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*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered: 11/04/2013*

IN THE CROWN COURT OF NORTHERN IRELAND SITTING AT OMAGH

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R

v

JOHN MICHAEL MCDERMOTT

_____

JUDGE MILLER

1.) The defendant, who is now 63 years of age, was indicted on two counts, these being one each of Indecent Assault on a male and Gross Indecency with a child. The victim in each case was **LC** whose identity, I remind the media is protected by a reporting restriction. The two incidents occurred within months of each other in 1989/1990 when LC was 12 to 13 years of age. Although McDermott pleaded not guilty on arraignment on 5th March of this year he later applied to be re-arraigned on 20th March and pleaded guilty to each count. By so doing he avoided the necessity for a trial and more particularly the need for LC to give evidence. He is, therefore entitled to credit in terms of sentencing in respect of this relatively early plea.

2.) The facts of the case have been set out by Crown counsel Ms Gallagher and they can be briefly stated. LC was born and grew up in Donagh village in rural County Fermanagh close to where the defendant and his brothers lived. LC knew the family from an early age and would have played football with them from when he was only 6 or 7 years. In the autumn of 1989 he broke his leg and spent time off school hanging around the area outside his house. On one occasion he was approached by the defendant who told LC to follow him down to the village shop and from there to the GAA field and to the dug-out where he sexually assaulted him. Having made the boy lie face-up along the bench the defendant then grabbed and twisted LC's fingers before putting his hand down his trousers, removing his penis and then masturbating LC for approximately 5 to 10 minutes.

3.) The second incident occurred the following year when LC was fishing at Kilmacbrack near the graveyard in Donagh. On this occasion he noticed the defendant following him. The defendant then lay down and began to masturbate himself before reaching out

grabbing LC's hand and trying to force the boy to masturbate him. LC was able to pull his hand away and run off. The charges are specific in nature, there being no suggestion therefore that the incidents were repeated on any subsequent date. On both occasions LC was alone with the defendant and he said nothing about what had occurred until he approached police and made a statement of complaint in May 2012.

4.) By the time that LC came forward this defendant was a convicted prisoner serving a long sentence for similar acts of predatory sexual behaviour committed against other children including a girl) in Donagh village over a period of decades spanning the late 60's through to the turn of the new century. He had pleaded guilty to these charges at his trial in June 2010 and at that same court two of his brothers were found unfit to be tried though they were found to have committed the acts forming the basis of similar charges of child sexual abuse. It is fair to say that the case generated considerable media interest fuelled by expressions of concern voiced by members of the community and political representatives. The then assigned judge (and now Recorder of Belfast) HHJ McFarland imposed a total commensurate sentence of 12 years made up of 9 years custody followed by 3 years probation. It should be noted that the offences then before the court included not only Indecent Assault and Gross Indecency but also penetrative acts of Buggery and also attempted Buggery.

5.) A second indictment was laid in 2011 when further complaints were made and again the defendant pleaded guilty after failing to persuade the court that proceedings should be stayed as an abuse of process. A further period in custody amounting to an additional 6 months was imposed on that occasion. Then in August 2012 a third prosecution was instituted in respect of 10 further sample counts for offences of a similar nature. Although the defendant initiated another application to stay proceedings he later abandoned this and made application for a pre-trial sentence indication hearing, commonly referred to in this jurisdiction as a "Rooney Hearing". He subsequently entered pleas of guilty to the new charges and was sentenced to an effective term of 3 months consecutive to the total sentence already imposed at trials 1 & 2. The position therefore is that he is currently serving a commensurate sentence of 12 years 9 months.

6.) As has previously been noted the complainant in this case did not come forward until May 2012 and the file was not presented to the PPS until September of that year with a direction not issuing until October, this being just weeks after sentencing took place in the third trial. The complainant in the present case is a brother of one of the complainants in the first trial and there is no doubt in my mind that had he come forward earlier or had the PPS been aware of his complaint earlier every effort would have been made to join the charges on one Bill of Indictment. Through no one's fault this did not happen and thus for the fourth time in as many years the defendant finds himself in court facing charges of historic sexual abuse.

7.) Nothing I have just said should be read or understood as in any way amounting to a criticism of LC. Sexual abuse and especially child sexual abuse is a pernicious crime, which can have devastating effects on the victim and the fact that one victim is able to

voice a complaint at an earlier stage does not mean that every victim will be able to do so. These crimes affect people in different ways and one should never seek even by implication to attribute blame to the victim. The responsibility and culpability must rightly stop at the door of the perpetrator.

8.) What should, however, be acknowledged is that in seeking to find the appropriate level of sentence a court must consider the totality of sentence and is entitled and indeed obliged to consider what that sentence might properly have been had all matters come to court at one time rather than over a period of years. This will mean on occasion that the sentence for one set of offences, if viewed in isolation, may appear more lenient than it might appear to have merited. One must, therefore, always be mindful of the overall context and I have made it clear that the sentence I intend to impose in this case will not impact to any significant degree on the total sentence already imposed after trials 1, 2 and 3. In so doing I have paid close attention to the submissions of Miss Gallagher and Mr Rodgers QC and to the authorities to which they each referred. In particular I have considered the leading decision on this aspect in this jurisdiction, namely **A G's Reference (Number 4 of 2005) [Martin Kerr] [2005] NICA 33.** At paragraph **26** of the judgment the then Lord Chief Justice, Sir Brian Kerr, (as he then was) observed: -***"For the Attorney General it was accepted, however, that the judge was entitled to take account of the fact that had the offender been prosecuted in 1998 for the present offences, the sentence passed on the offender might have been influenced by the consideration that these offences would have been part of a catalogue of charges and that the judge would have had to deal with the sentences by having regard to the totality principle. We accept the correctness of this approach."***

9.) I have received a short VIS prepared by LC and a more detailed report compiled by Dr Denise McCartan (Clinical Psychologist). From these it is clear that there have been long term effects and that LC found the offences distasteful and upsetting. There is evidence, however, that he has been able to get on with his life and that his feelings about the abuse will improve over time.

10.) These offences occurred before the change in the sentencing regime wrought by the Criminal Justice (NI) Order 2008. Moreover because the maximum sentence for Gross Indecency was only increased from 2 years to 10 years in 2001 the lower maxima for that charge will apply in this case. The maximum for Indecent Assault upon a male was at all times one of 10 years.

11.) Mr Rodgers QC who appeared with Mr O'Neill waived the requirement for a PSR. Given the background to this case this was both pragmatic and realistic. Clearly the custody threshold is passed and this court will not consider any other sentencing option. I consider that on the facts and taken as stand-alone charges the appropriate sentence in this case for these offences taken as pleas of guilty at such an early stage would be at least 12 months. As I have also determined that any sentence should be consecutive to the sentences already imposed I must take account of the totality principle and so I have concluded that the sentence on each count will be one of **3 months. These sentences shall**

be concurrent with each other but shall run consecutive to the existing commensurate sentence of 12 years 9 months.

12.) Ancillary orders. The defendant is already subject to the full panoply of ancillary orders, which will remain in force. Given, however, the fact that such orders must be recorded in respect of each offence that comes before the court I impose a Disqualification Order and SOPO in precisely the same terms as that imposed by HHJ McFarland as set out in paragraphs 26 - 28 of his original sentencing remarks. I further remind the defendant that he may also be the subject of a barring order in respect of both children and vulnerable adults. He is also subject to the provisions of the Sexual Offences Act 2003. As the present sentence is for less than 30 months this will be for 7 years but as he is serving a much lengthier total sentence he is already subject to the requirements under that statute for an indefinite period.

Geoffrey Miller QC
One of Her Majesty's Judges of the Crown Court in Northern Ireland
11th April 2013