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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE CROWN COURT SITTING IN DOWNPATRICK

R

-v-

ALAN McDONALD

_____

Before: Weatherup LJ, Weir LJ and Treacy J

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WEATHERUP LJ (delivering the judgment of the court)

[1] The appellant appeals against conviction and sentence. He was convicted before His Honour Judge Fowler QC and a jury at Downpatrick Crown Court on 3 March 2015 on 26 counts of assault and sexual offences involving four complainants. The effective sentence was one of life imprisonment with a minimum term of eight years. The Single Judge, Deeny J, gave limited leave to appeal, being against conviction only and on the first ground of appeal only. Mr Irvine QC and Mr Johnston appeared for the appellant and Mr Mateer QC and Mr Magee for the prosecution.

The charges against the appellant.

[2] Counts 1 to 7 involved a young female known as K in six charges of indecent assault and one of gross indecency between 1 January 1996 and 31 December 1997.

Counts 8 and 9 involved charges of indecent assault on a young female known as H, a sister of K, between the same dates.

Counts 10 to 13 involved charges of assault on J, the mother of K and H, between the same dates.

Counts 14 to 26 involved charges of sexual offences against a young female known as C, being three counts of indecent assault between specified dates in 1998 and 1999, one count of buggery between 1 August 1999 and 10 May 2000, four counts of rape between specified dates from 1999 to 2002, three counts of assault between specified dates between 1999 and 2002 and two counts of false imprisonment between 31 December 1998 and 1 July 2000. It was in respect of the conviction for rape on count 26 that Deeny J gave leave to appeal.

[3] The appellant was acquitted on three further counts, being count 27 of assault on C between 7 April 2001 and 8 April 2002, count 28 of false imprisonment of C and count 29 of false imprisonment of a female known as Z, on the same occasion between 7 April 2001 and 8 April 2002.

[4] The appellant was sentenced on 15 May 2015. The trial judge imposed a sentence of life imprisonment with a minimum term of eight years for the four offences of rape and the offence of buggery, all against C. Further he imposed a concurrent sentence of six years imprisonment for the offences of indecent assault, concurrent sentences of four years imprisonment for the offences of false imprisonment, a concurrent sentence of two years imprisonment for the act of gross indecency and concurrent sentences of one year's imprisonment for the assaults. The appeal against sentence is limited to the imposition of the sentence of life imprisonment with a minimum term of eight years.

The background to the offences.

[5] The appellant lived in Bangor, County Down from 1995. He began a relationship with J, who lived in Scotland, and she too moved to Bangor with one of her daughters K, who was aged 5 at the time. J's daughter H

was then aged 9 and she lived with J's other daughter in Scotland. There was domestic violence against J which led to the four counts of assault. There was sexual abuse of K in the house in Bangor leading to the seven counts of indecent assault and gross indecency. H came to Bangor to visit her mother and sister from time to time which led to the two counts of indecent assault. The appellant had a son who was in a local children's home where the appellant was a regular visitor. During those visits the appellant met C when she was 14 years old and also a resident of the children's home. The appellant's relationship with J broke down and she and her daughter K moved back to Scotland. The appellant began a relationship with C when she was still only 14 years old and this led to the 13 counts of which he was convicted in relation to C. The appellant denied all charges.

The grounds of appeal against conviction.

[6] The grounds of appeal against conviction were -

(1) The conviction on count 26 (rape of C) was entirely inconsistent and contrary to the evidence adduced at trial as to when this offence occurred and the agreed evidence as to the period of time during which the appellant was in custody at HMP Maghaberry.

(2) The conviction on count 26 was entirely inconsistent with his acquittal on counts 27 to 29 (assault on C and false imprisonment of C and Z) and no reasonable jury applying their minds properly could have arrived at the conclusion they did on count 26 bearing in mind the defence to all four counts was identical, that is, that the appellant was a remand prisoner in HMP Maghaberry when the offences were alleged to have occurred and the allegations were untrue.

(3) No reasonable jury, properly directed, could have convicted the appellant of counts 14 to 26 (sexual offences against C), those counts relying entirely upon the credibility of the complainant C, whenever the same jury had found the appellant not guilty of counts 27 to 29 and as such must have concluded that C had lied under oath and fabricated her allegations as to counts 27 and 28.

(4) No reasonable jury, properly directed, could have convicted the appellant on counts 1 to 13 (offences against H, K, and J) given the serious and significant inconsistencies between the accounts given by the complainants H, K and J and also the accounts given by other relevant witnesses.

[7] The issue for this Court is the safety of the convictions. The approach to that issue was outlined by Kerr LCJ in R v Pollock [2004] NICA 34 at paragraph [32] where he stated the following principles:

> "1. The Court of Appeal should concentrate on the single and simple question 'does it think that the verdict is unsafe'.
>
> 2. This exercise does not involve trying the case again. Rather it requires the court, where conviction has followed trial and no fresh evidence has been introduced on the appeal, to examine the evidence given at trial and to gauge the safety of the verdict against that background.
>
> 3. The Court should eschew speculation as to what may have influenced the jury to its verdict.
>
> 4. The Court of Appeal must be persuaded that the verdict is unsafe but if, having considered the evidence, the court has a significant sense of unease about the correctness of the verdict based on a reasoned analysis of the evidence, it should allow the appeal."

Ground 1 - The date of occurrence of count 26.

[8] The first ground of appeal against conviction related to count 26, which concerned allegations of the rape of C at knifepoint. The appellant denied the charge and the dispute concerned the date of the alleged offence. The offence was charged as having occurred between 7 April 2002

and (initially) 1 September 2002, later amended to 20 September 2002. The dates reflected C's account that the offence had occurred between the date of her birthday and the date of her wedding. The appellant was in custody from 20 May 2002 to 13 September 2002, having been arrested as a result of assault and threats to kill C on 19 May 2002. Accordingly, the dates on which the offence could have been committed were between 7 April and 19 May 2002 and 13 September and 20 September 2002. C's account of the date of the offence varied. Beyond setting the parameters between her birthday and her wedding, her evidence was that the incident occurred months before her wedding and could have happened during the summer. In cross-examination she stated that the rape occurred after the incident on 19 May 2002. She was referred to a witness statement of 2 August 2014 in which she stated that the rape occurred in September 2002. In cross-examination she refuted her witness statement and stated that the incident definitely did not occur in September 2002. She acknowledged that her dates may not be correct and in re-examination reaffirmed that the incident had occurred between the date of her birthday and the date of her wedding.

[9] The trial Judge pointed out to the jury the uncertainty in the evidence about the date and no criticism is made of the directions that the trial Judge gave to the jury on this issue. The appellant did not apply for a direction that the charge should be removed from the jury**.** Thus the members of the jury were presented with inconsistent accounts of the timing of the incident giving rise to count 26. There were windows of opportunity before and after the period of the appellant's custody when the offence could have been committed. This was a question for the jury. There was evidence upon which a jury, properly directed, could properly convict. On the evidence presented the jury was entitled to conclude that the offence had been committed during the periods before or after the appellant's custody. We are not left with any sense of unease on this ground.

Ground 2 – <u>Conviction on count 26 and the acquittals on counts 27 to 29.</u>

[10] The appellant's second ground of appeal against conviction asserts that there was inconsistency between the conviction on count 26 and the

acquittals on counts 27 to 29, the same defence having been relied on by the appellant. The latter counts involved allegations that C and Z were detained by the appellant in a motor vehicle, an incident distinct from the rape at knifepoint that was the basis of count 26. Counts 27 to 29 were stated to have occurred between 7 April 2001 and 8 April 2002. However the evidence at trial was that the incident had occurred after 19 April 2002. There was no amendment of the indictment to reflect the evidence as to the date of the incident. No objection was taken to the charges going to the jury unamended. The date of the offences stated in evidence, being after 19 April 2002, brought into play the appellant's period in custody from 20 May 2002 to 13 September 2002. With the acquittal of the appellant on counts 27 to 29 it was submitted by the appellant that it was entirely inconsistent and illogical of the jury to convict on count 26.

[11] Inconsistency does not make the verdict unsafe unless, despite such explanation as may be given for the inconsistency, the Court concludes that the jury was confused or adopted the wrong approach. In R v A[2014] NICA 2 Girvan LJ stated, following R v Dhillon [2010] EWCA 1577-

> "(i) The test for determining whether a conviction can stand is the statutory test whether the verdict is safe.
>
> (ii) Where it is alleged that the verdict is unsafe because of inconsistent verdicts, a logical inconsistency between the verdicts is a necessary condition to a finding that the conviction is unsafe, but it is not a sufficient condition.
>
> (iii) Even where there is a logical inconsistency, a conviction may be safe if the Court finds that there is an explanation for the inconsistency. It is only in the absence of any such explanation that the Court is entitled to conclude that the jury must have been confused or adopted the wrong approach, with the consequence that the conviction should be quashed.
>
> (iv) The burden of establishing that the verdict is unsafe lies on the appellant.
>
> (v) Each case turns on its own facts and no universal test can be formulated."

[12] The uncertainty about the date of the incident in the motor vehicle was not the only matter arising from the evidence in respect of counts 27 to 29. The two complainants gave inconsistent accounts as to whether the appellant was drunk and drinking from a bottle in the car, C had made no mention of the incident in her ABE interview, the incident had not been reported at the time of its occurrence and the complainants had accepted money from the appellant at the end of the incident.

[13] The members of the jury were aware of the matters raised on behalf of the appellant in relation to these counts. There were various grounds on which the jury could have reached the conclusion they did on these counts. There exists a reasonable explanation for the acquittal on these counts. We are satisfied that the acquittals on counts 27 to 29 and the conviction on count 26 does not amount to an inconsistency.

Ground 3 – <u>Conviction on counts 14 to 25 and acquittal on counts 27 and 28.</u>

[14] The third ground of appeal against conviction concerns counts 14 to 25 involving C, the jury having acquitted the appellant on the charges concerning C in counts 27 and 28. The appellant commenced a relationship with C when she was 14 years old and living in the children's home. By the age of 15 she was pregnant by the appellant and a son M was born. By the age of 17 she had left the children's home and was living with the appellant. The initial sexual contacts with C were consensual although she was underage so the contacts were criminal. Some of the later contacts were not consensual and gave rise to the charges.

[15] The defence denied the allegations made by C. The credibility of C was in dispute. She had not reported the appellant's conduct to the children's home or to the police on occasions when they had collected C from the appellant's home. Indeed she told lies to the children's home and to the police about her relationship with the appellant. In giving her account to the police of the incident of May 2002 she did not tell the police about abuse by the appellant. After some of this abuse she brought M to the appellant's house and she moved in to live with the appellant.

[16] All of the appellant's points about C's account were brought to the attention of the jury. The trial judge warned the members of the jury that they should exercise caution when assessing C's evidence. The appellant

makes no complaint about the terms of the Judge's charge to the jury in this regard.

[17] The appellant contends that there was inconsistency in the jury verdict in acquitting the appellant on counts 27 and 28 and convicting on counts 14 to 25. The appellant contends that the jury must have concluded, in acquitting on counts 27 and 28, that C had lied on oath and fabricated her allegations. Thus, says the appellant, the jury could not convict on counts 14 to 25.

[18] The acquittal of the appellant on counts 27 and 28 need not lead to the conclusion that C had lied under oath and fabricated her allegations. As Carswell LCJ stated in R v C [2002] NICA 26 -

> "A person's credibility is not a seamless robe, any more than his or her reliability: *Re G* [1998] Crim LR 483. There is no reason why the jury should not believe a complainant on one count while disbelieving her evidence on another. There may be all sorts of reasons why the jury may be convinced by a witness on one count but not on another: *R v Aldred and Butcher* [1995] Crim LR 160."

[19] We are satisfied that the jury were entitled to conclude, despite the acquittal of the appellant on charges 27 and 28, that C's evidence should be accepted as the basis for a conviction on counts 14 to 25.

Ground 4 – The convictions for offences against J and her daughters H and K.

[20] The fourth ground of appeal against conviction concerns counts 1 to 13 relating to J and her daughters H and K. The appellant denied the allegations and pointed to many inconsistencies in the evidence. By way of example H said she had been abused in a bed in the boys' room and there were no bunk beds in the room. K said there were bunk beds in the room and J said that bunk beds were not present when she moved in but were put in the room later. While H placed the abuse in the boys' room J said that H always slept in K's room when she visited from Scotland and had no recollection of H sleeping in the boys' room.

[21] The other count against H involved abuse when H was lying beside her sleeping mother. H's evidence was that when her mother awoke she told her mother that the appellant was hurting her. J had no recollection of this and said that if she had been told this she would have investigated.

[22] A further example involved K and J's account of an incident of abuse when K and the appellant were in the house and J was absent. K said that the abuse was interrupted by J returning to the house and the appellant went downstairs to admit J through the front door. K called J upstairs and in the bathroom showed J that she was bleeding from the vagina and told J that the appellant was responsible. J then went downstairs where there was an argument with the appellant and K and J stayed overnight with the next door neighbours and went back to Scotland the next day. J's evidence was that when she returned to the house she let herself in through the back door and remained downstairs until approximately half an hour later when she went upstairs and found K crying on the toilet. J saw that K was bleeding and thought she might have a urinary tract infection and put her in the bath. J had no recollection of being told that the appellant was responsible. J and the appellant did not have an argument nor was that the occasion on which they spent the night with the next door neighbours nor was that the occasion when they returned to Scotland which according to J was the result of a different incident involving assault on J.

[23] An additional example concerned the inconsistencies that emerged in the evidence about the appellant driving past the home of J's other daughter in Scotland and drawing his finger across his throat. This was said to be the occasion when police called at the house and H first reported abuse by the appellant. The police had no record of any report of such an incident, there were different accounts as to who was present in the house, as to who was present in the car, as to which car it was and as to the reason for the appellant being in Scotland.

[24] In relation to the above and other inconsistencies, prior to the trial Judge's charge to the jury, Counsel drew up a list of all the inconsistencies in the prosecution evidence and presented this to the trial Judge who incorporated every point in his charge to the jury. There was no application for a direction in respect of counts 1 to 13. There was no complaint about the content of the Judge's charge to the jury in respect of counts 1 to 13.

[25] The appellant invites the Court to undertake a "different analysis" of the evidence given at trial. This submission is based on the observations of Kerr LCJ in R v X [2006] NICA 1 at paragraph [22] –

> "In light of our conclusion that the judge was right not to accede to the application for a direction the argument that the verdict was against the weight of the evidence must fail. The basis on which the trial was allowed to proceed was that there was sufficient evidence on which the jury could properly convict. It follows that the verdict could not be said to be against the weight of the evidence. This does not, however, necessarily dispose of the argument that the verdict cannot be regarded as safe. *A jury could properly convict on the basis of the evidence presented to it but the Court of Appeal might subsequently conclude that it entertained a doubt about the safety of the conviction, either because of facts that emerged subsequently or because of a different analysis of the evidence given at trial.*"

[26] The different analysis for which the appellant contends is that the inconsistencies in the evidence were such that the Court ought to entertain a sense of unease about the safety of the conviction. However the basis of that unease is said by the appellant to be the very same inconsistencies that were outlined to the jury and despite which the jury convicted the appellant. No different analysis has been offered by the appellant. We see no reason to interfere with the jury's conclusion.

[27] This Court has examined the evidence given at the trial and considered the safety of the verdicts returned by the jury. We do not have any sense of unease about the correctness of the verdicts. We are satisfied that the verdicts are not unsafe. The appeal against conviction is dismissed.

The appeal against sentence.

[28] The appellant applies for leave to appeal against sentence in respect of the imposition of a sentence of life imprisonment. That sentence was

imposed in relation to the offences against C of buggery and the four counts of rape.

[29] In his sentencing remarks Judge Fowler indicated that he had been invited by the prosecution to consider the question of a discretionary life sentence in respect of the offences of rape, buggery and false imprisonment. He described those offences as clearly a very grave series of offences which, on their own, would warrant the Court considering a life sentence. Additionally he referred to what was described as the appellant's formidable criminal record. Reference was made to the summary of the authorities by Kerr LCJ in R v Gallagher [2004] NICA 11.

[30] The sentencing Judge further referred to the comments of Gillen LJ in R v White [2014] NICA on medical evidence relating to the mental state of the offender. It was noted that the sentencing exercise was completed without the appellant's consent to medical examination or to the preparation of a probation report.

[31] The sentencing Judge was satisfied that the offences of buggery and rape were "without doubt extremely grave offences calling for a severe and deterrent sentence". Further the sentencing judge was satisfied that the appellant was likely to commit such offences in the future. He outlined the appellant's criminal record which he described as chilling and disturbing. This included a 1992 conviction for assault occasioning actual bodily harm on a woman with whom he was involved in a relationship when he cut her face with a knife causing permanent disfigurement. In 2003 he was convicted of two counts of threatening to kill and one count of assault occasioning actual bodily harm on a female friend of victim C. This occurred at the appellant's home when he chased the female upstairs brandishing a knife and threatened her so that she locked herself in the bathroom and telephoned for help. In 2002 he was convicted of threatening to kill and assault occasioning actual bodily harm on another female in the presence of C when he grabbed her to the back of the head, punched her on the head, kicked her on the arms and threatened that he would slice her throat and that she would be dead. In 2005 the appellant was convicted of attempted murder and assault which caused severe injury and permanent disfigurement to a female with whom the appellant was in a relationship. The appellant punched her about the face, head and stomach before striking her about the head with a bottle causing lacerations to her face and head. Later the male occupant of the flat was found with his throat cut and other head injuries. In 2010 the defendant

was convicted of assault on his brother who, after a drinking session, awoke to find the appellant was strangling him.

[32] In light of the offences of which the appellant was convicted and the history of offending the sentencing judge described this as one of those rare and serious cases in which a life sentence was justified.

The approach to the imposition of a discretionary life sentence.

[33] The conditions for the imposition of a discretionary life sentence may be stated as follows. First of all, the offence for which the sentence is being imposed should be an extremely grave offence and secondly it is likely that there will be further offending of a grave character. These conditions arise from the judgment of Kerr LCJ in R v Gallagher [2004] NICA 11 where at paragraph [24] it was stated -

> "A discretionary life sentence should be reserved for those cases where *an extremely grave offence has been committed.* Of course it is true that the criminal record of the offender may affect the view to be taken of the seriousness of the offence since a repeat of earlier offending may indicate a more determined and settled criminal propensity and may cast doubt on any claim that the offence was spontaneous. But it would be wrong to impose a life sentence *solely* because it was considered that the offender is likely to re-offend on release from a determinate sentence for a less than serious offence. As Lord Bingham CJ pointed out in *Chapman,* a sentence of life imprisonment is the most condign punishment that a court may impose and it is therefore fitting that this should be *reserved for the most serious type of offence and where it is likely that there will be further offending of a grave character."*

[34] In stating the above in 2004, Kerr LCJ reviewed the approach in England and Wales in Hodgson [1967] 52 Cr App R 113, Whittaker [1997] 1

Cr App R (S) 261 and Chapman [2000] 1 Cr App R 77. The authorities show some development of the language used to identify the circumstances in which a discretionary life sentence would be imposed. The courts have moved from the terms adopted in R v Hodgson in 1967 where the conditions for the imposition of a life sentence were stated to be that (i) the offence or offences were in themselves grave enough to require a very long sentence, (ii) it appeared from the nature of the offences or from the defendant's history that he was a person of unstable character likely to commit such offences in the future and (iii) if the offences were committed, the consequences to others may be especially injurious, as in the case of sexual offences or crimes of violence.

[35] In R v Whittaker the conditions were stated under two heads. The first was that the offender should have been convicted of a very serious offence. The second was that there should be good grounds for believing that the offender may remain a serious danger to the public for a period which could not be reliably estimated at the date of sentence. This broader formulation was restated in R v Chapman and was adopted by Kerr LCJ in R v Gallagher as appears from the passage cited above.

The grounds of appeal against sentence.

[36] The appellant's grounds for leave to appeal against sentence may be summarised as follows:

(1) The sentencing Judge erred in concluding that the offences were of themselves grave enough to require a very long sentence and that it appeared from the nature of the offences and from the appellant's history that he was a person of unstable character likely to commit such offences in the future.

(2) The sentencing Judge failed to give sufficient weight to the fact that whilst the appellant had a number of serious convictions for violence none of them was associated with acts of a sexual nature.

(3) The sentencing judge failed to give sufficient weight to the fact that the offences were not of an extremely grave nature as would justify the consideration of a life sentence.

(4) The sentencing judge failed to consider, as a direct alternative to a life sentence, a sentence under Article 20 of the Criminal

Justice (Northern Ireland) Order 1996 which would have catered for a public protection element to any sentence imposed.

Ground 1 – The gravity of the offences.

[37] The first ground of appeal against sentence has been framed in terms taken from R v Hodgson. The three elements that require consideration are the gravity of the offences of which the offender has been convicted and the nature of the likely future offences, both of which will be considered below under the second and third grounds of appeal. The added element is the appellant's submission that the sentencing Judge failed to undertake any analysis as to whether the appellant was a person of unstable character for the purposes of the second condition in Hodgson.

[38] It is correct that the sentencing Judge did not undertake an analysis of the appellant as an unstable character. A mental condition may indeed be a factor in those cases where a discretionary life sentence is being considered. We are satisfied that the reference to unstable character is not a precondition but a likely incident of those cases where the conditions are otherwise satisfied. Evidence or proof or analysis of instability is not an essential feature of such consideration. As noted above the courts have moved away from the use of this term and from its inclusion in the conditions applicable. As to the availability of reports in that regard, the appellant refused to consent to medical examination or to a probation report.

Ground 2 – The likelihood of further such offences.

[39] The appellant's further submission concerns whether the likelihood of committing "such" offences in the future requires the Court to be satisfied of the likelihood that the same type of offence will be committed, that is, in the present case, offences of buggery or rape or other serious sexual offences. We are satisfied that the likely future offences are not so confined. "Such" offences must be extremely grave offences such as those of which the appellant has been convicted and which require a very long sentence, although it is not necessary that the likely future offences be the same character as the offences of which the offender has been convicted. We are satisfied that the reference to such offences involves the likelihood

of future offences that are similarly grave offences and does not require the future offences to be of the same character as those of which the offender has been convicted. This submission led the appellant to object to the sentencing Judge's reliance on the previous convictions for violence when those offences were not of a sexual nature. Offences of which the appellant had previously been convicted and of which he was convicted at this trial were kindred offences involving violent conduct against women. The sentencing Judge was entitled to take into account the history of offending involving violence against women and was entitled to conclude that the convictions and the history established a likelihood of such offences being committed in the future.

Ground 3 – Extremely grave offences.

[40] The appellant's third ground of appeal against sentence involved the concession that the offences were grave but the contention that they were not "extremely" grave so as to justify consideration of a life sentence. In addition the last count of rape was said not to have been accompanied by actual physical assault and thus did not render it an extremely grave offence.

[41] Kerr LCJ in R v Gallagher referred to the first condition as requiring that "an extremely grave offence has been committed" and to the second condition as requiring that "it is likely that there will be further offending of a grave nature". Were the offences of buggery and rape of which the appellant was convicted "extremely grave offences"? The alternatives are whether the offences are "in themselves grave enough to require a very long sentence" or "very serious offences"? Whichever formulation is used we are satisfied that the threshold has been reached in the present case. We adopt the previous formulation of this Court of "extremely grave offences". These were repeat offences against a vulnerable 15 year old girl and on the last occasion the offence was committed at knifepoint. We are satisfied that the offences of which the appellant was convicted were extremely grave offences and met the threshold for consideration of a discretionary life sentence.

Ground 4 – Protection of the public.

[42] The appellant's fourth ground of appeal against sentence concerned Article 20 of the Criminal Justice (NI) Order 1996 which provided as follows:

> "(2) The custodial sentence shall be -
>
> (a) For such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it; or
>
> (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.

[43] Thus under (a) above the Court may impose a commensurate sentence related to the seriousness of the offences or under (b) above the Court may impose a protective sentence, being a term longer than the commensurate sentence and necessary to protect the public from serious harm from the offender. Article 20(3) of the 1996 Order requires that when the Court imposes a sentence longer than a commensurate sentence it should be stated in open court that a public protection sentence is being imposed and why.

[44] The appellant contends that the sentencing Judge failed to consider, as a direct alternative to a life sentence, a sentence under Article 20(2)(b) of the 1996 Order which would have catered for public protection. However, the prosecution contends that, in imposing a discretionary life sentence the sentencing Judge imposed a commensurate sentence.

[45] It is unclear from the sentencing remarks whether the prosecution contention is correct. There is support for that contention in the sentencing Judge's statement that "…. looking at these offences on their own the Court would be considering a life sentence." The sentencing Judge did not make any statement for the purposes of Article 20(3) of the 1996 Order. However, the matter remains unclear and we proceed on the basis that the sentencing

Judge was not imposing the life sentence as a commensurate sentence but as a public protection sentence.

[46] The appellant relied on R v McDonald and Taggart [1989] NI 37 where a life sentence was imposed upon a plea of guilty to three counts of rape two counts of buggery and other sexual offences committed over 18 months against the appellant's stepdaughter when aged 8 to 10 years. The appellant had a clear record and there was found to be nothing to indicate that he was a person likely to commit such offences in the future when he was released from prison. Therefore it was concluded that the sentencing Judge had erred in principle in imposing a life sentence as a deterrent. It was found to be right and proper to impose a deterrent sentence but that such a sentence should have been a fixed term of 14 years imprisonment and not for the indeterminate period of a life sentence. This is an instance of the second condition for the imposition of a discretionary life sentence not having been established, namely the likelihood of extremely grave offending in the future. That is not the position in the present appeal.

[47] The appellant relied on R v McCandless [2004] NICA 1 to advance the essential point under this ground, namely that all other options should be considered before resorting to a discretionary life sentence. At paragraph [50] the Court of Appeal referred to the sentencing Judge's approach as being that "…. he quite rightly considered other methods of disposition; some were not available to him and others he did not regard as sufficient to deal adequately with the case, and he therefore fixed on a life sentence as the one remaining method which would suffice".

[48] Sentencing courts should consider all available sentencing options. Subject to any statutory requirement, it is not necessary that the sentencing Judge should state in terms that he or she has done so, nor that the available options be set out in the sentencing remarks. On many occasions the approach of the sentencing Judge will be self evident. In considering whether a sentence is wrong in principle or manifestly excessive, there will be occasions when an appellate Court will be assisted by an explanation of the selected option. In the present case the appellant's submission amounts to an appeal for a determinate sentence. This Court is satisfied that the conditions for the imposition of a discretionary life sentence were established in the present case and that the sentence was not wrong in principle nor manifestly excessive. The application for leave to appeal against sentence is dismissed.