Neutral Citation No: [2022] NICA 55 *Judgment: approved by the court for handing down (subject to editorial corrections)**	*Ref:* **KEE11938** *ICOS No:* **19/118939** *Delivered:* **07/10/2022**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE KING

v

SHAUN HEGARTY

Mr Brian McCartney KC with Mr Sean Doherty (instructed by Quigley Grant & Kyle Solicitors) for the Appellant
Mr John Orr KC with Mr Gary McCrudden (instructed by the Public Prosecution Service) for the Prosecution

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Before: Keegan LCJ, Treacy LJ and Sir Paul Maguire

KEEGAN LCJ (*delivering the judgment of the court*)

The complainant is entitled to automatic lifetime anonymity in respect of this matter by virtue of section 1 of the Sexual Offences (Amendment) Act 1992 as amended. The judge referred to the complainant as M in his sentencing remarks and we will adopt that nomenclature in this judgment.

Introduction

[1] This appeal decision provides guidance in relation to sentencing for rape with aggravating features.

[2] We have previously dismissed an appeal against conviction in a decision reported at [2022] NICA 31. We are now dealing with the appeal against sentence, leave having been granted by the single judge McFarland J.

[3] The appellant was sentenced on 28 May 2021 by the Recorder of Londonderry, His Honour Judge Babington ("the judge") to an extended custodial sentence of 25 years' imprisonment comprised of the following concurrent sentences of imprisonment:

- Three years' imprisonment on count 1 which was developing a relationship with a female without disclosing his previous criminal convictions, contrary to section 113(1)(a) of the Sexual Offences Act 2003.

- 12 years' imprisonment on count 3 for attempting to choke with intent to commit an indictable offence, namely rape, contrary to section 21 of the Offences against the Person Act 1861.

- 20 years' imprisonment on count 4 for vaginal rape, contrary to Article 5(1) of the Sexual Offences (Northern Ireland) Order 2008.

- 20 years' imprisonment on count 5 for anal rape, contrary to Article 5(1) of the Sexual Offences (Northern Ireland) Order 2008.

- 10 years' imprisonment on count 6 for causing grievous bodily harm with intent, contrary to section 18 of the Offences against the Person Act 1861.

[4] In addition to the above, pursuant to a finding of dangerousness, the appellant received a five year extension to the custodial term of 20 years.

[5] The maximum sentence for the above offences was life imprisonment in relation to all the offences save for count 1 where the maximum sentence is five years.

Background Facts

[6] We have already recited the facts in the conviction appeal decision but reiterate a number of distinguishing characteristics of this case which frame our decision on sentence.

[7] First, there were convictions for a range of offences reflecting two types of rape and quite separately serious physical violence, namely grievous bodily harm and choking resulting in additional injuries to the victim M.

[8] Second, the appellant has a previous conviction for rape in similar circumstances. This previous conviction was for an offence which occurred in February 2010 for which the appellant received a seven year prison sentence in January 2011. As part of that sentencing exercise a Sexual Offences Prevention Order ("SOPO") was made until further order. This order stipulated that the appellant was not permitted to develop a relationship with a female without disclosing his criminal convictions to her. The appellant breached that order when he committed the index offences.

[9] The circumstances of the previous rape which we decided were properly introduced as bad character evidence were that the complainant was not aware of

being raped until she woke and so, in essence, was raped whilst in an unconscious state. Furthermore, when she woke up she found that she was naked from the waist down as her pyjama bottoms had been removed. There were similarities in both cases as the victims did not know at the time what was happening to them and their clothing was removed without their knowledge.

[10] The third feature that we consider of particular importance is that this appellant has shown little or no remorse for his offending and little or no appreciation or learning from his previous period of imprisonment. He was recalled on licence twice upon his release from his prison sentence in 2014 and he clearly failed to apply any learning from the Sexual Offences Treatment Programme ("SOTP") he completed. We discuss this below in more detail when examining the contents of the pre-sentence report.

[11] Fourth, we consider that the impact upon the victim of this offending is reflected in the report of Dr Curran, Consultant Psychiatrist which we discuss further below. This report highlights the stark fact that the victim could recall little as to the exact details of what happened to her. She could not engage in therapy. She was diagnosed with prolonged adjustment disorder.

[12] Fifth, of some significance is the appellant's callousness in leaving the victim to her own devices to be recovered late at night by the public on a grass verge and the clean-up operation which the appellant undertook at the house before the police arrived.

[13] Finally, a matter of significance to us in this sentencing appeal is that the appellant consistently blamed the victim for her injuries by stating that she had sustained facial injuries by walking into a door and also that the internal injuries associated with the rape were as a result of rough sex. This was despite the considerable medical evidence photographic and CCTV evidence discussed in our earlier judgment.

The Pre-sentence Report

[14] At the time this report was commissioned the appellant was a 29 year old single man. He is now 31 years. The appellant described some family support from his mother and siblings. He completed mainstream education and acquired several GCSE's before attending technical college where he trained in various trades and then achieved employment as a painter and decorator. The report refers to the fact that the appellant has no mental health diagnosis although he experienced anxiety and self-harmed on a number of occasions. There is also reference to use to drugs although the appellant claimed to be drug free since his remand in April 2019.

[15] Correspondence we have since received indicates that he has passed recent drug tests in prison. He has not been subject to any adjudications, is employed in the prison kitchen and is currently an enhanced prisoner.

[16] The appellant is also described as having one long term relationship which began and ended in his teens. He described having an active sex life estimating he has had about 30-40 casual sexual partners. He said that he was not in a sexual relationship at the date of the index offences.

[17] The report also refers to the appellant's previous conviction for rape. For that a court imposed a determinate custodial sentence of 42 months' custody and 42 months on licence and ordered that the appellant complete the SOTP whilst in custody. It appears that the appellant completed the programme and was released from custody on licence only to be recalled a very short period after.

[18] The report describes the circumstances of this recall and subsequent recalls as follows:

> "The defendant was released on licence on 30 August 2014 and then recalled to custody on 6 November 2014, for breach of licence conditions including an undisclosed relationship. This relates to him being found in the company of two females, both subject to care and both having been reported missing by the care home earlier that day. Both were flagged as being at risk of child sexual exploitation. Staff at the children's home reported that one of the females had been seeing a male known to them as Sean O'Neill since 27 October 2014. It transpired that this was the defendant. Consequently, he was convicted for breach of SOPO on 6 November 2015, for failing to disclose that relationship. The defendant was released again on licence on 26 January 2017 and then was recalled a second time for a breach of licence on 28 April 2017. As a licence condition, the defendant was residing at approved hostel accommodation. He had one placement withdrawn in February 2017 due to drug misuse and being aggressive towards staff when they challenged him about the smell of cannabis in the room where drug paraphernalia was also present. The defendant forfeited a second placement at a different hostel in April 2017 when non-prescribed medication and a knife were found in his room. He was released on licence again on 4 January 2018 and his licence expired on 18 February 2018."

[19] The opinion provided by probation services as to the risk posed by the appellant is stated in the following terms:

> "Given the nature of Mr Hegarty's convictions, further assessments have been completed. The Stable 2007 was developed to help predict recidivism, assess change in risk status and identify intervention needs for those adult males who commit sexual offences against identifiable victims. When combined with the Risk Matrix 2000 it provides a composite assessment of risk/needs and estimates sexual recidivism. Mr Hegarty's composite assessment places him in the moderate to high priority category for supervision and intervention at this juncture."

[20] Under the heading 'Risk of serious harm to the public' the probation report states that the appellant was assessed as presenting a significant risk of serious harm due to the following risks:

- repeat sexual offending – developing pattern/similarities;
- serious harm caused to victim;
- vulnerability of victims;
- escalation and gravity of offending;
- use of violence;
- degree of violence used in index offending;
- alcohol/substance misuse;
- alleged offending;
- depicting poor self-management and placing himself in risk type situations;
- use of weapons;
- non-compliance;
- rejection of supervision;
- disregard for court orders/external controls;
- unmet treatment needs;
- lack of deterrents;
- no pro-social influences;
- no responsibility; and
- seeking to avoid culpability, forensic clean up.

[21] Under the heading 'Protective Factors' the following opinion is given:

> "Whilst it is positive that Mr Hegarty expresses an intention to engage in any work assessed as appropriate to reduce his risk of reoffending, there are no identified protective factors at this stage. This is based on the previous SOTP being completed by Mr Hegarty, with obvious limited, if any, impact. Moreover, his persistent rejection of supervision/disregard for external controls, poor self-management and repeat – similar offending.

> Consequently, when balanced with the assessed risk, his self-reported intentions are insufficient to be assessed as protective, at this stage. Mr Hegarty remains assessed as a Category 3 offender within the Public Protection Arrangements (Northern Ireland) (PPANI) that is someone whose previous offending and/or current behaviour and/or current circumstances present clear and identifiable evidence that they are highly likely to cause serious harm through carrying out a contact sexual or violent offence. Mr Hegarty's risk level was raised to Category 3, whilst on remand on custody on 1 August 2018 for alleged offences and released on bail 27 September 2018 when he was subject to supervision by the Public Protection Team (PPT). PPT is a co-located team comprising police officers, probation officers and staff from social services. They are based at PSNI Seapark complex and tasked with the responsibility of managing Category 3 sexual and violent offenders in the community. Mr Hegarty's engagement with supervision between 27 September 2018 and the commencement of the index offences was non-compliant. The statutory powers underpinning his risk management lay with the notification requirements and his SOPO. While he remains subject to a SOPO it is assessed as insufficient in its current form to manage the assessed risk."

[22] When interviewed by the probation service the appellant asked that the court be made aware that although he was angry and frustrated at what he considers a wrongful conviction, he wanted it to be known that none of those feelings are directed towards the victim. Furthermore, that he said that he was respectful of the jury's finding and accepting of any sentence imposed.

Victim Impact

[23] In the report of Dr Curran the victim is described as a single woman and the mother of a young daughter who is placed in kinship care. She had suffered the loss of her partner over the past four years. She was prescribed anti-depressants. Her physical injuries were such that she required in-patient treatment and medical observations for a week. As the victim had no retained memories of the events of the particular night Dr Curran was of the view that any resultant symptomology would not reach the diagnostic criteria for post-traumatic stress disorder ("PTSD").

[24] The diagnosis provided was one of prolonged adjustment disorder following this traumatic experience – symptoms were characterised by increased subjective anxiety, fluctuating lower mood and a marked impairment of sleep complicated by excessive inappropriate use of alcohol over nearly 12 months post incident.

[25] By the spring of 2020 the victim's mental state had begun to cause such concern that she was assessed by the crisis team but a week or so later ended up in Altnagelvin Hospital with aspiration in her lungs which led to renal failure. The patient's life was at risk at this time and she would have been deemed to be a medical emergency. Dr Curran was of the view that undoubtedly, the victim's anxiety levels became heightened again prior to the recent court case. The victim recounted that she had since rarely gone out into any social surroundings apart from working occasionally alongside her father to help with his removal business. She remained disinclined to leave her own home except when accompanied by relatives. She said that she is not in the right place to undertake and engage in counselling sessions but does not dismiss that within the next month she will self-refer to Nexus but only in her own mind when she is ready and prepared to do so. She has had the sterling support of her family.

The judge's sentencing remarks

[26] To consider the arguments made in relation to this appeal we have had the benefit of reading the judge's sentencing remarks. Strikingly, the judge described the case in these terms:

> "This case, sadly, is one of the very worst cases to come before this court, involving as it does a very serious sexual assault which culminated in M being raped in two different ways. If it was totally consensual he would, one presumes, have had the human decency to ensure that she was able to get home. As it was she collapsed on a grass bank beside the Northland Road. Fortunately, over time a number of people stopped and assisted her before summoning the emergency services."

[27] These words have particular resonance as they come from a criminal judge of considerable experience and expertise who has dealt with these cases in the Crown Court over many years.

[28] It was accepted that there was no mitigation in this case, no credit for a guilty plea and that the finding of dangerousness could not be questioned. We need say no more on those issues. The judge considered that there were four aggravating factors as follows:

(i) The sexual violence which the appellant attempted to explain away by saying that it was consensual rough sex.

(ii) The physical violence which appears to have been completely gratuitous.

(iii) The attempted forensic clean up.

(iv) The appellant's very relevant previous record.

Arguments on Appeal

[29] Realistically, only one ground of appeal was pursued. This was the ground upon which leave was granted namely that the sentence of 20 years plus five years extended term was manifestly excessive. The argument was advanced that the judge had not provided a starting point in his sentencing and that offended the principle of transparency and made the ultimate sentence one without a proper methodology. Counsel also maintained that the overall sentence was out of kilter with authority in this jurisdiction in relation to rape. Finally, it was argued that this was, what was described as a crushing sentence, for a man of his age when the 20 years term of imprisonment was combined with the five year extension period during which the appellant will remain on licence.

Guidance in relation to sentencing for rape in this jurisdiction

[30] The guideline case that we have been referred to is *R v Kubik* [2016] NICA 3. The appellant in that case had no previous convictions for violent or sexual offences. He was in his late twenties, had a good work record although he was unemployed at the time and had sustained a long-term relationship for five years in the recent past. The court found it was apparent therefore, that neither the nature nor the circumstances of the offence nor the pattern of the appellant's behaviour provided a basis for the conclusion that there was a significant risk of serious harm to members of the public from the commission of similar offences. Having assessed mitigating and aggravating features the Court of Appeal imposed a sentence of seven years' imprisonment.

[31] Whilst the facts of *Kubik* are far removed from the facts of the instant case the guidance provided to the court remains relevant to this sentencing exercise. This is found in the consideration section of the judgment as follows:

> "[14] Sentencing levels in rape cases in this jurisdiction were specifically addressed in *Attorney General's Reference (No 2 of 2004) (O'Connell)* [2004] NICA 15 [2005] NIJB 185, where it was stated that sentencers in this jurisdiction should apply the starting points recommended by the Sentencing Advisory Panel in England and Wales ("the Panel") in its 2002 guidelines – these are 5 years with no aggravating or mitigating factors and 8 years where a number of enumerated features are present. That approach was reaffirmed by this court in *Attorney General's Reference (No.3 of 2006) (Martin John Gilbert)* [2006] NICA 36 [2007] NIJB 246. Where, however, there has been a campaign of sexual violence against one or

more victims a sentence of 15 years or more is appropriate as the recent decision in *R v Ayton* demonstrates.

[15] It is important to remember, however, the advice in *R v Molloy* [1997] NIJB 241 that sentencers should not view starting points as fixed tariffs for rape cases. In *R v Millberry* and others [2002] 2 All ER 939 the English Court of Appeal approved the recommendations of the Panel but emphasised that guidelines can produce sentences which are inappropriately high or inappropriately low if sentencers merely adopt a mechanistic approach. It is important to stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances. Guideline judgments are intended to assist the judge in arriving at the current sentence but they do not purport to identify the correct sentence. Doing so is the task of the trial judge.

[16] With that health warning in mind, since the recommendations of the Panel in 2002 remain the principal guidance on sentencing in rape cases in this jurisdiction, we consider it appropriate to set out a little more fully the content of the recommendations. The previous guidance had identified a number of different starting points for cases with particular features and the Panel concluded that its recommendation should follow that approach. It recommended a starting point of five years on a contest for a single offence of rape of an adult victim with no aggravating or mitigating factors. A starting point of eight years is appropriate where the following factors are present:

(i) the rape is committed by two or more offenders acting together;

(ii) the offender is in a position of responsibility towards the victim (e.g. in the relationship of medical practitioner and patient, teacher and pupil); or the offender is a person in whom the victim has placed his or her trust by virtue of his office or employment (e.g. a clergyman, an emergency services patrolman, a taxi driver, or a police officer);

(iii) the offender abducts the victim and holds him or her captive;

(iv) rape of a child, or of a victim who is especially vulnerable because of physical frailty, mental impairment or disorder, or learning disability;

(v) racially aggravated rape, and other cases where the victim has been targeted because of his or her membership of a vulnerable minority (e.g. homophobic rape);

(vi) repeated rape in the course of one attack (including cases where the same victim has been both vaginally and anally raped);

(vii) rape by a man who is knowingly suffering from a life-threatening sexually transmissible disease, whether or not he has told the victim of his condition and whether or not the disease was actually transmitted.

[17] In either case a number of aggravating factors were identified which would result in a sentence above either starting point:

(i) the use of violence over and above the force necessary to commit the rape;

(ii) use of a weapon to frighten or injure the victim;

(iii) the offence was planned;

(iv) an especially serious physical or mental effect on the victim; this would include, for example, a rape resulting in pregnancy, or in the transmission of a life-threatening or serious disease;

(v) further degradation of the victim, e.g. by forced oral sex or urination on the victim (referred to in *Billam* as 'further sexual indignities or perversions');

(vi) the offender has broken into or otherwise gained access to the place where the victim is living

(mentioned in *Billam* as a factor attracting the 8 year starting point);

(vii) the presence of children when the offence is committed (cf. *Collier* (1992) 13 Cr App R (S) 33);

(viii) the covert use of a drug to overcome the victim's resistance and/or obliterate his or her memory of the offence;

(ix) a history of sexual assaults or violence by the offender against the victim.

The Panel recommended a starting point of 15 years in relation to offences amounting to a campaign of rape and recognised that in such cases the issue of risk to society arose. Those are cases that inevitably are going to give rise to issues of dangerousness under the 2008 Order.

[18] We would emphasise that neither the factors indicating an increased starting point nor those setting out aggravating circumstances should be applied mechanistically. Secondly, they are not comprehensive. Where other aggravating or mitigating factors are in play they need to be taken into account. Thirdly, the court in *Gilbert* summarised the aggravating factors at paragraph 21. We have set out the factors as contained in the Panel's recommendations as these help to explain more fully the Panel's approach. We do not consider that the summary in *Gilbert* was intended to indicate any difference of approach. Fourthly, the purpose of sentencing guidelines is to ensure consistency of sentencing. The proper discretion of the judge should be exercised with that in mind. Members of the public are entitled to feel aggrieved or confused if like cases are dealt with differently."

The purpose of an extended custodial sentence

[32] An extended custodial sentence may be imposed by virtue of the provisions of the Criminal Justice (Northern Ireland) Order 2008 ("the 2008 Order"). Article 14 of the 2008 Order is the key provision which sets the test for imposition of this type of sentence which must be for the protection of the public. Article 14 reads as follows:

"14.—(1) This Article applies where—

(a) a person is convicted on indictment of a specified offence committed after 15 May 2008; and

(b) the court is of the opinion—

(i) that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences; and

(ii) where the specified offence is a serious offence, that the case is not one in which the court is required by Article 13 to impose a life sentence or an indeterminate custodial sentence.

(2) The court shall impose on the offender an extended custodial sentence.

(3) Where the offender is aged 21 or over, an extended custodial sentence is a sentence of imprisonment the term of which is equal to the aggregate of -

(a) the appropriate custodial term; and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences

…

(8) The extension period under paragraph (3)(b) or (5)(b) shall not exceed—

(a) five years in the case of a specified violent offence

…

(b) eight years in the case of a specified sexual offence.

[33] Rape is defined as a specified sexual offence by virtue of Schedule 2 to the 2008 Order and therefore the maximum extended term that can be imposed is eight years.

[34] In *R v Edward Stuart Cambridge* [2015] NICA 4 Gillen LJ explained the ingredients and purpose of an extended custodial sentence in the following terms:

> "[46] The extended period will be for such period as is considered necessary to protect the public from serious harm. The protective element should not be fixed as a percentage increase of the commensurate sentence. On the contrary, the protective element should be geared specifically to meet the statutory objective i.e. the protection of the public from serious harm and to secure the rehabilitation of the offender to prevent his further offending. The punishment element cannot dictate the period required to ensure the necessary level of protection. The two aspects of sentence thus serve different purposes. The first is to punish and the second is to protect. See Valentine "Criminal Procedure in Northern Ireland" 2nd Ed at 18.64, R v McColgan [2007] NIJB 254 at paragraph [24] and R v Cornelius [2002] Cr. App. R.(S)69 at paragraph [10]."

[35] The effect of an extended custodial sentence is that after the prisoner has served the relevant part of a sentence, the Secretary of State shall release him if the Parole Commissioners direct his release when they are satisfied it is no longer necessary for the protection of the public that he should be confined. The relevant part of the sentence is one half under Article 18 of the 2008 Order. The Secretary of State, on the recommendation of the Parole Commissioners, can revoke the appellant's license and have him recalled to prison. Thus, the offender may, in the event that happens and depending on his behaviour, have to serve the whole or part of the extension period. Unlike a determinate sentence; the court does not recommend licence conditions to the Secretary of State where an extended custodial sentence has been imposed. These conditions are to be imposed by the Secretary of State, after consultation with the Parole Commissioners, pursuant to Article 24(5) of the 2008 Order. The 2008 Order also makes provision for the prisoner to apply periodically to review his detention.

Consideration

[36] The case of *Kubik* that we have discussed is a recent decision of the Court of Appeal in this jurisdiction which should continue to apply in relation to sentencing for rape. The lowest starting point is five years for cases without aggravating factors. The next starting point is eight years for cases with additional features. The third category is a starting point of 15 years for cases where there is campaign of rape. However, a starting point is just that and may be adapted up or down depending on circumstances.

[37] In this case the judge should have set a starting point. 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. This omission is a failing which is accepted by the prosecution but it is not necessarily fatal to the overall sentence reached as that depends upon the outcome reached.

[38] 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 other matters at paras [7]-[12] herein not least the fact that the appellant left the victim to fend for herself after the rapes and also blamed her.

[39] We do not think that the appellant's age has any significant bearing as he is now a man of 31 years and so does not have the benefit of youth which has influenced sentences in other cases.

[40] Suffice to say that if the aggravation is applied to the eight year starting point a judge looking at this case would justifiably reach a sentence at the top of the range of 15 years.

[41] However, we do not consider that the judge should have stopped there and that is 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. These types of offences could attract custodial sentences in their own right and represent serious aggravation.

[42] We, therefore, think 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 we think that a further period of imprisonment was justified. We think that 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 he was acquitted of that offence and so it should not influence sentencing.

[43] 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.

[44] 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 which we have described above 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.

Overall Conclusion

[45] Accordingly, we consider that the appropriate custodial term is one of 18 years in this case. In addition, we see no fault in the 5 year extension period, during which the appellant will be subject to a licence, making an aggregate extended custodial sentence of 23 years.

[46] The sentence that we have imposed 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. Thus, the appellant may only be released on licence once he has served half of the appropriate custodial term or at any time during the remainder of that term provided that the Parole Commissioners consider it safe to do so. 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 he is automatically released but remains subject to licensed supervision for the five year extension period during which he is liable to be recalled to custody should he breach any of his licence conditions.