IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

WILLIAM ALFRED LEMON

McCollum J

The appellant pleaded guilty at Belfast Crown Court on 13 September 1996 to a single count of indecent assault and on 20 September 1996 having heard his Counsel the Learned Recorder of Belfast sentenced him to 3 years' imprisonment. He appeals against that sentence, leave having been granted by Mr Justice Pringle on 23 October 1996.

The Learned Recorder made an order prohibiting the identification of the victim of the assault who was almost 15 at the time its occurrence. According to her statement of evidence she went to the appellant's house where she had been on previous occasions with her mother.

Although it appears that she had never previously stayed alone at his home she had told her mother on this particular evening that if she was not back at home by a certain time she would stay at his house.

There were 3 bedrooms in his house but he told the girl that 2 of the bedrooms were cold and she could spend the night on his couch in his bedroom. She had a bath and then settled on the couch wearing a bra and underpants and a shirt belonging to the appellant. He changed in another room and got into bed wearing boxer shorts.

The appellant persuaded her to get into bed with him, which she did, because she was scared in case he shouted at her and when she got into bed he kissed her on the forehead. She turned away from him and he then put his arms around her and started to hug her. According to her, "a couple of minutes later" he moved his hand up inside the shirt she was wearing and inside her bra and started to feel her breasts inside the bra. She was too scared to say anything and the next thing she knew was that he had put his hand inside her underpants and was rubbing her vagina. This went on for about 5 or 10 minutes and he kept telling her that she was all right. She then told him to leave her alone and go and sleep on the settee. She made no allegation of any other form of indecent assault. She told him to leave her alone and

go and sleep on the settee. He did so and she fell asleep but when she woke up he was back in the single bed which she was in and he slept with his arms around her but according to her did not touch her in a sexual way again.

When interviewed by the police the appellant claimed that he had not committed any assault on her but that after they had got into the bed together he dozed off and when he woke up his hand was on her bare stomach as a result of which he got up and went and lay on the settee.

When the girl's allegations were put to him, while he disagreed with some of the matters in her statement and said he could not remember any indecent assault, he accepted that if the girl had made the allegations then they must be true and he must have done the things that she described.

There is no indication of how he responded to the charge but on arraignment he pleaded guilty. In addition to the committal papers the Learned Recorder also had before him a probation report from Inner London Probation Service and a medical report on the girl prepared by a consultant in adolescent psychiatry, Dr E McEwan, MD, MRCPSYCH. The report highlights the embarrassment and distress caused to the girl. It appears that on account of the emotional disturbance consequent upon the incident her behaviour pattern changed for the worse for some time and her performance at school suffered. However, Dr McEwan in commenting on her current mental state did not advert to any present psychological or emotional symptoms, apart from her discomfort in telling the story of what had happened to her.

In the course of a very thorough consultation Dr McEwan elucidated details and allegations from the girl which had not been made to the police. He also speculated about other forms of assault about which no complaint was made by the girl to either him or the police.

It is clear that the Learned Recorder read the report carefully and it may be that the additional allegations contained in the report but which do not form part of the evidence contained in the committal papers coloured his attitude to the case to some extent.

Mr Dennis Boyd of Counsel who appeared in this Court also appeared before the Learned Recorder, and in the course of a comprehensive review of the mitigating factors in the case he referred to the case of Vinson [1981] 3 Cr.App.R (S) 315.

The Learned Recorder referred to the date of that case and to the fact that the maximum sentence would have been 2 years at that time.

This Court reiterates all that has been said in previous similar cases about the serious view which the Court takes of indecent assaults on young girls, especially by those

who are place by relationship or circumstances, in a position of trust and influence. Any abuse of such trust must be treated severely and when it results in a sexual assault upon the child it is virtually inevitable that an immediate custodial sentence will follow.

However, as Mr Boyd pointed out there are also strongly mitigating factors. The appellant is a man of 46 with no previous convictions. We are satisfied that he showed remorse for his actions and that it was this rather than a desire to escape from justice that made him change his abode and move to London. He used no violence on the girl and desisted when she protested. He pleaded guilty at the first arraignment having throughout interview accepted the honesty and reliability of the girl concerned.

While the girl was touched in an indecent manner there was, according to the evidence, no invasive assault.

Mr Boyd referred to a number of cases in England and in this jurisdiction. In the case of McCafferty heard by this Court on 25 October 1991, a sentence of 3 years' imprisonment was reduced on the grounds that it was manifestly excessive to one of 15 months' imprisonment. That was a case with rather more aggravating features than the present because the appellant in that case had shown the girl a pornographic video film, and appeared to use his physical dominance to some extent and there was also indecent exposure as well as an assault.

In the case of Vinson referred to by Mr Boyd at the hearing, 2 girls were involved aged 10 and 11 and were indecently assaulted over a period of about 6 months and a sentence of 2 years was reduced to one of 9 months. That case was referred to in the case of Frederick William Smith [1986] 8 Cr.App.R (S) at 325 in which a sentence of 9 months' imprisonment was substituted for one of 15 months on a man who had been guilty of several sexual assaults on 2 girls younger than the girl in the present case and which involved placing his finger into the vagina of one of the girls.

Of more interest in view of the interjection of the Learned Recorder in relation to the case of Vinson, is the case of Gibbons [1988] Crim.L.Rev 129 in which the following report of the decision and commentary appears:-

"Decision (considering Vinson [1981] 3 Cr.App.R (S) 315 and Smith [1986] 8 Cr.App.R (S) 325 in order that there should be uniformity of sentence so far as it was possible to achieve that object the court considered that the sentence of 2 years was too long. Vinson was decided before the increase in the maximum sentence for indecent assault on females but that was not so in Smith. The fact that the increase had been made by statutory dictate did not necessarily mean that the principles applicable in Vinson and Smith were not equally applicable today. Accordingly, the court felt that having regard to all the matters of mitigation, the appropriate sentence would have been 9 months' imprisonment. As the appellant had been in custody for

nearly 6 months the sentence would be reduced to one which would permit his immediate release.

Commentary. Although Smith was decided in the Crown Court after the increase in the maximum penalty for indecent assault had taken effect the offences were committed before the date from which the increased penalties were available (September 17, 1985) and accordingly the old maximum applied to that case. This does not affect the main point of the present decision which seems to be that the increase in the maximum penalties should not be taken as an indication that sentences for indecent assaults at the lower end of the sentencing bracket should rise; the same point seems to be implicit in Halliwell [1988] Crim.L.R.67. The longer sentences which are now possible should presumably be reserved for indecent assaults involving serious aggression and sexual interference comparable to rape (see Sheen [1987] 9 Cr.App.R (S) 164; 8 years upheld for an "oral rape by a stranger" carried out with violence)"

We agree with the commentary and take the view that the increase in the maximum sentence for indecent assault was a recognition of the fact that that charge may be the only one appropriate to deal with some quite extreme examples of sexual interference which the Court has found that it has to deal with.

It should not be a consequence of the raising of the maximum sentence that an isolated case of indecent assault of the kind involved in this case, and in those cited, should carry a heavier sentence than those imposed before 1986.

The Learned Recorder's interjection may well suggest that he felt bound to impose a higher sentence than that thought appropriate in Vinson and we find that the sentence is considerably in excess of that thought appropriate for cases with many similar features. In all the circumstances we regard the appropriate sentence as one of 12 months' imprisonment and accordingly we quash the sentence of 3 years and substitute one of 12 months' imprisonment.