented that he "struggles with taking full responsibility for his actions". In my opinion Quinn's expressions of remorse would carry more weight had he pleaded guilty at an earlier stage, thereby enabling KMcK to rebuild her life and sparing her the prospect of having to return to Northern Ireland to give evidence.

[21] In her psychiatric report Dr Harbinson refers to his excessive drinking and abuse of illegal drugs and to his motoring convictions which involved the use of alcohol. She describes him as having a history of aggressive and impulsive behaviour which improved with medication. Unfortunately the medication gave rise to side effects and was therefore discontinued. Her report, and the defendant's general practitioners records, show that Quinn has a long history of Attention Deficit Disorder as well as learning difficulties. Mr Colin McClelland, an educational psychologist, administered a number of standard tests and concluded that Quinn is functionally illiterate, although his numeracy skills place him in the bottom 3% of the population, a level which would be regarded as that of basic adult numeracy.

[22] His history of aggressive and impulsive behaviour does not predispose the court to sympathy towards him, nevertheless he is still a young man and

one who plainly has difficulties with alcohol and with controlling his behaviour. I consider it appropriate to make a modest reduction in the sentence which otherwise would be passed to take account of his youth at the time.

[23] The Pre-Sentence Report on Quinn describes his impulsive and aggressive behaviour in the past, and his limited educational achievements. Quinn has been assessed by the PBNI as being at high risk of re-offending and to be a high risk of harm to young females. The Report suggests that he is suitable for a custody probation order, although he would not be deemed suitable for the PBNI run Community Sex Offenders Group programme until he is 21. The report also refers to the option of placing the defendant under supervision of an Article 26 sex offenders licence upon his release "given the serious nature of the present offences and the defendant's limited capacity to take responsibility for them."

[24] I am satisfied that Quinn requires supervision upon his release, and the question is whether this should be achieved by means of a custody probation order or an Article 26 sex offender's licence. As the Court of Appeal recognised in The Attorney General's Reference No 2 of 2004 (Daniel John O'Connell) [2004] NICA 15 it is the almost invariable practice of the Secretary of State to require the offender to undertake a period of probation where an Article 26 order is made, and, as Mr McCartney accepted, upon Quinn's eventual release it is open to the Secretary of State to impose such conditions as part of probation supervision under an Article 26 licence as have been suggested are appropriate to a Custody Probation Order in the present case.

[25] Article 26 requires the court to have regard to the need to protect the public from serious harm from the offender; to the desirability of preventing the commission by him of further offences, and of securing his rehabilitation. The PSR understandably refers to "the serious nature of the present offences and the defendant's limited capacity to take responsibility for them". I agree that these are important considerations and consider that they require me to make an Article 26 order rather than a custody probation order, and I do so. I do not consider that the circumstances of these offences require the making of a sexual offences prevention order under s. 104 of the Sexual Offences Act, 2003.

[26] I sentence Quinn as follows:

Counts 5, 6, 7 and 8, the counts of false imprisonment, three years imprisonment.
Count 9, indecent assault, 5 years imprisonment.
Counts 10 and 11, rape, 8 years imprisonment.

The sentences will be concurrent and the total sentence is therefore eight years imprisonment.

[27] McKenna has pleaded guilty to four counts of robbery of mobile phones, jewellery and money and other items from SC, WO, RR and KMcK, and to four counts of false imprisonment of each of them. Whilst Quinn was the dominant figure throughout these events, McKenna's role was far from negligible. When RR attempted to break away he was struck at with this metal pipe or bar. McKenna told the police that he had found it earlier that night. He admitted during interview that he forced the three boys to empty their pockets and then led them across to the garage where he demanded further belongings from them, including necklaces. He also admitted that he forced them to strip off their upper clothing which was thrown over the fence and later found in adjoining gardens. He said that he did this for a laugh, although he accepted that it might have been to see if they were wearing anything else worth stealing.

[28] Whilst the offences of false imprisonment are distinct from the offences of robbery in that the victims were forced to remain at the petrol station against their will, and then to go with the defendants some distance into the Golf Club grounds, there is an obvious overlap between the two sets of offences. Offences of false imprisonment can cover a wide spectrum of circumstances. In R v Cockerham [1999] 2 Cr. App. R. (S.) 120 Burton J no doubt had in mind the remarks of Lord Lane CJ in R v Spence and Thomas (1983) 5 Cr. App. R. (S.) 413 when he said

> …the spectrum of sentencing for false imprisonment is a very wide one depending upon the precise facts, ranging between, as has been pointed out by the Lord Chief Justice on occasion, as little as one year in appropriate cases of domestic disputes and, on the other hand, to 15 years or more in the most striking and often more publicised events of violence.

[29] In R v Brendan Devine [2006] NICA 11 the Lord Chief Justice referred to guidelines for robbery recommended by the Sentencing Guidelines Council in England .

> The guideline identifies three levels of seriousness which can be applied to each of the categories of robbery. The first involves the threat or use of minimal force such as snatching from a person's grasp causing bruising/pain and discomfort; in the second category a weapon is used to threaten or there is actual significant force used; in the third

> category significant force or a weapon is used. The three categories of robbery discussed in the guideline are (i) street robbery or mugging; (ii) robberies of small businesses; and (iii) less sophisticated commercial robberies. Where the offence involves the threat or use of minimal force the suggested starting point is 12 months with a sentencing range of up to three years custody. Where a weapon is produced or force is used which results in injury the starting point is four years' custody with the sentencing range being between two and seven years' imprisonment and where the victim sustains serious physical injury the starting point is eight years' custody with the sentencing range being seven to twelve years.

[30] An aggravating feature of the case is the effect of his behaviour on the three youths. A report on WO by Eamon McMahon, a Family Therapist, records that WO had problems that led to his being referred to the Child, Adolescent and Family Consultation Team in November 2004, but he had to be placed on the waiting list for such treatment, but following these events he was offered an emergency appointment. In his very comprehensive and detailed report Mr McMahon describes the various consultations with WO, and the effect of these events upon him. Whilst recognising that there were problems before the events of 2005, Mr McMahon's opinion is that "There appears however to have been significant additional symptomatology related to the assault in 2005". These include memory loss, sleep disturbance with nightmares, flashbacks, intrusive memories, emotional arousal, difficulties with concentration, appetite loss, and social withdrawal. He concluded that WO had suffered from Post Traumatic Stress Disorder with chronic features, but had benefited significantly from treatment, and may continue to do very well, although he sounded a cautionary note.

> At the same time though it would not be surprising, nor unusual, if [WO] were to re-experience quite elevated traumatic symptoms at some stage in the future perhaps unrelated to this incident, but nevertheless occurring more or less as a direct result from it.

[31] I have been provided with a report on SC by Mr Stephen McDyre, a systemic psychotherapist at the Family Trauma Centre. He described a range of symptoms associated with Post Traumatic Stress Disorder, namely reliving the incident, hyper-vigilance and arousal, and concluded his report in these terms.

> At the time of interview the reported difficulties appeared to have impacted upon this young man's ability to engage in the normal adolescent tasks, particularly in relation to school and peer relationships. If the reported symptoms are left untreated this may result in some negative effect on his future functioning and relationships.

[32] A report upon RR has been prepared by Mrs Jean Murray, a psychoanalyst/child and adolescent psychotherapist who provided him with year-long, once-weekly psychotherapy. She describes how RR's personality changed considerably after these events, and it is clear that these events have had a profound effect upon him. She makes a diagnosis of post-traumatic stress, but says that he has benefited from being in therapy: his nightmares, early morning waking and, low mood, and the flash backs have disappeared, and he was more able to manage his anger. She concludes that although he has ended his therapy, "there remain serious issues which he still needs to resolve if the trauma he endured is not to leave lasting damage".

[33] McKenna 's date of birth is 17 May 1989 so he was 16 and two months of age at the time, and has now just passed his eighteenth birthday. He does not have any criminal record. In terms of gravity, his conduct on this night, whilst deplorable, was less culpable than that of Quinn, and, unlike Quinn, his admissions during interview after he went to the police, and his pleas of guilty on arraignment on the charges for which he is to be sentenced mean that he is entitled to the maximum allowance for his pleas of guilty. That is the principal mitigating factor. Others are his youth, his clear record, and his evident remorse.

[34] I have been provided with reports on McKenna prepared in November 2006 by Dr Helen Harbinson and by Dr Carol Weir, a consultant psychologist. Dr Weir's report refers to his having been examined by Mr McClelland, but I have not been provided with a copy of that report. She refers to his having been found to have a verbal IQ of 78. It appears from the accounts McKenna has given that he consumed all, or most of, a 10 glass bottle of vodka that night. Whilst he says this was the first time he had consumed spirits, it seems from Dr Harbinson's report that he had been regularly drinking beer at weekends since he was 15. His behaviour on this occasion was, I am satisfied, influenced by his drunkenness and desire to show off in front of his cousin.

[35] The guidelines in Devine indicate that the sentence in the present case should reflect the following features. There were several victims; McKenna had a weapon in the shape of the metal pipe which he used to threaten his victims. Taking into account the false imprisonment charges, the period for which the victims were detained against their will, and the considerable effect which these events have had on each of the victims, had McKenna been

convicted after a contest I consider the appropriate sentence would have been one of five years imprisonment. However, giving due weight to his youth at the time, his clear record, his early admissions and plea of guilty at the first opportunity I consider that the proper sentence is one of three years and four months detention in the YOC.

[36] As the sentence is more than twelve month's detention I am obliged to consider whether a Custody Probation Order is appropriate. The Pre Sentence Report expresses the opinion that McKenna is of medium-high risk of re-offending if in the company of pro-criminal peers and intoxicated, a view I share. I consider that the risk of his re-offending would be reduced were he placed under probation supervision on his release, and required to take part in Alcohol Management and Anger Management courses.

[37] Following his arrest McKenna was remanded in custody on 13 August 2005 and remained in custody until he was released on bail on 22 April 2006. I understand that, allowing for home release at Christmas and Easter he has therefore already spent 224 days in custody, and given that he has no criminal record it must have been a salutary experience to have spent the greater part of his sixteenth year in custody. The PSR states that he has complied with his bail conditions, and has undertaken a joinery course where his attendance and engagement have been good. Given that he has already spent the equivalent of 64 weeks, or one year and three months in custody, which is a substantial period for a teenager with no previous record, and that I am satisfied that he would benefit from probation supervision, I do not believe that any useful purpose would be served by sending him back into custody for a short period. I therefore propose, subject to his consent, to sentence him to 15 months detention to be followed by two years probation on the understanding that this will result in his immediate release. If that is not correct I will adjust his sentence accordingly. The probation element of his sentence will be subject to the requirements that he participate in Alcohol Management and Anger Management courses as recommended in the Pre Sentence Report. The sentence would otherwise have been one of three years and four months detention in the YOC.