

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

Delivered: 29/06/2006

IN THE CROWN COURT IN NORTHERN IRELAND

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THE QUEEN

-v-

MARTIN HUME

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GILLEN J

Charges

[1] Martin Hume you have pleaded guilty to 10 counts of indecent assault and 5 of gross indecency with a young girl between 1966 and 1974 when the child was between 4 and 18 years of age and you were between 14 and 24 years of age. You had originally been charged with a number of other even more serious offences which have now not been proceeded with by the Crown. I wish to make it clear at the very outset of this case that the offences to which you have now pleaded guilty namely offences contrary to Section 52 of the Offences Against the Person Act 1861 and gross indecency with her towards a child contrary to Section 22 of the Children and Young Persons Act (Northern Ireland) 1968 at the time these offences were committed carried a maximum of 2 years' imprisonment. The maximum for these crimes have now been substantially increased but I am obliged by the law to treat you on the basis of the maxima that then applied when these offences were committed and accordingly I am constrained in the sentence that I can pass on you today. I wish to make it absolutely clear that had you been convicted of the more serious offences which no longer are being proceeded with, and had the maximum sentences in the offences to which you have pleaded been higher, I would have sentenced you to a term of imprisonment much higher than that which I am now going to impose upon you to reflect the court's abhorrence of your offences, the effect these crimes have had on your victim and to deter others from similar conduct.

The crimes of indecent assault and gross indecency

[2] In determining the gravity of these offences, I have taken into account the approach laid down in AG's Ref Nos. 91, 119 and 120 of 2002 (E, K and G)

(2003) 2 Cr. App. R. (S) 55 where the sentencing court was exhorted to take into account the same general considerations as in the case of rape. Those are:

- (i) The degree of harm to the victim.
- (ii) The level of culpability of the offender.
- (iii) The level of risk posed by the offender to society – the offender's age and the fact that the offender might only be a danger to the members of the family with whom he had the relationship would be relevant in determining whether there was a reduced risk of offending.

#### Criminal Justice (NI) Order 1996

[3] I have considered Articles 19-21 of the Criminal Justice (NI) Order 1996. I have obtained pre-sentence reports pursuant to Article 21. I consider that these offences are so serious that only a custodial sentence is justified. My reasons for so concluding are that the crimes of this kind, despite the low maximum sentence which obtained at the time of their commission, are extremely serious particularly when perpetrated with children as young as this child. Both deterrence and punishment must be elements in these sentences. I have taken into account all the information before me about the circumstances of the offences, the information contained in the pre-sentence reports and that which has been said so ably on your behalf by your counsel. Pursuant to Article 24(1) and having formed the opinion that a custodial sentence of more than 12 months is necessary, I have considered whether it would be appropriate to make a custody probation order and I shall turn to this later in my judgment.

[4] Pursuant to Article 33 of the 1996 Order, I have taken into account the plea of guilty in your case. I have also taken into account the principles recently considered by the Court of Appeal in Attorney General's Reference (No. 1 of 2006) McDonald, McDonald and Maternaghan (2006) NICA 4. In that case the Lord Chief Justice, noting the provisions of Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996, stated that to obtain the benefit from the maximum discount on the penalty appropriate to any specific charge a defendant must have admitted his guilt of that charge at the earliest opportunity. If a defendant wishes to avail of the maximum discount in respect of a particular offence on account of his guilty plea he should be in a position to demonstrate that he pleaded guilty in respect of that offence at the earliest opportunity. It will not excuse the failure to plead guilty to a particular offence if the reason for delay in making the plea was that the defendant was not prepared to plead guilty to a different charge that was subsequently withdrawn or not proceeded with. Crown counsel has indicated to me that I should approach this case as if you had entered an early plea of guilty. I wish to make it clear therefore that I intend to impose a

punishment on you that is less severe than the punishment I would otherwise have imposed on you had you not pleaded guilty or pleaded guilty later and had there not been the mitigating circumstances that I shall refer to later in this judgment. The victim has been spared the ordeal of the witness box and your plea has manifested some remorse on your part.

### Victim impact report

[5] I have considered the victim impact report on the victim in this case prepared by Roberta Lennox, counselling psychologist. I am satisfied that she had been introduced to sexual awareness at an inappropriate stage by you and others in a position of trust. She has spent years fighting against the intrusive memories of her childhood experience of sexual abuse and of other of cruelty inflicted upon her. The psychologist felt that this woman will be unlikely to ever feel able to bring closure to her very sorry childhood. I recognise that I must read this report in the context of the charges that now stand preferred against you and I must close my mind therefore to the more serious charges which have now been withdrawn against you together with the fact that you were not the only person involved in the defiling of this young woman. This young woman has regularly attended this court and I admire enormously her fortitude and courage that she has shown throughout this whole process. She will never be able to put this saga behind her but I hope that the sentencing process of this accused will make some contribution to closure of this sad chapter of her life.

### Guideline cases

[6] Pursuant to the principles set out in R v Pepper and Others in the Court of Appeal in England, Times Law Reports 10 May 2005, prosecuting counsel drew my attention to sentencing guidelines which would assist me in this matter. This trial did occur prior to the guidelines set out by the Lord Chief Justice in Attorney General's Reference (No. 1 of 2005) Rooney and Others (2005) NICA 44 (11 November 2005) where rules of practice for the guidance of sentencers and advocates were set out where advance indication of sentence had been sought. Nonetheless, this was a case where counsel did approach me in chambers about this case seeking an indication of the sentence that I intended to impose on a plea of guilty. I have recorded the contents of that meeting and they have been agreed with counsel for onward transmission to the accused at any time prior to this hearing. Guideline cases were drawn to my attention at that time and in court today. The guideline cases included:

(i) Reference by Her Majesty's Attorney General for Northern Ireland (No. 3 of 2001) (2002) NCIA 9. That was a case where the offender had pleaded guilty to nine counts of inciting children to commit an act of gross indecency with them contrary to Section 22 of the Children and Young Persons Act

(Northern Ireland) 1968 and six counts of indecently assaulting children contrary to Section 52 of the Offences Against the Person Act 1861. At first instance the offender had been sentenced to 21 months imprisonment suspended for three years. These offences had been committed with a child who was then aged ten years of age. The nature of the offences were not dissimilar to the cases presently before me and the age of the offender, being 63, was not dissimilar to the age of the accused now before me. The Court of Appeal in that case indicated that they regarded the offences as meriting a sentence of three to four years imprisonment.

(ii) Reference by Her Majesty's Attorney General for Northern Ireland (No. 1 of 2003) (R v JC) (2003) NICA 19 the Court of Appeal in Northern Ireland dealt with a reference from the Attorney General in the case of an offender who had pleaded guilty to a series of indecent assaults against three young girls one of whom was aged four years of age and the daughter of his wife's sister. The offences committed were not dissimilar to the present case albeit only one child is involved in this instance. The Court of Appeal substituted the imposition of probation orders for three years with a sentence of imprisonment of 21 months on each count to run concurrently. The Court indicated that it is not generally appropriate to impose custody probation orders in this kind of case.

(iii) Reference by Her Majesty's Attorney General for Northern Ireland (No. 16 of 2003) (John Anthony Deery) the Court of Appeal in Northern Ireland dealing with offences of repeated indecent assaults involving five children stretching over a period of more than 25 years a sentence of five years was increased to 7½ years where the maximum sentences had been two years imprisonment on most of the counts and ten years imprisonment on one of the counts. That option of course does not apply in this case because the maximum sentence I can impose on each count is two years. I must also bear in mind that there are not multiple victims in this case.

(iv) In R v M delivered in the Court of Appeal in Northern Ireland on 13 December 2002, where offences concerned one child and occurred over a period of three months, the court held that the sentencing judge would have been entitled to impose consecutive sentences in each of the three counts as the appellant's behaviour amounted to a course of conduct. I consider that there was a course of conduct in this case.

#### Aggravating Factors

(v) There were a number of aggravating factors in this case which included:

(1) the age of the child and her vulnerability at the time of the offences;

- (2) there was a substantial age difference between you and the child namely 10 years;
- (3) there was a breach of trust;
- (4) these offences were persistent over a number of years;
- (5) these offences have had a damaging effect on your victim.

### Mitigation

[7] I have taken into account in mitigation of these crimes the following matters:

(i) The report from Dr Loughrey, consultant psychiatrist dated 17 May 2006. He describes this man having a history of psychiatric problems on and off, a number of which are likely to be linked to his alcoholism. He comes from a troubled family background. He had a poor relationship with his own father and may have been sexually abused. He does have significant anxiety symptoms arising from threats against him. Dr Loughrey concluded that it was reasonable to suppose that his alcoholism was linked, at least in part, to his childhood experiences and his poor relationship with his father. He opined that if indeed it was the case that he was abused by his father, then it seems likely that alcoholism has been the main consequence of this albeit the causes of alcoholism are probably multiple. He has had a number of mood problems consequent upon his alcoholism over the years and the prognosis for his addiction seems to be guarded. I observe that Dr Loughrey, who has the most experience in this case does not describe you as presenting a concrete risk to children which I am certain he would have done had he so concluded.

(ii) I have read a report from Thomas Boyle probation officer who records the accused telling him that not only had he been sexually abused by his father, but that on one occasion his father tried to kill him by firing shots from a rifle up through the ceiling of the living room into his bedroom where he was playing music. He said he did not have female friends outside the family and he lived in a somewhat isolated existence. He was admitted at the age of sixteen to Purdysburn Hospital for psychiatric treatment. Although he married in 1969, his marriage ended in 1972 when his wife left him and took his son aged three months with her. He did not see his son again allegedly until Christmas 2005.

(iii) You have a limited criminal record, the only relevant offence being that of an indecent assault on a female in 1968 for which you received a sentence of imprisonment of two months.

(iv) You were a boy of 14 when these offences started, although they were still continuing when you were a young man up to the age of 24. I therefore take into account that you have not committed any similar offence now for over thirty years. The offences diminished as time went on for example part of the time you were in the Royal Navy and the Merchant Navy.

(v) I must bear in mind that whilst this victim has clearly been harmed, I cannot say that it was entirely due to this accused nor to the offences alone with which he is now charged. Whilst his level of culpability was clearly substantial, nonetheless I must bear in mind his comparative youth when these offences occurred and the general atmosphere of sexual impropriety that seemed to obtain in the home where he was then living.

(vi) Turning to the level of risk posed by him to society I observe that he not been convicted or questioned about any similar offence in the last thirty years.

(vii) I must bear in mind also that these offences occurred an extremely long time ago albeit it is important that the public should appreciate that time does not diminish the seriousness of such offences against children and that justice when it catches up with these offenders will be unremitting. Nonetheless in this context I do accept the suggestion of Mr Boyle that this accused does present as an emotionally lonely individual with low esteem which may have contributed to his cognitive distortions about appropriate sexual behaviour towards females so many years ago.

(viii) Your plea to which I have already adverted on page 3 of this judgment.

### Conclusion

[8] On the offences of indecent assault on counts 13-17 I sentence you to 18 months' imprisonment on each count, these sentences to be concurrent with each other. On counts 18-22 on indecent assault I sentence you to a further 18 months' imprisonment on each count which will be concurrent with each other but which you shall serve consecutively to the sentence I have imposed on counts 13-17. On counts 23-27 namely 5 charges of gross indecency towards a child, I sentence you to a term of 12 month's imprisonment on each count all of those sentences will be concurrent with each other but consecutive to the sentences I have passed on counts 13-17, and counts 18-22. In total therefore you will serve a sentence of 4 years' imprisonment. In arriving at this sentence of 4 years which I consider appropriate in this instance I have applied the totality principle and looked at the overall sentence to be imposed to ensure it is not disproportionate to the law breaking as a whole. I make it clear that I am not imposing consecutive sentences because I regard the maximum sentence available for these offences as inadequate but because I do not consider these offences constitute a single

course of action given the lengthy period over which they were committed and the number of offences involved (see R v M (Supra)).

[9] I respectfully concur with the observations of Nicholson LJ in R v JC (supra) that in cases of this kind it is not generally appropriate to impose a custody probation order. I consider the same approach in this case must be adopted. I have concluded that an order under Article 26 of the Criminal Justice (NI) Order 1996 should be made. In this context the Secretary of State should bear in mind the evidence before me from Mr Thompson, the manager of Alderwood Centre to the effect that once your alcohol addiction has been dealt with, a period on a community sex offenders' programme would be in the interests of the public. I therefore commend to him a condition of this nature. I have concluded that an order under Article 26 is apposite in light of the concerns expressed in the probation report of Mr Boyle concerning your distorted thinking on child sexuality and that therefore there is a need to protect the public from serious harm from you. In addition it is desirable to prevent commission by you of further offences and to secure your rehabilitation. Consequently, instead of being granted remission of your sentence, you shall on the day on which you might have been discharged if remission had been granted, be released on licence under the provisions of Article 26 of the 1996 Order and subject to an obligation to comply with such conditions as shall be determined by the Secretary of State specified in the licence.

[10] I am obliged to advise you that under the terms of the Criminal Justice Act 2004 you shall be registered as a sex offender for 10 years. That means that on your release from prison you will be required to register with the police, giving your full name, your address and your date of birth. Should you change your address or indeed your name you are obliged to register with the police giving the various changes. The clerk will prepare a document which will be handed to you in relation to your requirements. I am also obliged to advise you that under the terms of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 a disqualification order will automatically come into operation against you which disqualifies you from working with children.