IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

EAMON HUGH MOLLOY

CARSWELL LCJ

PRINGLE J

In this application Eamon Hugh Molloy seeks leave to appeal against sentences passed on him by His Honour Judge Burgess at Londonderry Crown Court on 6 June 1997, when the applicant pleaded guilty to all 4 counts on the indictment on which he was charged. On the first count, that of rape, he was sentenced to 15 years' imprisonment; on the second, attempted buggery, to 8 years; on the third, indecent assault, 6 years; and on the fourth count, assault occasioning actual bodily harm, 3 years, all sentences being concurrent. The applicant sought leave to appeal against sentence, but leave was refused by the single judge.

The charges arise out of an episode which took place early in the morning of 27 July 1996. The victim, a young married woman then 8 and a ½ months pregnant, was in her house in Londonderry. Her husband left about 5.30 am for work, and about 5 minutes later she heard the noise of an intruder on the flat roof. The applicant, whom she knew to see, appeared at the bottom of the stairs. He knew that her husband had just left, for he asked when he was expected back. He declared his intention in coarse terms of having sexual intercourse with her. He seized hold of her and, in spite of her entreaties, subjected her to a series of revolting and degrading acts of a sexual nature over the next half hour or so, following which he left the house after threatening to kill the victim if she told anyone.

These acts form a catalogue of violence, indecency and humiliation which it is distasteful in the extreme to record in this judgment. We feel nevertheless that it is necessary to do so, at least in outline, in order to demonstrate the nature of the case which impelled the judge to impose the long sentences which he considered to be merited by the offences to which the applicant pleaded guilty. He threw the victim violently across the hallway and ripped off her clothing. He attempted anal intercourse with her at 2 points during the incident. He inserted the handle of a hair brush into her anal passage, and carried out the same act with other objects, causing

her pain and distress. He took her into the shower cabinet and attempted intercourse, achieving a degree of penetration but not a full erection. He repeated this attempt in several places and positions. He inserted his fingers into the victim's vagina and fondled her breasts. He made her masturbate him several times, both manually and orally, following which he finally ejaculated over her.

The victim pleaded unsuccessfully with the applicant to desist, but did not resist him physically, out of fear for the health of her unborn child. She was naturally extremely distressed by the whole episode and afraid that her baby might have been harmed. Fortunately the baby was undamaged and was born safely a couple of weeks later. The effect on the victim has, however, been severe. She found the experience of giving birth a distressing ordeal and she has been unable to take pleasure in looking after the baby. Her shock and distress have progressed into a clinical depression, with sleep disturbance and a moderately severe anxiety state. She has been unable to tolerate any physical contact with her husband and a severe strain has been put upon her marriage. She has not been able to return to her job. In January 1997 Dr Elizabeth McGavock expressed the following opinion after examining her:

"I consider it very likely that she will continue to suffer from anxiety symptoms including panic attacks for many years; she will recover only slowly, if ever from the symptoms of the depressive illness she is now suffering; she will have major problems with psychological readjustment now necessary to re-establish her marriage. She has been deprived of the important and desirable early bonding to her son.

Counselling and group therapy may help somewhat to mitigate the psychological trauma outlined above but they will probably need to continue for several years and even then I would not be optimistic about this woman ever being able to enjoy her life and marriage again. I think the adverse effects of the major psychological trauma she has suffered will stay with her for the rest of her life and she will continue to experience great difficulty in personal relationships and trusting people even if her symptoms of depression and anxiety do eventually subside."

Dr McGavock examined her again in May 1997, but found only minimal improvement of her depressive symptoms. She concluded her second report by stating:

"She may after a number of years recover from some of the effects of the sexual assault but it is impossible to predict a time-scale and in the meantime she is suffering major psychological trauma and disruption to her life. With the positive factors of support from her husband and her sister as well as counselling she may eventually make a reasonably good recovery."

It could fairly be said, as counsel for the applicant described the effect of this report, that it gives ground for a glimmer of hope, but it is still only a rather faint gleam. The judge was quite justified in categorising the effect of the attack on the victim as "major psychological trauma resulting in detrimental effects in many areas of her life."

The applicant is now aged 20 years, and has no previous convictions. When interviewed by the police he professed to have no recollection of the incident, which he attributed to his having drunk half a litre of vodka and smoked a great deal of cannabis. He did not receive support for his claim of memory loss from Dr IT Bownes, the consultant psychiatrist who examined the applicant on 2 occasions at the request of his solicitors. Dr Bownes was unable to find any evidence from which it might be concluded that his behaviour was attributable to the adverse mental effects of cannabis intoxication. Nor could he find any evidence from the applicant's account of his alcohol intake that the offences were committed in the context of the very severe level of intoxication generally associated with "alcoholic black-out." He concluded in his report of 3 March 1997:

"Mr Molloy presented as an intelligent but immature individual. He described a long-standing interest in viewing and reading works of fiction, and his attitudes and aspirations on a range of issues appeared to derive primarily from some idealised self-image rather than a realistic evaluation of events and experiences. Mr Molloy clearly understands the serious nature of his behaviour in the index offences, and I could find no evidence of any mental illness process, such as a delusional order or psychotic illness, to which this might be attributable. However I felt that Mr Molloy has genuinely found it difficult to come to terms with the nature of his own behaviour, and particularly the dramatic contradiction it presents to his preferred self-image. I would consider that Mr Molloy's apparent memory loss for the index offences reflects his difficulty in acknowledging and coming to terms with the unpleasant and disturbing nature of his own behaviour in this incident rather than effects of any classifiable disorder of memory, such as dissociative amnesia."

Dr Bownes examined the applicant again on 15 April 1997, when he focused on searching for any sign of mental illness or severe psychological or behavioural difficulties which might account for his conduct. He said that he could find no evidence of mental illness and went on to state his opinion:

"I could detect no evidence from the information disclosed by Mr Molloy and his parents on his personal history, his attitudes and interests and his functioning during the period leading up to the index offences of any mental illness process or severe psychological or behavioural difficulties which might be used to mitigate or explain his behaviour in the index offences.

It would appear that Mr Molloy had limited sexual experience at the time or the index offences, however I could find no evidence that his behaviour occurred in the context of delusional thinking or mistaken beliefs regarding the nature of his relationship with the victim, or feelings of anxiety and confusion regarding sexual matters in general. There was no evidence from the information disclosed that Mr Molloy's behaviour was motivated by feelings of anger, resentment, or inferiority, or that he was pressured into this by other people. I did feel that Mr Molloy was rather defensive and ambivalent about his pornography use, however I was unable to elicit any categorical evidence that this was a significant factor in his behaviour."

It seemed to us that, notwithstanding the applicant's claim that he had watched only occasional pornographic films, that his behaviour may have owed more than a little to the examples appearing from such sources.

The applicant entered a plea of guilty and the victim was spared the ordeal of giving evidence. It was made clear from a very early stage that she would not be called on to do so. It is right to say, however, as the learned judge pointed out, that the evidence against the applicant was overwhelming, and the credit to which he is entitled is limited to that extent.

The judge set out his reasons for imposing the sentences in a detailed and carefully considered allocutur. He correctly warned himself against being over-influenced by the natural feelings of abhorrence which any judge must feel on hearing the facts of the offence and the effect on the victim. He examined the guideline cases on sentencing in rape cases in England and in this jurisdiction and took into account the element of aggravation in breaking into the victim's home, as well as those consisting of the applicant's treatment of the victim and the potential danger created to the health of a pregnant woman and her unborn child. He examined the victim impact reports and the psychiatric reports on the applicant. He considered the imposition of a life sentence, but, in our view correctly, rejected it. He went on to say:

"Rather the court is obliged to deal with the defendant as a person who was mentally normal and who committed these acts out of a wicked failure to control himself."

He took into consideration any factors which might operate in the applicant's favour, his previous good character, his age, his personality and his family background. He concluded, however, that the offences were so serious, both in their nature and by reason of the manner in which they were committed, that the court could permit only the most modest of mitigation. He accordingly imposed the sentences which we have set out.

The grounds of appeal specified in the applicant's notice of appeal were as follows:

"1. The total sentence of 15 years imposed by the learned trial Judge was excessive in all the circumstances of the particular case.

2. In particular, the learned trial Judge made insufficient allowances for the following factors:-

(a) The plea of guilty by the accused/appellant.

(b) The age and previous good character of the accused/appellant.

(c) The fact that whilst violence was used in the course of the offences same violence was not of a grievous nature".

Mr James Lavery QC for the applicant submitted in his argument before us that the learned judge allowed himself to be influenced too much by the victim impact reports and did not give enough weight to the mitigating factors.

This court has had occasion on a number of occasions to consider appeals against sentences imposed for serious cases of rape. We would underline once more the severity of the emotional and psychological trauma involved in this crime and of the physical consequences. These were accurately described in the Criminal Law Revision Committee's 15th report, in a passage quoted in R v McDonald and Others [1989] NI 37, 38-9. It is worth repeating the Wolfenden Committee's summary of the function of the criminal law in the field of sexual offences:

"To preserve public order and decency, to protect the citizen from what is offensive and injurious and to provide sufficient safeguards against exploitation and corruption of others,

particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced or in a state of special physical, official or economic dependence."

Mr Lavery drew to our attention a number of cases involving sentences for sexual offences which, though substantial, were lower than those imposed in the present case. He did not attempt, however, to compare these in minute detail. We think that he was correct in this approach, since such comparisons are not a profitable exercise, for the reasons which we set out in R v Williamson (1995, unreported) at page 6 of the judgment. It is of rather more assistance first to examine the judge's reasons for deciding on the sentences, as expressed in his sentencing remarks, to see if there is any visible imbalance, and secondly, to stand back and consider whether the sentence is appropriate in all the circumstances of the case, when set against any trend discernible from other cases.

On the first limb of this exercise, we have considered with care the learned judge's approach and cannot find fault with it. On the contrary, it was a careful and thoughtful consideration of the difficult task facing a sentencer in such a case, and demonstrates a very proper attribution of weight to the several factors operating in either direction and a suitable balance between them.

When one looks at the amount of the sentence, one must start with the undeniable proposition that it is pre-eminently a case for a long sentence of imprisonment. It would be difficult to find any redeeming features about the offence itself. It was premeditated, in that the applicant knew that the victim's husband had left the house and resolved to break in and attack her. He broke into her dwelling-house, a factor which has regularly been held to weigh heavily against offenders. He did so with the intention from the beginning of raping the victim, and it cannot even be said that this was the result of a sudden lustful urge. He treated her with barbaric cruelty over a fairly extended period. The revolting acts to which he subjected her were not only painful but degrading in the extreme. The severity of the assault was compounded by the fact that the victim was visibly in an advanced stage of pregnancy, but the applicant entirely disregarded the obvious risk to her health and that of the unborn child. Finally, the adverse effects upon the victim have been profound in the damage which they have wrought to her life. The mitigating factors, which we have already enumerated, are few and of little weight when set against the damning features of the assault and the circumstances in which it was committed.

A mere recital of the facts of the case before us is sufficient to demonstrate that the offences committed by the applicant must be visited with penalties of a severity well outside the normal range of rape cases. The courts must be concerned to protect women against the predatory instinct of males who see them as vulnerable objects for the gratification of their baser desires. We would return to the point which the court adumbrated in R v JM (1997, unreported), that in view of the increasing frequency of cases of rape, the courts will have to give serious consideration to reviewing the starting or baseline figure of 7 years for a contested rape. We consider that sentencers should in any event regard it as no more than a general guide, rather than a fixed tariff for rape cases. Certainly in cases where the offence is aggravated by violence, sexual indignities or perversions, the scale should rise steeply and judges should not hesitate to visit such cases with penalties that they consider appropriate.

It is also the duty of the courts to take steps to deter those who break into dwelling houses and commit such crimes by imposing severe sentences upon them. It may be seen from recent decisions that the English Court of Appeal has upheld lengthy sentences in such cases; we need refer only to R v Williams [1992] 13 Cr.App.R(S) 562, R v Thomas [1995] 16 Cr.App.R(S) 686 and R v Howatt [1997] 1 Cr.App.R(S) 232, where the sentences were of the order of 15 or 16 years, even on pleas of guilty. We do not propose in this judgment to lay down guidelines for sentencers to cover cases of this nature, for they will vary considerably in their facts.

It is sufficient to say that they should be visited with sentences of imprisonment well above the baseline, and that when the element of maltreatment of the victim enters into them as well the level of sentence should be substantially above it.

Having given careful consideration to the various factors in this case, we cannot conclude that the sentences imposed by the learned judge in this case were in any way excessive, let alone manifestly excessive. We regard them as fully merited by the facts of the case, and do not consider that any reduction is required. The application will be dismissed.