IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

WILLIAM KIERAN BRADY

HUTTON LCJ (giving the judgment of the Court)

HIGGINS J

This is an application for leave to appeal against sentence by William Kieran Brady who is a man aged 62. At Belfast Crown Court he was tried on an indictment which contained 9 counts. The first count charged him with Administering a Noxious Thing With Intent to Procure a Miscarriage and the second count charged him with Using Instruments With Intent to Procure a Miscarriage. He was found not guilty of counts 1 and 2 by the jury. The other 7 counts charged him with Indecent Assault on young girls. He was convicted on counts 3 to 8 and by direction of the learned trial judge, Mr Justice Pringle, was acquitted on count 9.

The assaults were committed against 5 girls aged between 12 and 15 and the offences were committed over a period from February 1993 to January 1995 and on all of the counts with the exception of one, count 7, he was sentenced to 7 years' imprisonment by the learned trial judge. On count 7, which constituted a much lesser type of indecent assault, he was sentenced to 2 years' imprisonment. The terms of imprisonment were all concurrent and therefore he was sentenced to a total period of imprisonment of 7 years. The applicant was a caretaker in a disused school in Carrickfergus and young girls aged between about 12 and 15 used to visit him there in the evenings and they would talk and smoke cigarettes and drink tea. The background to the offences can be discerned from the statement of one of the young girls, in respect of whom he was convicted of indecent assault (count 3) and whose evidence was in essence at the trial the same as the information contained in her statement to the police.

She is a girl called Trudy and was aged 15 at the time of the offence against her and she said this:

"During my summer holidays in June 1993 my friend Naomi and me went down to the St Nicholas school in Carrickfergus. The school is closed down but there is a caretaker, his name is William Brady. We would go down to the school about 7pm most nights. Willie would give us tea and cigarettes. There were lots of girls that

would go into the school. Willie would not let boys in just girls. Willie said he could help us if we ever got pregnant. He told us he had got tablets that could take the baby away. He had got them from a Woman Doctor. He used to tell us that if it was too late he could do it himself, he could do an abortion. He showed us syringes and told us what he would do. He told us he would put it in the vagina. He told us that he had done it to other girls and that he had done it on his own daughter. One night in June 1993 me and Naomi went down to the school to see Willie. I thought I was pregnant and I thought Willie would give me tablets. We went into the school and another man was there, Willie Keenan, he is a friend of Willie Brady. Willie Keenan was in another room. Me, Naomi and Willie Brady walked up the corridor into another room. I had told Willy a couple of nights before that I thought I was pregnant and he arranged for me to come down and see him. It was a Tuesday night. When we went into the room there was work benches. There was blankets on the benches. Willie told me that there was nothing to worry about. He asked Naomi if she was staying and she said yes. He told me to get on the bench and take my trousers and pants off. I did that and when I was lying on the bench he told me to lift my feet up. He moved my feet apart. He said right everything is ok and I'm going to put gloves on. Naomi was right beside me holding my hand. He then put his fingers in my vagina. He told me he was going to open something, I don't know what it was. He said if I hurt you just tell me. He was hurting me and I started to cry. He told me don't worry it will be all over soon. He was pulling something in me in my vagina. I don't know what it was but it was sore. The day that I arranged to come and see him he told me to bring a sanitary towel with me because I was going to bleed. He only used his fingers in my vagina he didn't use anything else. He had his fingers in me for about twenty minutes. He then told Naomi to go out in case Willie Keenan came down. When Naomi left the room he said this isn't going to work. I said why and he said he was going to use something. He said he didn't have cream and he would use saliva. I said do you have to and he said yes. Then he got my legs and put them over his shoulders and he put his hands on my bum at the sides. He then had oral sex with me. He put his hands on my chest over my clothes and said everything is all right. I pushed his hand away and he said oh sorry and he gave me a peck on the lips. He then put his fingers into my vagina again and he started pulling something inside me. About 10 minutes later he turned the lights on. He had turned the lights off when we went into the room."

Although there may be an element of exaggeration in the time which that young girl describes the offence taking place, nonetheless her account of the offence and on which this applicant was convicted, shows a very grave indecent assault indeed. In passing sentence the learned trial judge said:

"Those 5 indecent assaults which I have mentioned are serious examples of what an indecent assault can be. I have been furnished with medical reports on 3 of the girls. Each has had problems, 2 have overdosed and one has been an in-patient in hospital for 3 weeks because of that. Prognosis in one case is guarded, as to how she will get on in the future. In the other 2 cases the prognosis is good although that is in a qualified sense and I will just read what is in one report stated in general terms:

`Young people survive sexual abuse and improve to the point where they can continue with their lives despite being psychologically traumatised. It will always be an ever-present memory and from time to time will cause victims difficulties in the future'.

You are aged 62, you have a record of convictions, for some of which you did serve imprisonment, but no conviction since 1987 and none is for a sexual offence. You gained the trust of these girls by turning yourself into a sort of father or grandfather figure and then used them for your own perverted pleasure over a period from about the spring of 1993 to the end of 1994. You cared nothing for the distress and harm you might cause to the girls. I have borne in mind your age, the medical reports on you and your wife and her evidence and what your counsel has said on your behalf. He has referred to a number of decisions in England, most of which or nearly all of which were where the defendant had pleaded guilty and in only one, I think, was reference made to the harm to the victim. I think one has to be very careful in not being bound by what is done in the circumstance of another case."

And then the judge imposed the overall sentence of 7 years' imprisonment.

Mr Donaldson who said everything that can be said on behalf of this applicant made 4 main points. Before referring to them and considering them, we think it desirable to emphasise again, that we regard these offences as being very serious offences of their type. We have already referred to the description given by Trudy which merits the term 'horrible'. The accounts of the other girls are as bad or almost as bad. We refer to how Martina (count 4) described the offence committed against her. She described how he asked her to go up the corridor and into a room and she said:

"He then turned me around and put me down on the desk. I tried to get up. He put his hand on my stomach and kept me down. When he first lifted me by the waist onto the desk he took my trousers and pants down to below my knees. When he had his hand off my stomach I tried to get up again and he then put his elbow on my throat. Then he took his elbow away and he started licking my vagina. Before he licked my vagina he stuck his fingers up my vagina and he felt my breasts under my clothes. He told me it would be over in a wee minute. I kept trying to get up and I was shouting to him, "Let me up now." I kept hitting him on the shoulder with my right fist. He was doing these things to me for about twenty minutes."

And Cindy (count 6), after the applicant had been saying to her that she needed a smear test, gave this description:

"I told Willie I don't want one because I don't want anyone touching me. He kept trying coaxing, coaxing, coaxing trying to get me to have one. I kept saying no. He then just said come on and he pulled me up the next set of stairs on the first floor. At the first step of the next flight of steps Willie held my hands with one hand. I had track suit bottoms on. He pulled my trousers and pants off down to my calf

muscles. He said don't worry it won't hurt tell me if it does. He then injected his finger into my vagina, I was near sick. I told him I was sore please leave me alone. He had his finger in my vagina for no more than a minute. I kept telling him to leave me alone and I kept pushing him."

Those are the accounts given by these young girls and it is on those descriptions that we said they were very grave offences indeed and we must view Mr Donaldson's points against that background. We turn now to the points raised by Mr Donaldson.

Mr Donaldson informed us quite correctly that this man now aged 62 is not a well man. He suffers from chronic arthritis, hearing problems, stomach ulcers and at this present time suffers from abdominal blockages. He was unable to come to court today and is a man, we accept, who has prematurely aged. Furthermore his wife is living alone and has had to move from Carrickfergus to another town because the windows of their house were broken and there is no doubt that she herself is depressed and deeply unhappy. But as we have stated these are very serious offences and if the sentence is otherwise proper we do not feel, in this case, that we can reduce it because of the state of health or the age of this applicant. The second point that Mr Donaldson made was that these were isolated offences, not a persistent course of conduct carried out by, for example, a stepfather against children living in the same house with him. We do not accept that these were isolated offences. We consider it to be quite clear from the evidence given that this applicant set out on a deliberate course of behaviour to win the confidence and the friendship of these girls. He talked to them about these very unsavoury subjects to provide an excuse for him to pretend to carry out some sort of medical procedure, which gave him the opportunity to commit these very nasty offences.

We consider that these offences were persistent in the same way as Lord Taylor referred to the offences in the Attorney-General's Reference (No 12 of 1994) (Re Phillip Dyke) reported in 16 Cr.App.R (S) 559. Lord Taylor said:

"The offender persistently assaulted very young girls who were either the daughters of his neighbours or friends of his own children. We use the word "persistently", although it was queried on behalf of the appellant, on the basis that the assaults on the young girls were individual instances, one in respect of each girl. But it is persistent, in our view, if 6 different girls are assaulted over a period."

We consider in this case these offences can properly be described as being persistent.

Linked to that point was a further point which Mr Donaldson made which was that this case did not constitute a breach of trust. He submitted that the offences, where longer sentences were given for indecent assault, were cases involving a breach of trust, for example, where the defendant was in the position of a schoolmaster or a

stepfather or a family friend. We accept that this applicant was not in a position of trust in that sense, but what we do consider is, that he had worked to put himself in what was a de facto situation of trust, in that he won the friendship and confidence of these young girls so that they viewed him as an avuncular or fatherly figure. To that extent there was a breach of the trust which he had built up and therefore we consider that Mr Justice Pringle was quite entitled, and it obviously influenced him in passing sentence, to say:

"You gained the trust of these girls by turning yourself into a sort of father or grandfather figure and then used them for your own perverted pleasure".

The third point and the main point made by Mr Donaldson (though to some extent the points are linked) was that this total sentence of 7 years' was outside the proper range of sentence and was wrong in principle. Mr Donaldson referred us to a number of cases in England and Wales, which he also referred to the learned trial judge. He submits that those cases establish, after the maximum sentence was increased to 10 years, that the general range of sentences for indecent assault in England and Wales in recent years, is in the region of one year (or sometimes a little less) to 3 or 4 years. He has carefully taken us through those cases and pointed to them as being cases where, in many instances, there was a breach of trust and where there were numerous offences and where the counts were special counts against the accused person. However, we respectfully agree with the observation of Lord Taylor in Dyke's case, supra, and it is an observation that this court has also made on previous occasions, when he said:

"We have been referred to a number of cases, but it has been said many times before, comparing the facts of one case with the facts of another is rarely a profitable exercise. We have to look at this case in the round and decide whether as a matter of totality the sentence imposed by the learned judge was unduly lenient."

We consider the wisdom of that observation is illustrated when one studies the various cases that Mr Donaldson has referred us to, because the facts vary very greatly. Whereas in some of the cases there is a breach of trust in the classic sense of the term, there were also, on occasion, cases where the person had a completely clear record or in one case was a highly respected schoolmaster. Now that of course cuts both ways. It is a breach of trust, but nonetheless he was a man who hitherto led an unblemished life. Moreover we consider that the cases establish that in a very bad case, as this case was, a sentence of 7 years is not manifestly excessive.

In the case of the R v Lloyd 9 Cr.App.R (S) 254 a sentence of 6 years was imposed. That was a case where a man over a long period of time had abused the daughters of the lady with whom he lived. It was a grave breach of trust and the court pointed that out and said at Page 255:

"This appeal is put forward on the basis that the total of 6 years' imprisonment is too much for this offender for these offences and that those offences do not give sufficient credit for his frankness with the police, his plea of guilty and his previous good character."

So that is a case (albeit a bad case) in which 6 years was upheld, where there was also a plea of guilty. In this case this applicant did not plead guilty and he caused these unfortunate young girls to come to court and go through the strain of giving evidence. That does not mean he had to receive an additional punishment, but it does mean that he can receive no discount whatever for a plea of guilty.

In the case of Dyke a sentence of 7 years was substituted on a reference by the Attorney-General. Lord Taylor said in that case:

"In deciding what we should do, we bear in mind that the offender has been sentenced once, then told that he would be brought here for a possible increase of his sentence, with all the anxiety that that involves. Taking all those matters into account, and the matters well urged on his behalf by Mr Christie, the least sentence we consider we can properly impose at this stage in that case is one of 7 years' imprisonment."

So if the court in that case had not been considering a reference by the Attorney-General, a sentence of 8 or 9 years may well have been imposed. Mr Donaldson made the point and a proper point to make, that in the case of Dyke one of the counts was for attempted rape, which is more serious than indecent assault. He also made the point that in the actual breakdown of the sentencing Lord Taylor gave a considerably greater sentence for rape increasing it from 3 to 5 years. Nonetheless it is clear from the judgment that we referred to in the course of the submissions, that Lord Taylor is looking at the totality of the sentence and we consider that that case indicates that in a bad case, 7 years is within the range.

There are certain other factors in this case. We have already referred to the consideration that this applicant contested the charges. Mr Donaldson made the point that he was acquitted on 2 charges of allegedly causing a miscarriage and suggested that in some way that entitled him to contest the entire case. We cannot accept that submission. We consider it would have been open to this applicant to have admitted that he acted indecently and assaulted these young girls, but then to make the defence (albeit a somewhat technical defence) that in reality he never intended to procure a miscarriage and that it was simply a cover to enable him to carry out the indecent assaults.

A further consideration that we must take into account is the effect on the young girls themselves. In the very recent case of the Attorney-General's Reference (No 2 of 1995)reported in [1996] 1 Cr.App.R (S) at 274 Lord Bingham said:

"The trial judge declined to look at the statement made by the victim as to the impact of the offences on her, taking the view that it was inappropriate for him to receive evidence which sought to aggravate the impact which the offending had on the victim. The Court did not agree with that. It was wholly appropriate that a judge should receive factual information as to the impact of the offending on a victim. The judge was well equipped to know whether the statement put before him contained evidence of fact relevant to sentencing or whether an attempt had been made to try to hot up the case against the offender."

In this case sadly, 3 of these girls took overdoses and one of them had to be admitted to a psychiatric hospital for 3 weeks. It is clear from the reports that these offences had a serious effect on their psychological development. Hopefully they will overcome them, but the reports make clear that, as regards their relationships with older people, there will always be the risk of an element of distrust and unhappiness and that is a further reason why we must regard these offences as being very serious. The sentences were certainly stiff, but for the reasons we have stated, we consider them to be entirely appropriate. Therefore we dismiss the application for leave to appeal against sentence.