Judicial Communications Office

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COURT DELIVERS GUIDANCE ON SENTENCING FOR RAPE WITH AGGRAVATING FEATURES

Summary of Judgment

The Court of Appeal[1] today imposed a custodial term of 18 years' imprisonment on Shaun Hegarty following an appeal against sentence. Hegarty will also be subject to a five year extension period on licence following release making his sentence an aggregate extended custodial sentence of 23 years.

Summary of factual background

Shaun Hegarty ("the appellant") was convicted in November 2020 of two counts of rape; attempting to choke with intent to commit rape; causing grievous bodily harm with intent; and developing a relationship without disclosing his previous criminal convictions. He was acquitted of one count of administering a stupefying substance to enable sexual activity. The Crown Court imposed an aggregate extended custodial sentence of 25 years comprising a custodial term of 20 years and a five year extension period during which the appellant will be subject to a licence[2].

The offending took place on 6/7 April 2019. The complainant "M" had met the appellant at a friend's house several weeks before and agreed to meet at his flat. Her evidence was that on returning from the bathroom, she took a sip of her drink and passed out. She woke to find herself on a mattress with a rope around her neck. She left the flat and was discovered lying at the side of the road. When the police arrived M told them she had been assaulted and raped. A hospital doctor gave evidence that she had suffered a subarachnoid haemorrhage on the left side of her brain, a "blowout fracture" of the bones surrounding her left eye, swelling to her jaw and multiple abrasions around her neck.

M was also seen at the Rowan Centre and the doctor there was of the opinion that she had been subject to a "very aggressive sexual and physical assault". M gave various accounts of how she came to be at the appellant's flat and how she came to sustain her injuries. She claimed she had been injected with something however toxicology samples taken some time after the events showed low alcohol readings and no evidence of drugs in her system. The police attended the appellant's flat and there was evidence that some cleaning had occurred. The appellant's case was that all sexual activity had been consensual and that the injuries to M's face were caused when she walked into a door during a visit to the toilet.

Appeal

The court outlined distinguishing characteristics in this case which it said framed the decision on sentence:

[1] The panel was Keegan LCJ, Treacy LJ and Sir Paul Maguire. Keegan LCJ delivered the judgment of the court.
[2] On 6 June 2022, the Court of Appeal dismissed an appeal against conviction reported at [2022] NICA 31.

- There were convictions for a range of offences reflecting two types of rape (vaginal and anal) and separate serious physical violence, namely grievous bodily harm and choking resulting in additional injuries to M.
- The appellant has a previous conviction for rape and sexual assault which occurred in February 2010 for which he received a seven year prison sentence and under the terms of a Sexual Offences Prevention Order ("SOPO") was required to disclose his criminal conviction when entering into a relationship. The circumstances of the previous rape were that the complainant was not aware of it until she woke and was in essence raped whilst in an unconscious state.
- The appellant has shown little or no remorse for his offending and little or no appreciation or learning from his previous period of imprisonment and the Sexual Offices Treatment Programme ("SOTP") he completed. He was recalled twice upon his release from prison for breaching his licence conditions.
- The impact on the victim who has been diagnosed with prolonged adjustment disorder following the traumatic experience.
- The appellant's callousness in leaving the victim to be recovered late at night by the public on a grass verge and the clean up operation he undertook at his house before the police arrived.
- The appellant consistently blamed the victim for her injuries by stating that she had walked into a door and that her internal injuries associated with the rape were as a result of rough sex.

The trial judge in the Crown Court accepted that there was no mitigation in this case, no credit for a guilty plea and the finding of dangerousness under the Criminal Justice (NI) Order 2008 could not be questioned. He considered there were four aggravating factors:

- The sexual violence which the appellant attempted to explain away by saying it was rough consensual sex;
- The physical violence which appears to have been completely gratuitous;
- The attempted forensic clean up; and
- The appellant's very relevant previous record.

The argument on appeal was that the sentence was manifestly excessive. This argument was grounded on the fact that the trial judge had not provided a starting point in his sentencing and contended that this offended the principle of transparency, making the ultimate sentence one without a proper methodology. Counsel maintained that the overall sentence was out of kilter with authority in this jurisdiction in relation to rape, describing it as a "crushing sentence".

Paragraphs [14] – [18] of the guideline case in relation to sentencing for rape in Northern Ireland, *R v Kubik* [2016] NICA 3, states that a starting point of five years is appropriate in cases of rape with no aggravating or mitigating factors. In cases where a number of specified factors are present, the starting point is eight years. Where there is a campaign of rape a starting point of 15 years is appropriate. The starting point is just that and may be adapted up or down depending on the circumstances.

The court said the trial judge in this case should have set a starting point as this would have provided some explanation of how he arrived at the 20 year sentence "which was on the face of it outside the range for aggravated rapes". However the court was of the view that this omission was not necessarily fatal to the overall sentence reached as that depended upon the outcome reached:

> "We think that if the judge had considered a starting point applying *Kubik* he would have gone to the second category of case which is the eight year starting point. The fact that there was both vaginal and anal rape would of itself make this a case where the higher starting point applied. However, there were also a number of other significant aggravating factors which would result in a sentence above the eight year starting point. The judge properly identified these as the two types of rape, the use of violence over and above the force necessary to commit the rape, a previous relevant conviction and the clean up of the property. We agree that all of these features were relevant factors and in addition we raise [the distinguishing characteristics noted above] not least the fact that the appellant left the victim to fend for herself after the rapes and also blamed her."

The court said the trial judge could justifiably have reached a sentence at the top of the range of 15 years. The court then noted that the judge should not have stopped there because of the constellation of violent offences which were part of this course of behaviour, specifically a choking offence and an offence of grievous bodily harm. It said these types of offences could attract custodial sentences in their own right and represent serious aggravation.

The court stated that a judge would be justified in saying that 15 years was not enough on the basis of totality to reflect all of the offending in this case and that the appropriate sentence was above the 15 years. Taking into account the additional violence which was independent of the rapes the court considered that a further period of imprisonment was justified and that this should bring the total sentence to one of 18 years' imprisonment. Had the appellant been found guilty of a drugging offence this would have increased to 20 years however as the appellant was acquitted of that offence it could not therefore influence sentencing.

In summarising the conclusion reached on the appropriate custodial term the court said as follows:

> "This is a very stiff sentence which is beyond the usual range and may be unprecedented in this jurisdiction. However, to our mind this length of sentence is justified in a case of high culpability and high harm with such a myriad of aggravating factors and to reflect the seriousness of this type of offending. In addition, the court was entitled to consider risk to the public which is what an extended custodial sentence is designed for. The maximum extended term by virtue of the legislation is eight years in this case. Given the uninspiring contents of the probation report … and the need to protect the public an extended custodial sentence of five years was not an unreasonable position to take by the judge on the facts of this case. We are not convinced that the judge needed to say much more about this disposal as the length of the extended custodial period is a matter of discretion. The trial judge was best placed to assess this having conducted the trial."

Conclusion

The court considered the appropriate custodial term in this case is one of 18 years.

In addition the court found no fault with the five year extension period, during which the appellant will be subject to a licence, making an aggregate extended custodial sentence of 23 years.

This means that the appellant will have to serve at least half of the 18 year custodial term in prison at which stage a risk assessment will be conducted by the Parole Commissioners to determine whether

he can be safely released on licence. If the Parole Commissioners do not support release due to risk to the public the appellant may have to serve the entire 18 year custodial term in prison. At the end of the 18 year term the appellant will be automatically released on licence for the five year extension period during which he is liable to be recalled to custody should he breach any of his licence conditions.

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 (https://judiciaryni.uk).

ENDS

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