

# Judicial Communications Office

12 January 2018

## **COURT DISMISSES APPEAL BY DARREN FEGAN AGAINST SENTENCE**

### Summary of Judgment

The Court of Appeal today dismissed an appeal against sentence by Darren Fegan who pleaded guilty to the grievous bodily harm with intent of a two year old girl.

#### **Background**

The offence occurred on 19 October 2014. The appellant had stayed the previous night at the house of a woman with whom he was in a relationship. The woman's two year old daughter was upstairs in her bed. The mother heard the child crying and then what she described as a single thud. When she went upstairs the appellant was standing crouched over the child's bed and the child appeared lifeless. The mother lifted the child and ran downstairs for help. The appellant tried to prevent her leaving the house but she managed to push past him. There was evidence that the appellant's knuckles were raw and there was blood between his fingers immediately after the incident.

The appellant initially maintained during police interview that he had not caused any injury to the child. He alleged that the child's mother had been drinking during the day, came across a text to him from another girl and "cracked up". He claimed that she fell when carrying her daughter up to bed and dropped her on the stairs. The appellant maintained this position until at least late 2016. The Court heard that none of this was true. The appellant subsequently admitted that he was upstairs when he heard the child crying. He went into her bedroom and punched her as she wouldn't stop. In demonstrating how he hit the child the Court said it was clear that he "violently assaulted her with extreme force". The child suffered a significant brain injury and required cranial reconstruction. She has mobility and visual difficulties which will require assistance for the foreseeable future and reassessment of her needs throughout childhood. Her cognitive ability is significantly limited. She has speech and physical impairment and is at significant risk of developing epilepsy.

#### **The appellant's circumstances**

The Court heard that the appellant had a difficult upbringing. His father was an alcoholic and his mother was addicted to drugs and alcohol. He was taken into care and was sexually assaulted at the age of 13. At the age of 15 he was diagnosed as having severe conduct disorder, a condition characterised by severe aggression and nonconformity behaviours. At 18 he had a diagnosis of Attention Deficit Hyperactivity Disorder although he informed his probation officer that these conditions were no longer a problem in his life.

The appellant had a total of 19 assault related convictions and an extensive domestic abuse history. On 4 January 2013 at Craigavon Magistrates Court he was convicted of six common assaults, one assault occasioning actual bodily harm and four offences of criminal damage

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arising in a domestic context between 1 November 2011 and 22 January 2012. Of particular concern to the Court was an incident on 22 January 2012 when he punched a woman who was holding her 20-month-old son. The injured party was knocked to the ground along with her son. The appellant stamped on her leg and punched her son, hitting him on the side of the head. The injured party tried to hide with her son behind his cot but the appellant pushed the cot in against both of them with force preventing them from escaping. The defendant left the room and then returned punching the injured party on the nose.

The pre-sentence report in respect of the appellant concluded that he presented as a high likelihood of reoffending and as posing a significant risk of serious harm. The trial judge noted as an aggravating factor the appellant's "cowardly, shameful and vindictive" denial of responsibility for the offence and his claim that the victim's mother had inflicted the injuries on her child. The judge took into account the appellant's "harrowing and tragic" childhood, including his diagnosis of ADHD and severe conduct disorder, his alcohol and drug abuse and his lately expressed remorse. He noted the appellant's expressed desire to maintain a positive lifestyle but also the absence of evidence to support a conclusion that he can achieve this aim. The trial judge set the starting point for sentencing in this case at 16 years imprisonment and a discount of 15% was applied for the late guilty plea, resulting in a sentence of 13 years and 6 months. The judge further imposed an extended licence period of three years.

## **Consideration**

The Court of Appeal stated that in cases like this the focus has to be on the vulnerability of the child. That vulnerability affects the victim in two ways. First, the child has absolutely no defence mechanism against the person who intends to inflict grievous bodily harm upon him. Secondly, because of the child's stage of development the harm likely to be caused by the application of severe force is greater than that which would be expected in relation to an adult:

"Where significant force is applied to a young child with intent to cause that child grievous bodily harm, the increased likelihood of significant damage to the child renders the conduct itself highly culpable. In general, therefore, we consider that a range of 7 to 15 years for such conduct is appropriate. The place within the bracket will be heavily influenced by the extent of harm actually caused but we recognise that there will be cases where a person of good character has engaged in an isolated incident as a result of which a sentence below the range might be appropriate."

In this case, however, there was a significant blow to the toddler's head. The Court said the appellant had imposed himself upon the child despite its mother asking him to leave the welfare of the child to her. The appellant had consumed alcohol and drugs at the time of the offence. The victim has suffered permanent life changing injuries. The Court considered that these are all factors pushing the case towards the upper end of the bracket. In addition the appellant has a previous conviction for assaulting a toddler and a significant domestic violence criminal record upon which the prosecution relied.

The Court added that a particular feature of this case is that the appellant at interview and thereafter sought to make a case that the mother had been responsible for the assault upon

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the child. It said that in essence this was an attempt by him to pervert the course of justice but that no such charge was properly levied against him. This was an aggravating feature which the Court said, if he had been charged, would normally require a consecutive sentence:

“Taking all of those factors into account we consider that this was a case which justified a starting point at the top end of the range. The judge adopted a starting point of 16 years which in our view was stiff but we cannot say that it was manifestly excessive. There is no issue with the discount allowed for the late plea and no other issues arising in the appeal.”

The Court of Appeal did not consider that the sentence was manifestly excessive and dismissed the appeal.

## 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](http://www.judiciary-ni.gov.uk)).

**ENDS**

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