

*Ex tempore Judgment approved for handing down.  
(subject to editorial corrections)\**

**IN THE CROWN COURT SITTING AT DOWNPATRICK**

---

**THE QUEEN**

**-v-**

**AB**

---

**HIS HONOUR JUDGE MILLER QC**

[1] The defendant is a 17 year old youth. He was arraigned on 28<sup>th</sup> February 2012 at Downpatrick Crown Court and pleaded guilty to the first count on the Bill of Indictment this being a charge of (vaginal) rape. Having initially pleaded not guilty to the two remaining counts of (oral) rape and Sexual Assault, the defendant was re-arraigned and pleaded guilty to both of these charges on the 3<sup>rd</sup> May 2012, this being the date of trial.

[2] The factual background as presented by Mr Weir QC on behalf of the Crown may be briefly stated. The case arises out of an assault upon a 76 year old lady, Violet Loughlin at her home around 9.30pm on the evening of Sunday 13<sup>th</sup> March 2011. At this time the defendant was only 15 years of age. On that day, Mrs Loughlin's daughter, Irene Abernethy had called at her home at 127 Upper Greenwell Street between 7 and 8pm. She left her dog there as Mrs Loughlin liked it to be there when she was alone. Mrs Loughlin's granddaughter, Linzi Abernethy had called round after that, leaving at around 8.25pm. She was the last to speak to her before the assault.

[3] The defendant entered Mrs Loughlin's home when she was letting her dog go out the back of her house to go to the toilet. He gained access through her open front door. She was coming out of the kitchen with a cup of tea when he confronted her in the hallway. He grabbed her by the wrist and dragged her into her bedroom, throwing her on the bed. He pulled down his trousers, exposing his penis to her and pulled her pyjamas down before raping her orally and vaginally. He rubbed and pulled hard at her breasts. She was unable to move through fear. He said nothing throughout the rapes.

[4] In her ABE interview she continually repeated that he had “put it in her mouth and everything”. She repeated this complaint to a number of people after the attack. It is plain that this act had had a particular impact upon her. She said that the oral rape had continued for 10 minutes. She commented “what he done to me, a pig wouldn’t have done it”. Understandably she was frightened to return home, fearing that he would come back.

[5] The defendant made his escape through the bedroom window, breaking the louvre blinds. It is apparent that he must then have climbed the fence of the back garden.

[6] Mrs Loughlin was looked after by carers who would call four times a day. One of her carers, Dawn Craig arrived at her house at 9.40pm on the Sunday night but Mrs Loughlin did not answer the door. She looked through the glass in the door to see someone wearing shiny black tracksuit bottoms with a red stripe step out of, and immediately return to, the bedroom. Ms Craig thought it may have been Mrs Loughlin’s grandson. She then, with the assistance of another carer, attempted to contact Irene Abernethy, as she was supposed to if she couldn’t gain access. She was unable to do so and returned to Mrs Loughlin’s home about 15 minutes later. Mrs Loughlin came out of the bedroom while trying to put on her dressing gown. She was shaking and was naked from the waist down and was wearing only one slipper. She told Ms Craig what had happened and the police and family members were called. When her daughter Irene arrived, Mrs Loughlin was crying and shaking. She got into her daughter’s car before breaking down. She told Irene he had put it in her mouth and asked: “*Why did he do it on me?*”

[7] Another of her carers, June Meredith noted a change in Mrs Loughlin on Tuesday 15th. She was very quiet and unsteady on her feet. Ms Meredith says that it was as if the life was drained out of her. The ABE video interview was conducted that day.

[8] Mrs Loughlin underwent a medical examination. It was discovered that her attacker had ejaculated inside her. Semen was detected on swabs taken from her vagina. A DNA profile matching the defendant was found on swabs taken from three areas within her vagina.

[9] As a result, the defendant was arrested on 15th June at the address of his parents. He made no reply to caution. Throughout his interviews, the defendant denied his involvement in the offence, saying that he had never been in her house. He maintained his denial even when told of the forensic evidence against him.

[10] Mrs Loughlin never returned to her house. She died on 14th October 2011. Her medical history for the last months of her life is chronicled in the letters from her GP, Dr McQuade and Consultant Physician, Dr Harding. It is apparent from these reports that the immediate cause of death was unrelated to this incident. Nevertheless as is all too apparent from the Victim Impact Report presented through

the form of a letter from Mrs Irene Abernethy, the effect of this assault on her mother was devastating. The letter sets out in poignant and eloquent terms how an elderly and frail woman of spirit, humour with a zest for life and in particular her children and grandchildren, was reduced to a shadow of her former self. As Mrs Arbernethy put it: -

“All her spark, determination and character was gone. She was distressed and humiliated by her attack until she died...he snatched the later years of her life destroying my mother’s whole being and haunted her right until her death”.

[11] This is a shocking case in many ways. It is hard to conceive of a greater violation than that endured by Mrs Loughlin. That an elderly lady should have been attacked and made subject to such a degrading, humiliating and sustained assault within the supposed sanctuary of her own home is horrifying enough. That these despicable crimes were perpetrated by a 15 year old boy is frankly beyond comprehension and calls for the most condign punishment and condemnation.

[12] The defendant was remanded in custody to the Juvenile Justice Centre where he remains to this day. The fact that he was deemed unsuitable for bail pending trial and has thus been in custody for more than 12 months to the date of sentencing is indicative of the concerns that are raised in this case.

[13] Before turning to consider the sentencing options in this case I intend to set out something of the defendant’s background. The defendant is originally from Scotland though he has lived in the Dundonald, North Down and Ards areas for most of his life. He has been diagnosed with ADHD, Dyslexia and has been assessed as having a mild learning disability. His parents’ separation when he was 7 years of age appears to have had a profound effect upon his development. He then began to consume alcohol at the age of 12 and a year or so later he was experimenting with various forms of drugs including cannabis, methadone and diazepam. He had his first sexual encounter at the age of 13 and by the time of these offences he was in active sexual relations with several different partners. There is nothing, however, to suggest in his background any predilection towards fantasising behaviour focusing on rape or other acts of sexual violence.

[14] At the time he committed these offences he had no previous convictions. Two months later whilst under the influence of alcohol, he broke into a builder’s yard and stole a fork lift truck. This led to him being prosecuted and convicted of several offences. More importantly, however, it led directly through the taking of a DNA sample to his being made amenable for the current offences. It is a startling insight to his mind-set that he gave no apparent care or consideration to his actions during that intervening period. When interviewed by Mr Ian McGlade (Probation officer) who prepared the PSR, the defendant was either unable or unwilling to offer any credible explanation for his actions. He said that he had spent the day uneventfully at home

before heading over to Bangor where he met up with friends. It was on his way home after consuming half a bottle of vodka that he noticed seeing the victim's open front door. He admitted to Mr McGlade that he had entered the house but he refused to discuss what occurred thereafter. From this limited information it is unclear as to whether his actions were premeditated or opportunistic in character with limited planning and targeting. Either way it is clear that the capacity to act in the manner the defendant did on this occasion poses very real concerns as to the level of future risk he presents to members of the public generally and vulnerable elderly women in particular.

[15] These offences were committed after the coming into effect of the full sentencing powers under the Criminal Justice (NI) Order 2008 on 1st April 2009. The offences of Rape and Sexual Assault are both "serious" and "specified sexual" offences within the meaning of Schedules 1 & 2 of the said Order and the Court is, therefore, enjoined to reach a determination as to whether the defendant is a "dangerous offender" adopting the criteria set out in Article 15 of the Order.

[16] Against the background set out in the preceding paragraphs it is perhaps not surprising but still no less depressing that the defendant is assessed as presenting with a high likelihood of re-offending. A PBNI Risk Management Meeting was held on 26<sup>th</sup> June 2012 at which he was assessed as meeting the threshold of Significant Risk of Harm within the PBNI's Risk of Serious Harm Policy. The meeting concluded that there was a high likelihood that the defendant would commit a further sexual offence, the impact of which would cause serious harm. In reaching this determination the following factors were considered of particular relevance:-

- Serious nature of the index offences;
- The significant escalation in the seriousness of his offending behaviour;
- His unwillingness/inability to provide an account of his offending behaviour;
- His early sexualisation experiences and use of pornography;
- The victim's age and vulnerable state;
- Alcohol abuse;
- High levels of Risk taking behaviour;
- Distorted thinking patterns which allowed for his offending behaviour
- Distorted interpersonal and intimacy balance;
- Lack of self-control and self-regulation;
- Lack of remorse and victim empathy.

[17] It is also significant to note in the context of consideration of the level of future risk that during his time on remand at Woodlands Juvenile Justice Centre, The defendant has moved through the tiers reflecting a progress of good behaviour within the unit. Concern has, however, recently been voiced that he has displayed inappropriate sexualised behaviour. In the light of all these factors the meeting concluded that the defendant presents a serious risk of harm to females.

[18] Mr McDonald QC referred me to the report of Dr East (Consultant Psychiatrist) submitted on the defendant's behalf. On the basis of this report Counsel accepted that there could be no serious challenge to the conclusions of the Risk Management Meeting. I have considered the very helpful and carefully structured PSR, the submissions of Mr McDonald QC and have re-examined the depositions in light of all these matters. I have further applied the guidance as set out in the decision of R v E B [2010] NICA 40. On the basis of this analysis I am drawn inexorably to the conclusion that the defendant does pose a significant risk of serious harm to members of the public by the commission of further specified offences. This being so I find that he is a "dangerous offender" within the meaning of the 2008 Order.

[19] This determination must shape the approach taken to the range and level of sentence. I have considered whether an Extended Custodial Sentence would be adequate for the purpose of protecting the public. I consider that such a sentence would be adequate for the following reasons -

- (a) there is evidence that since his admission to Woodland JJC, staff have developed a positive working relationship with him;
- (b) measures can be put in place, first whilst he remains in custody whether in the JJC or the YOC and then when he is eventually released, to put in place programmes such as alcohol and drug counselling and methods of addressing the areas of concern identified at the Risk Management Meeting.
- (c) I bear in mind his youth and the fact that the finding that he is a dangerous offender should be mitigated with the lowest level of sentence commensurate with the risk posed.

[20] I pause to reflect that in England & Wales the passing into law of the Criminal Justice and Immigration Act 2008 has had a significant limiting effect on the power of a Crown Court to sentence a young offender as a dangerous offender. In essence unless the Court considers that the young person should spend at least two years within a custodial establishment the court cannot impose a sentence for dangerousness. This statute does not apply in Northern Ireland, but I make it clear that on the evidence placed before me I am of the opinion that even if it did the threshold is clearly met in the present case.

[21] In addressing the issue of sentence I have also borne in mind the principle that the welfare of the child must be specifically taken into account as set out in Section 53 of the Justice (Northern Ireland) Act 2002, the relevant parts of which provide: -

"53.-(1) The principle aim of the youth justice system is to protect the public by preventing offending by children.

(2) All persons and bodies exercising functions in relation to the youth justice system must have regard to that principle aim in exercising their functions, with a view (in particular) to encouraging children to recognise the effects of crime and to take responsibility for their actions.

(3) But all such persons and bodies must also have regard to the welfare of children affected by the exercise of their functions and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development."

[22] I have also considered the guidance offered in R v C K [2009] NICA 17 in which Kerr LCJ (as he then was) analysed how the court should approach the issue of sentence under the provisions of Article 39 or Article 45 of the Criminal Justice (Children) (NI) Order 1998. This guidance was, of course given in respect of offences committed before the implementation of the Criminal Justice (NI) Order 2008 and the sentencing court was not, therefore required to assess the issue of dangerousness. The effect of my decision on this issue, which does apply to the present case, means in effect that this court does not have the option of imposing a sentence under the relevant provisions of the 1998 Order. I nevertheless consider that the principles set out in the judgment of the Lord Chief Justice have a bearing on and inform this court in its approach to sentence. In particular I take note of the following observations at Paragraphs 18 - 22 of the ruling -

"[18] The European Court of Human Rights has regarded the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) and the United Nations Convention on the Rights of the Child (UNCRC) as providing guidance on how juvenile offenders should be dealt with. Paragraph 5 of the Beijing Rules states that: deprivation of liberty should only be imposed after careful consideration. It should be for a minimum period and should be reserved for serious offences.

[19] Article 3.1 of UNCRC proclaims the paramountcy of importance of the welfare of the child in all public actions taken in relation to children. It stipulates that: -

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'

[20] Article 37 (b) of UNCRC echoes paragraph 5 of the Beijing Rules: -

'No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.'

[21] The need to promote the re-integration of a child offender into society is dealt with in article 40 (1) of UNCRC as follows: -

'State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.'

[22] The theme common to all these provisions (the need to have particular regard to the welfare of the child offender) should inform the approach of the court to the application of article 45 (2) (b) of the 1988 Order. Examination of the suitability of alternative methods of dealing with the case other than by detention must take place against the backdrop of an imperative to do what is best for the child, while, of course, recognising the need to prevent offending by

children. Moreover, where it is concluded that detention is required, there is a need to focus on what is the minimum period that will accommodate that requirement.”

[23] Having regard to the seriousness of the charges and to my conclusion that the defendant is a “dangerous offender” within the meaning of the 2008 Order, the enhanced sentencing provisions apply in this case. I must now turn to the applicable guidelines. The approach to be taken by the Courts in this jurisdiction to the question of sentencing in cases of Rape has been clarified and refined in recent years. In Attorney General's Reference Number 2 of 2004 (Daniel John O'Connell) [2004] NICA 15 the Court of Appeal endorsed the levels set out by the Sentencing Advisory Panel in England & Wales; these being 5 years with no aggravating or mitigating features and 8 years where a number of enumerated features are present, in both cases after a contested hearing. In Attorney General's Reference (No. 3 of 2006) (Martin John Gilbert) [2006] NICA 36, the then Lord Chief Justice, Sir Brian Kerr, highlighted the three dimensional approach taken by the Sentencing Panel with consideration being given to the following factors:

- (a) Degree of harm to the victim;
- (b) The level of culpability of the offender; and
- (c) The level of risk posed by him to Society.

[24] The sentencing court is enjoined to consider all three dimensions. In the present case the degree of harm, level of culpability and level of risk posed are all high. In addition the court must focus on the presence or absence of the following specific aggravating features as referred to by the Panel and endorsed in Gilbert:

- (a) The use of gratuitous violence;
- (b) The use of a weapon to frighten or injure the victim;
- (c) Planning the offence;
- (d) Significant physical or mental consequences for the victim;
- (e) Further degradation of the victim (including forced oral sex);
- (f) The victim's home having been broken into;
- (g) The presence of children when the offence was committed;
- (h) Covert use of a drug to overcome the victim's resistance or to obliterate his or her memory of the offence;



- (i) Any history of sexual assaults or violence by the offender against the victim.

[25] On the facts of the present case (d), (e) & (f) are all present as aggravating features. The Sentencing Guidelines recognise three principal categories of mitigating factors. These are a plea of guilty, although the reduction of sentence that a timely plea will warrant is to be adjusted if the plea was not prompt; the victim's behaviour; and the offender's good character (although absence of a criminal record should not necessarily be equated with good character). The only relevant factor in this case was the guilty plea. It is, of course true that so far as Count 1 is concerned the evidence was overwhelming and the plea on arraignment was nothing less than what could be expected. The decision to maintain not guilty pleas to Counts 2 & 3 prolonged the anguish for the family of the deceased victim but I accept Mr McDonald's submission that legal considerations focusing on the need to explain the implications to the defendant was the principal cause for the delay. Mr Weir QC for the Crown acknowledged that a plea of guilty even a delayed one is of particular value in cases of sexual assault and some measure of mitigation will, therefore apply.

[26] I consider that had the defendant been an adult and had he been convicted after contesting the charges a sentence of at least 15 years would have been appropriate in this case. Bearing in mind the youth of the defendant and giving full weight to the plea in mitigation I have determined that the minimum appropriate custodial term to be a period of eight years. After you have served at least one half of that period, the date of your release will be determined by the Parole Commissioners.

[27] I consider that the extension period should be three years. Having reviewed the concerns raised by the Probation Service I believe that it is essential that sufficient time is allowed to provide the fullest opportunity for the suggested programmes and measures to be put in place.

[28] If you are released from custody before the completion of the full custodial element you will be subject to the normal licence period for the balance of that term and then to this extended period of licence. This means that the effective term of the ECS is 11 Years. I consider that this period is necessary for protecting members of the public from serious harm. As this is not a determinate custodial sentence of twelve months or more, the court's power to recommend licence conditions to the Minister of Justice, enshrined in Article 23, does not arise. Similarly the power contained in Article 24(2)(b), as any future release on licence of this Defendant will not be effected under Article 17 or Article 19. At a later stage, the licence conditions recommended in the Probation Officer's report, which appear to the court to be both reasonable and sensible, will doubtless be carefully considered, in the circumstances then prevailing.

**Sentence:**

Count 1 – Rape – 11 Years ECS (8 Years followed by 3 Years extended Licence)

Count 2 – Rape – 11 Years ECS (8 Years followed by 3 Years extended Licence)

Count 3 – Sexual Assault 5 Years ECS (2 Years followed by 3 Years extended Licence)

All sentences shall run concurrent with each other.

[29] Further, by virtue of your conviction for these offences and the sentence that I have just passed, I advise you that the provisions of Part 2 of the Sexual Offences Act 2003 will now apply with regard to Notification Requirements. Within three days of your release from the Young Offenders' Centre you must notify the police of your name, your address and other personal information. There is also a continuing obligation to inform the police of any changes, and any plans to travel abroad for periods of 3 days or longer, and in any event to notify the police of your details on an annual basis. Your solicitor will advise you as to the exact requirements. This obligation will continue for an indefinite period.

[30] I am obliged by virtue of the provisions of paragraph 25 of sch. 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to inform you that the Independent Barring Board will include you in the barred list concerned for children/adults by virtue of your conviction.

[31] Finally I impose a Sexual Offences Prevention Order in the following terms: -

(i) The defendant is prohibited from accessing or seeking to access or communicating or seeking to communicate directly or indirectly with witnesses associated with this case and their families.

This is necessary to protect witnesses and their families in this case.

(ii) The defendant is prohibited from directly or indirectly initiating any communication with or initiating access to and having any association save unavoidable everyday interaction with elderly people 65 years and over unless approved by Social Services.

This is necessary for the protection of elderly people which the defendant may seek to engage in sexual activity, therefore allowing no opportunity to take advantage of any such individual.

(iii) The defendant is prohibited from residing at any address without prior approval from his Designated Risk Manager PPANI.

This is necessary to assist in the defendant's risk management and to ensure that he is not residing where there would be greater access to potential victims.

- (iv) The defendant is prohibited from consuming alcohol or possessing alcohol while in a public place. The defendant must provide a breath sample to police as part of this prohibition if requested to do so if the defendant is suspected of being under the influence of alcohol in a public place.

This is necessary given the circumstances of the case in that alcohol was an aggravating factor in the offence which the defendant was convicted.

- (v) The defendant must not frequent or loiter in or remain within 100m of places associated with elderly females, for example, Care and residential homes, all housing associated with the elderly, day centres or activity centres for the elderly without prior notification to and approval from his Designated Risk Manager PPANI.

This is necessary for the protection of elderly females, to reduce the opportunity of further offending and to assist in the management of the defendant's risk around places associated with elderly centred activity.

- (vi) The defendant is prohibited from seeking to take up or taking up employment (paid or unpaid) or seeking to participate or participating in any voluntary or charitable organisation without the approval of his Designated Risk Manager PPANI.

This is necessary to ensure that any future employment or participation in voluntary organisation does not directly or indirectly bring the defendant into a situation where he may have access to elderly persons.

- (vii) The defendant is prohibited from entering any future relationship with a prospective partner without a prior verified disclosure of his sexual offence having been made through his Designated Risk Manager PPANI.

This is necessary given the defendant's sexual behaviour in the carrying out of this offence and for the protection of a prospective partner and his or her family circle.

- (viii) The defendant is prohibited from denying police access to his notified address to ensure he is complying with the terms of his Sexual Offences Prevention Order and to carry out home visits under the Public Protection Arrangements for Northern Ireland.

This is necessary to ensure the defendant's compliance with the Order in the protection of the elderly and to facilitate his future risk management and association with people who he may consider entering a relationship with.

- (ix) The defendant must not knowingly associate or seek to associate with Registered Sex Offenders save in the course of any treatment or activity permitted by the Probation board.

This is to ensure that the defendant's association with other like-minded persons does not encourage further offences.

This order shall remain in force for 10 years.