IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

---

THE QUEEN

V

JAMES KENNEDY HORROCKS

---

MacDERMOTT LJ (giving the judgment of the Court)

McCOLLUM LJ

This is an appeal against sentence. On 27 September 1996 the appellant James Kennedy Horrocks, pleaded guilty to 8 counts of indecent assault on L (the child of the lady with whom he was then living) and to 8 counts of indecent conduct with her. These offences occurred over a period between 31 December 1972 and 1 January 1980. The victim was born on 2 April 1968, in other words she was a child of between 4 and 12 years during this period. A total sentence of 3 years' imprisonment was imposed after the appellant had pleaded guilty to all charges and that was on 25 October 1996.

Another relevant factor in the case is that in January 1993 the appellant received a 6 months sentence for 2 offences of gross indecency with a child (his stepson) and 3 indecent assault on a female (his stepdaughter). Those offences were committed in January 1982, that is after the current offences. On any showing all such conduct was disgusting and potentially harmful to the victims. Sadly it is clear that the victim in the case before the Court today is still suffering grievously from the abuse that she received as a child. I repeat what Judge Russell said:-

"I have a report on the victim and 20 years later your victim is still being treated. She has been treated by a psychiatrist over the past 13 months on 21 occasions for obsessional thoughts in connection with the sexual abuse to which you subjected her. In other words ... this women, is still suffering from your abuse 20 years after it occurred, to such an extent that she has required 21 courses of treatment in the past 13 months, that gives some indication of the damage and harm that people like yourself do to young children."

Following his conviction in January 1993 and a short period in prison the appellant participated in the Alderwood Centre programme from June 93 to June 94 and that involved attendance on 3 days each week. No doubt this was a considerable

commitment and the appellant should have benefited from that course. Early in l995 he agreed to attend a Relapse Prevention Programme (designed to support and maintain an non-offending lifestyle). It meets monthly and he appears to have attended until his present imprisonment.

A matter of great concern to this Court, however, is that the appellant did not reveal this earlier offending either to the police or to the Alderwood Authorities. I think one must then accept that when one finds a person who is offending in this way, not once but twice, then there is a risk of that person offending in the future but in fairness to the appellant there is no suggestion of that since 1982.

We have already mentioned the effect of the abuse on this unfortunate victim; that is relevant in 2 respects:-

(a) it shows the serious health damaging consequences which can flow from this kind of persistent and abusive behaviour to a young child; and

(b) a non-custodial sentence could appear to the victim to be unjust and an indication of a lack of understanding by the Court.

In fairness to Mr Taylor Campbell (who appeared for the appellant) he never suggested that there should be a non-custodial sentence in this case. In our view the persistent abuse of this child demands a humane but severe judicial response. Such conduct is intolerable and the appellant must not only be punished but such punishment must be a deterrent to others.

Mr Campbell has raised a number of points in Court today. First of all he argued that the Crown Court Judge was in error in imposing consecutive sentences. He has taken us through a number of cases on this topic. The general rule is that when the offences or series of offences arise out of the one transaction, as in the case of McCready(unreported 23.9.88) in this jurisdiction the sentences will be made concurrent. In McCready, however, the Court kept open the question of whether or not sentences in respect of offences committed over a lengthy period of time, in this case some 6 years, were to be made concurrent or consecutive. It is of comfort to find Lord Taylor in the Attorney General's Reference [No 2 of 1995) [1996] 1 Cr.App.R (S) 274 which we have looked at both in Thomas' Encyclopedia and in the actual report concluding that is perfectly proper to impose consecutive sentences where the offending has occurred over a lengthy period of time. In spite of Mr Campbell's submissions we are quite satisfied that in law the Judge was entitled to impose consecutive sentences in this case.

The second point that Mr Campbell made really was that 15 years had elapsed since the offences and the matter may have been bearing on the mind of the appellant from that time until the time that he was confronted with it. That may be but it certainly has continued to affect his victim. When one is dealing with an old case,

that is to say offences that occurred a long time ago, age would be a factor which may be taken into account and no doubt was. If one seeks to pay regard to that principle, as one should, it is well to bear in mind the observation of Lord Taylor in the case of R v Tiso [1990] 12 Cr.App.R (S) 122 at 125 where he said:-

"Offences involving sexual abuse within the family are by their very nature likely to remain undetected for substantial periods, partly because of fear, partly because of family solidarity and partly because of embarrassment. We consider that whilst any factors which have positively emerged in the time between the offence and the trial are open to the Court to be taken into consideration, the mere passage of time cannot attract a great deal of discount by way of sentence in relation to offences of this kind."

Mr Campbell's principal argument is having accepted his guilt, the appellant pleaded guilty at the first opportunity and should therefore have received a greater discount. Well, there is no hard and fast rule about discount. Clearly a discount was allowed in this case and we are quite satisfied that the Judge did not err as suggested and did give credit for the early guilty plea.

Mr Campbell's final point is that the sentence is manifestly excessive. However, having regard to what the child was subjected to which was clearly established as persistent abuse over 6 years, (the child at that was time being between 4 and 12 years of age) and looking at the case in the round as one must and can do at this stage we are quite satisfied that the sentence was in no way excessive let alone manifestly excessive. The appeal is therefore dismissed.