

# Judicial Communications Office

Wednesday 6<sup>th</sup> September 2017

## COURT ALLOWS APPEAL AGAINST SENTENCE IN SEXUAL OFFENCES CASE

### Summary of Judgment

The Court of Appeal today allowed an appeal against part of the sentence in the case of a man convicted of committing serious sexual offences on his sisters.

The applicant, who cannot be named for legal reasons, was convicted on 18 February 2014 of 14 counts of indecent assault, three counts of gross indecency, five counts of rape, one count of cruelty to children and one count of attempted indecent assault on a female committed in respect of his younger sister and two counts of indecent assault on his older sister. He was sentenced to 20 years imprisonment in respect of the rapes with concurrent sentences in respect of the other convictions concerning his younger sister. The trial judge also imposed an **indeterminate custodial sentence with a minimum term of two years custody** in respect of the attempted indecent assault on his younger sister and concurrent sentences in relation to the indecent assault on his older sister.

The offences were committed against the applicant's younger sister, when she was between the ages of 5 and 16, from 1992, when the applicant was 12, to 2003, with a later count of attempted indecent assault on her when she was aged 20. The counts of indecent assault on his older sister took place in or around 1998/99 when she was 15 and the applicant was aged between 19 and 20.

The Court of Appeal refused the applicant's application for leave to appeal against conviction but considered his leave to appeal against his sentence. The Court of Appeal held that this was plainly a case of high culpability:

*"It represented a campaign of violent sexual abuse over a period of approximately 11 years. On any view that gave rise to very high culpability. This was also a case where more than one victim was involved and the trial judge correctly took into account that there was an element of breach of trust in that the perpetrator took over the role of father figure and continued his offending after the victim's father died."*

In mitigation the judge noted that the applicant suffered from a significant learning difficulty and took into account that he had no previous record for sexual offences. He also noted that the offences had commenced when the applicant was only 12 years old but continued into his twenties. He further took into account a psychiatric assessment which indicated that the applicant warranted designation as a high risk of sexual reoffending and

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there was evidence suggesting a continuation of persistence of attitudes supportive of sexual assault against a female.

The trial judge imposed a sentence of 20 years imprisonment in respect of the rapes and corresponding shorter terms on the other counts. The judge also imposed an Article 26 licence, which means the defendant is subject to licence until he has served the whole of the sentence, as well as a range of protective and rehabilitative measures to provide protection to the public.

The judge then turned to the appropriate sentence for the offence of attempted indecent assault on the younger sister which offence occurred approximately 5 years after the defendant had left the family home and at the time when the younger sister was living elsewhere with her partner. The applicant came into the younger sister's bedroom and attempted to touch her breast. He did not succeed and there was no element of violence involved in the incident but was deemed to be evidence supportive of a persistence of attitudes supporting sexual assault of females. The trial judge concluded that an extended custodial sentence would not be adequate in light of the persistence of the offending and the recent attempt to engage in sexual abuse in 2008. He imposed an indeterminate custodial sentence with a minimum term of two years custody in respect of the attempted indecent assault on his younger sister and concurrent sentences in relation to the indecent assault on his older sister.

The sentencing in this case took place four days before the Court of Appeal's decision in R v Pollins [2014] NICA 62 which held that an indeterminate custodial sentence is "the most draconic sentence the court can impose apart from a discretionary life sentence and that it should not be imposed without full consideration of whether alternative and cumulative methods might provide the necessary public protection against the risk posed by the individual offender".

The Court of Appeal said that, although it is entirely appropriate to consider the extent to which the offender may demonstrate protective factors in his personality, it is also necessary to have careful regard to the other protective factors imposed as a result of the sentencing exercise. In this case that includes the sentence of 20 years imprisonment, the Article 26 licence, the Sexual Offences Prevention Order, the Disqualification Order and the role of the Independent Safeguarding Authority. It considered these provide a range of intrusive measures designed primarily to secure the protection of the public which can be adjusted to reflect the requirement of effective protection and in some cases can endure for as long as is necessary:

"Without in any way failing to recognise the importance of the incident in 2008 it is noteworthy that it differed significantly from the earlier episodes in that there was no persistence or use of violence. It is also noteworthy that ... the risk of a violent offence was in the low to medium range. Taking all these factors into account we do not consider that this was a case for such a draconian sentence. An

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extended custodial sentence was adequate to deal with the risk having regard to the suite of protections to which the applicant is subject.”

The Court of Appeal substituted an extended custodial sentence comprising a commensurate term of 4 years and an extended licence term of 4 years in place of the original indeterminate custodial sentence. The 20 years imprisonment in respect of the rapes was not altered.

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).

**ENDS**

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