Judicial Communications Office

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COURT OF APPEAL INCREASES SENTENCE

Summary of Judgment

The Court of Appeal[1] today increased the sentence imposed on Vincent Lewis for his campaign of "horrendous" sexual abuse of three boys over a ten year period.

Background

Vincent Lewis ("the offender") was sentenced on 9 February 2018 to a total term of 10 years and six months comprising nine years and six months in custody and one year on probation in respect of multiple offences of indecent assault, buggery and attempted buggery committed on three children over a period of 10 years from 1973 to 1983. The Director of Public Prosecutions sought leave to refer the sentences to the Court of Appeal on the grounds that they were each unduly lenient.

The offender, who is now 91 years old, was until 1978 a monk at Portglenone Abbey. His principal responsibility since the late 1960s was operating the printing press. The first victim ("V1") was 10 or 11 when in 1973 he got a job along with two other boys at the Abbey. He told the Court that the offender began a campaign of indecent assault and buggery on him which persisted until 1978. The offender told the child that he had spoken to his parents who said that he had been a really bad boy and that they had agreed that the child be punished in this way. The medical evidence showed that this campaign of horrendous abuse had enduring effects on the victim. He was not believed when he told other people including his parents. He performed badly at school and became angry and distrustful of people. The Court heard that he continues to have recurring distressing recollections of his experiences and flashbacks in response to certain smells. He was judged to meet the criteria for post-traumatic stress disorder.

After leaving the Monastery the offender moved to another village where he again opened a printing press. He was assisted by a local man and a priest to find accommodation. He married in 1979. The local man who had arranged for his accommodation had a son ("V2") aged 9 or 10. The offender began to attack this boy and when the child was 10 or 11 he started taking him to the darkroom of the printing press and locked the doors. This campaign of abuse continued for approximately four years. The medical evidence indicated that this victim is suffering from trauma and stress related disorder and will require significant assistance to try to put his life together. The Court was told that he reported the abuse at the age of 18 but it was "swept under the carpet" by the local priest.

The third victim was a brother of V2. He was subject to one incident when he was approximately 13 years old. The offender fondled at his genital area and the boy fended him off. The offender sought to encourage the boy to engage in sexual activity but he refused.

In 2005 V1 complained to the Abbot of the Monastery about the offender's sexual abuse. Solicitors were instructed to commence civil proceedings against the Order and compensation was agreed. The

[1] The panel was the Lord Chief Justice, Lord Justice Stephens and Madam Justice McBride. The Lord Chief Justice, Sir Declan Morgan, delivered the judgment of the Court.

offender made a small contribution to that compensation. V1 did not go to the police until 2012. He made an Achieving Best Evidence ("ABE") interview at that time.

In 2010 V2 made a complaint to a local priest. Shortly afterwards the allegations against the offender were reported to police who spoke to V2 who indicated that he did not wish to proceed with the allegations. The offender was advised of the allegations at that time, apologised to V2 and made some monetary donations to charities of the victim's choice. V2 did not make an ABE interview until 2015 at which stage the offender was interviewed by police for the first time.

At interview the offender denied all of the offences and claimed that he did not even know who V1 was. On 20 March 2017 he was due to be arraigned but it was adjourned to have the offender psychiatrically examined. When arraigned on 30 June 2017 he pleaded guilty to the counts of indecent assault but not guilty to those of buggery. In September 2017 the trial was adjourned to again have the offender psychiatrically assessed and on 5 December 2017 he applied to be re-arraigned and pleaded guilty to almost all of the buggery counts. The remainder were left on the books.

The pre-sentence report indicates that the offender accepted that he sexually abused V1 but denied the buggery offences claiming that there was no penetration. He denied the offence in relation to the brother of V2. In relation to V2 he said that the victim came to him, to his house, and was keen for "the bit of sex for the money". He believed the sexual behaviour they engaged in was by way of mutual agreement. The report indicated that the offender held justification and offence supporting beliefs in relation to children consenting to sexual behaviour and a lack of awareness or appreciation of the impact of his offences on the victims. The report stated that there was no evidence that the offender had engaged in sexual offending for a period of 30 years prior to his conviction. He was assessed as a low likelihood of reoffending reflecting the relative stability of his general lifestyle in circumstances related to his advanced years and his withdrawal from community life. He was not assessed as meeting the threshold for significant risk of causing serious harm.

The sentencing remarks

The trial judge examined the aggravating factors in this case:

- the offender was placed in a position of trust by the parents;
- in the case of two of the victims their father had gone out of his way to assist the offender to get settled in the community after he left the Abbey;
- a significant degree of planning went into the offender's attempts to attack these boys;
- there were three victims who were all under 14 years of age;
- the offending stretched over a period of about 10 years;
- there was frequent ejaculation;
- the offender took steps to prevent V1 in particular from reporting the matter telling him that his parents knew what was happening and approved of it;
- on occasions money and alcohol was used to facilitate the attack;
- the presentence report indicated a stark lack of victim empathy; and
- the effect on the victims was horrendous.

The trial judge noted the established principle that the court is always entitled to show a limited degree of mercy to an offender of advanced years because of the impact that a sentence of imprisonment can have on such a person. The trial judge also noted that although V1 had made his

ABE interview in 2012 the offender was not interviewed in respect of it until 2015 (there was no suggestion that the delay in interview caused actual prejudice to the offender but it was submitted that this unexplained delay should be recognised in some way). The trial judge further noted that the offender did eventually plead guilty to the offences and was entitled to credit for that.

Sentencing guidelines state that the starting point for a campaign of buggery and other serious sexual offences attracts a starting point of the order of 15 years. In light of the aggravating factors the trial judge considered that apart from the issues of old age and delay before applying credit for the plea the appropriate sentence was one of 18 years imprisonment. He decided to reduce that sentence for three years in respect of the offender's age and one year for delay. He then gave a discount of 25% credit for his plea resulting in an overall sentence of 10 ½ years. The trial judge then considered whether it would be appropriate to impose a custody probation order. Under that provision the custodial sentence shall be for such term as the court would pass on the offender less such period as the court thinks appropriate to take account of the fact of the offender's supervision by the probation officer on his release from custody in protecting the public from harm from him or for preventing the commission by him of further offences.

The trial judge noted the assessment that the offender was at low likelihood of reoffending after his release and in light of his age there were external controls to manage any issues argued against making a custody probation order. Having identified the purposes of a custody probation order as being the need to protect the public from serious harm and the desirability of preventing the commission of further offences and securing rehabilitation the trial judge imposed a custody period of 8½ years and a probation period of two years. He then relisted the case on 9 February 2018. He noted that the purpose of a custody probation order was not designed to enable the court to soften the sentence that would otherwise be entirely appropriate but took the view that some rehabilitation and some probation supervision would be of benefit. He increased the custodial element to 9½ years and reduced the probation period to one year.

Consideration

The Court noted that in his consideration of the starting point, before taking account of age and delay in the plea, the trial judge correctly noted that the starting point for a campaign of rape or buggery or other serious sexual offences was 15 years before taking into account any specific aggravating circumstances. It said there clearly were significant aggravating circumstances in this case in respect of V1:

> "He was very young, the offender was in a position of trust, the offender undermined the boy's confidence in the protection to be expected from his parents and the attacks were persistent and planned. This offending on its own would easily have justified the 18 year starting point identified by the learned trial judge."

The Court was satisfied that when one then takes into account the further campaign of sexual offending against V2 and a further attack on V3 the appropriate starting point in this case before considering the mitigating factors was in excess of 20 years. It accepted the submission by the prosecution that the offender was not charged until he was interviewed in 2015. The trial judge had noted that if he had been charged in 2012 his old age might not have been taken into account in the same way but the Court commented that whether he was 87 or 90 at the time of sentencing would in its view have made little difference to the approach to age.

The Court noted that the reduction of one year for delay allowed by the trial judge related to a three year period where the lack of action by the prosecution is unexplained. It commented that since the offender was during that period at liberty and not under charge it was difficult to see how he had suffered such prejudice as to justify a material reduction in sentence: "The learned trial judge may have taken into account that the offender was aware from 2005 about the allegations of V1 and from 2010 those of V2. It may be that he concluded that between 2012 and 2015 the offender justifiably feared criminal proceedings."

The Court was satisfied that the trial judge approached the question of discount for age in accordance with the principle outlined in case law. It said the practical outcome of that assessment must depend upon the circumstances of the individual case. For that reason the Court sought further information from the Northern Ireland Prison Service ("NIPS") in order to assist its judgement in this case. The Court was informed the total number of prisoners aged 70 or more in April 2018 was 26 of whom 25 were in the bracket aged 70 to 79. The offender was the only person aged 90 or over. It was also advised that NIPS has a policy for Older and Disabled Prisoners which provides for an initial health assessment and interview in order to assess a suitable cell location for the prisoner. Arrangements are in place to establish those who require support to be provided for daily living. The Court was informed that this offender has caused staff no concerns and has followed routine. It commented that, given the offender's age and circumstances, it considered that no criticism could be made of the decision of the trial judge to allow a reduction in the sentence of three years.

The last issue concerned the discount for the plea. The trial judge allowed a discount of 25% and was told that the plea was welcome. The Court commented that for an offender who denied the offences at interview and pleaded not guilty to the most serious offences until some months before his trial that was a very generous discount. The prosecution indicated, however, that the plea was welcome and took no issue with the extent of the discount.

Conclusion

The Court indicated that a starting point in excess of 20 years was appropriate in this case before looking at the mitigating factors. It accepted that the three-year reduction for age and the 25% discount for the plea were in the circumstances appropriate:

> "Even if one took a very generous starting point of 20 years and made allowance for age, delay and discount for the plea the resulting sentence would still be one of 12 years. Accordingly we are satisfied that the sentence imposed was unduly lenient and we substitute for the commensurate sentence of 10 years 6 months a sentence of 12 years."

The Court added that the provision of a custody probation order is designed to ensure that the public are protected and offending reduced because of the rehabilitative effect of the probation period. It said it was clear from the pre-sentence report that no rehabilitative programme directed to his offending was either required or likely to be put in place. The Court considered that there was no basis for a custody probation order in this case in light of the conclusion of the pre-sentence report that the offender's age and withdrawal from community life had created external controls to manage his issues without the requirement for further intervention.

The Court concluded that the sentences were unduly lenient. It increased the buggery sentences to concurrent custodial sentences in each case of 12 years and substituted imprisonment for the commensurate term for the custody probation orders in the other cases.

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 Judiciary NI website (www.judiciary-ni.gov.uk).

ENDS

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