

IN THE CROWN COURT FOR THE DIVISION OF ARDS

REGINA

V

DANIEL CURRAN

Sentencing remarks and sentence.

HIS HONOUR JUDGE SMYTH

Culpability:

- [1] Between 1989 and 1992 the defendant on a number of occasions indecently assaulted X who then was aged between 9 and 11. X was born in 1980. The four counts relating to him are specimen counts. He was an altar boy at the church where the defendant was parish priest. He was invited along with other boys to stay at a seaside cottage near Tyrella Beach. He obtained the permission of his parents and was driven down to spend weekends. The first trip occurred when he was 9 and he had the permission and the encouragement of his parents to go.
- [2] There were basic but limited amenities. It had no electricity and must have been a different world for boys from the city. Mr Curran gave them alcoholic drink and they were encouraged to take it and X did. The boys got ready for bed and were usually about 3-5 in number. It was a one bedroom cottage with an upstairs loft bedroom. The boys shared a bed downstairs. The abuse happened in the bed and to X on at least 10 occasions. The time span was approximately two years. One incident involved the defendant ejaculating after masturbation. X did not know or understand what was happening at first but eventually after this offending was repeated his behaviour at home became difficult. He kept the abuse secret and did not tell friends because he was worried his mother would find out. He felt he would be blamed. In an attempt at protection he altered his position in the bed but was still abused.

- [3] After the defendant was arrested in 1994 X was interviewed at Garnerville but with negative results. His name had been mentioned by others who went there as one of the boys who visited the cottage.
- [4] The fifth count is specific and relates to the second complainant. It is earlier in time and relates to misbehaviour on one occasion, between 12th February 1986 and February 1988. Unlike the other complainant and indeed the other boys in the cottage the abuse took place in the loft which was reached by a ladder. According to the complainant Y he was aged 9-10. The boys were upset by the wind and Mr Curran was called up and comforted them. The complainant later woke and was abused in the bed. Mr Curran placed his penis against the complainant's bottom and rubbed the complainant's penis inside his clothing. The abuse was on one occasion. To prevent any attempt at repetition the ladder was retracted by the boys. Y was never asked about this and the first person he disclosed it to was his wife.
- [5] At the time the victims were aged between 9 and 11. The offences occurred against a background of trust placed in Mr Curran as a parish priest who also had responsibility for X as an altar boy. There are two victims. In relation to one the abuse was carried out over a period and could be described as a campaign of abuse against that boy. In relation to Y it was one specific incident. The abuse whilst serious did not include penetration. Against X it was aggravated by ejaculation.

Victim Impact Statements:

- [6] X was spoken to by the police in 1994 because his name had been mentioned as one of a number of boys who had taken up offers from the accused to spend time at the family cottage at Tyrella. At the time he indicated that he had not been indecently assaulted. The second victim Y was not spoken to.
- [7] Subsequently X has done well at school. His orientation is gay and he is in a partnership. When he was in his later teens he had a conversation with his aunt about his sexual orientation. Although he had a struggle with accepting his sexual orientation when a teenager there is no suggestion that there was any connection between the abuses he suffered as a child and these problems. He not only has done well academically but he is in a secure job and is clearly well thought of. He is diagnosed as suffering from a Post-Traumatic Stress Disorder. I accept that he has had many difficulties not all the result of the abuse but he was at the time a particularly vulnerable child who later, in common with some of the other boys, resented their parents placing trust in the defendant.

[8] Y is married and 34 years of age. He was born in 1977. He would have been 9 in February 1986 and 11 in February 1988. He attended one counsellor for a number of sessions after disclosure of this but then stopped attending. Last year he was referred by his GP to a fresh counsellor and this has been met with more success. He disclosed this to his wife relatively recently, then to police officers and now, through prosecuting counsel, to this court. He has been diagnosed by Dr Patterson as suffering from Chronic Adjustment Disorder to a moderately severe degree. This is based on the history given to Dr Patterson of the frequency of abuse related thoughts, sleep disturbance and startle response. The positive indication is that resolution of this case will be likely to bring a degree of improvement to him. It is a stressful period and this for him concludes with this sentence. The effect upon him of the abuse was no doubt aggravated by his silence over many years. It was brought to the fore by his having to cope with his wife delivering a still born first child. He has however done well in his life, improving his qualifications and is in rewarding and permanent work. They now have two children.

The Record and History:

[9] Mr Curran appeared first before His Honour Judge Hart QC, as he then was, on 14th June 1995. This was in relation to two separate Bills but it involved largely similar offences committed over a similar time frame. One of the complainants had been physically assaulted. It was his condition that initially provoked alarm. He was in a dishevelled and sodden state and bore some signs of assault. Apparently he was taken to hospital. Mr Curran's response to police was to indicate that he had been attempting to defend himself. When his blood was tested a high alcohol level was found in the complainant's system. He had been given alcohol by Father Curran. He was older. He was not the subject of any charge of sexual assault.

[10] In total eight boys made complaints of sexual assaults that took place upon them in the cottage where they were spending the weekend and where they had been taken by Mr Curran with the consent and the trust of their parents. That trust was understandable. Mr Curran was a parish priest and the victims were the children of parishioners, altar boys or connected with the church. Their parents and the boys would most likely have been regular Church attenders. I will not go into any detail about the nature of the allegations except to say that they are similar to those this court is dealing with.

[11] The location of the offending behaviour was in the cottage. It took place after the boys had gone to sleep or at least to bed. It involved inter-crural contact and rubbing. There was no penetration. The longest sentence of three years

and 6 months imprisonment was for an offence of attempted buggery. There is no offence of this seriousness before this court. The accused pleaded guilty and was sentenced to a total of seven years. He was released on licence probably about three years 6 months later in 1998.

- [12] In 2005 Mr Curran received a suspended sentence of 18 months in total for two specific offences of indecent assault that had been committed on 14th June 1986. These charges related to a specific incident committed within the same timescale but dealt with in 2005, nineteen years later. It resulted in a suspended sentence of 18 months that was suspended for two years. As Mr Gallagher says this, even though the sentence is not served, is treated as a sentence of imprisonment. Alcohol was given to the victim. He was aged about 11 going towards 12. The offence took place in the cottage and whilst it involved two charges, one of oral sex, it was confined to one night. The victim belonged to a scout troop connected with the parish.
- [13] The final relevant significant entry on Mr Curran's record is on 25th May 2006. He received a sentence of 14 months in total for indecent assault upon a male and in respect of five specimen offences committed over an earlier period. This was between 1977 and 1982. The age of the victim was between 8 and 12 but estimates of age can be inaccurate. The complainant was aged 12 when the abuse stopped. The offences took place in the cottage and at the complainant's two homes where he was trusted not just to share a room with Mr Curran but his bed.
- [14] The overall time span therefore covers in total 16/17 years. It involves a total of 13 boys. Their ages were between 8 and 12. The same aggravating features were present in respect of each. Access was freely given by trusting parents. That position of trust was that of a parish priest who had particular duties both to parishioners and to altar boys and those using and attending church.
- [15] Successive courts have dealt with Mr Curran who has always pleaded guilty.
- [16] That is not to say that his victims have been spared distress. Before His Honour Judge Hart QC there were 9 boys. It could not be said that there was an early confession. It is my understanding that in that case admissions were not made to the police. It was not said to the investigating police that there was an acceptance of abuse or that it would be difficult for Mr Curran to recollect the number of children abused whether because of the number of occasions, because of the lapse of time or because the memory of the defendant had been affected by alcohol. He was described as "less than helpful" by Mr McDowell.

[17] This remained the case when further offences were complained of, namely those that were dealt with in 2005 and 2006. Mr Curran did not take the opportunity to say "I have done these acts. I cannot remember how many or to whom but I am truly sorry for what I have done". He did not present a picture of penitence to Judge Hart, Judge McFarland or Judge Lynch.

[18] He did however plead guilty and his victims were spared a trial. It could not be said that a plea was entered at the first opportunity, that the complainants did not have to be prepared for a trial or that the defendant had made at those times a contrite confession of all that he recalled being responsible for.

Mitigation:

[19] In relation to this case he has pleaded guilty. His plea was volunteered at the first available, and reasonable, opportunity to him before me. This has allowed the complainants to be told that their case was going to be a plea of guilty. They consequently have been spared the considerable worry engendered by a public hearing. Those who preceded them did not have to give evidence and to relive their abuse but they were not aware of the defendant's attitude until a much later stage in their cases.

[20] Mr Curran has accepted that he was responsible for the acts alleged against him. He also now has accepted there may be others whom he cannot remember. That will no doubt be something that will be borne in mind in the event of there being any fresh allegations made against him.

[21] His parents are elderly. His mother and father are both aged over 90 and his father is in a home. Mr Curran was a carer for his elderly mother and lived at home with her. There are 7 other siblings and the task will fall to them to be carers in what must be distressing circumstances for them.

[22] Mr Curran was assaulted in the course of his 7 year prison sentence. It is distressing that this can happen. It shows how important it is that justice is both done and also seen to be done in court. It is the State's duty to protect its prisoners and any assault in prison, if it were to occur, would be a breach of both natural justice in a civilised society and of the State's Convention duties. The court will not however anticipate that this might happen. It is the duty of prison authorities to ensure that it does not. To a limited extent I take into account that Mr Curran has on four occasions been attacked because of these events when serving a prison sentence.

The Pre-sentence Report and the assessment of Risk:

- [23] Miss Kane reported to the court on 20th January. Her assessment of risk was as follows: that Mr Curran is classed as presenting a medium risk of re-offending and that he does **not** meet the criteria for assessment as presenting a risk of serious harm to a section of the public. The latter assessment was made after a Risk management Meeting on 25th January 2012. I agree with both these assessments.
- [24] In particular the effect of the Sexual Offences Prevention Orders, the notification requirements, the benefit of Article 26 supervision upon release and the support of his family counter the risk presented by the concerns expressed over his failure to co-operate fully. For some unclear reason the records from the facility operated on behalf of the Church in Stroud, although sought, have not been obtained. This and the other concerns about co-operation mentioned in Miss Kane's report are balanced by the defendant's rejection of alcohol and the lack of concern about his behaviour towards children since his release from prison in 1998 and since disclosure of the first offending behaviour in 1994.
- [25] In any event this falls to be dealt with under the 1996 Order not the 2008 sentencing regime.
- [26] I do not regard custody probation as an appropriate disposal given some of the concerns expressed in the PSR report. The stricter regime that allows recall to prison if the licence is significantly broken is more appropriate.

Rationale:

- [27] The court must approach the overall sentence having regard to the totality of sentence and it must also sentence for the offences before the court in a proportionate and just manner. That also means the court must have regard to the interests of the two complainants who have required courage to do what they did.
- [28] Mr Gallagher and Miss Kane refer to Mr Curran's assertion that these offences were committed when he had a significant alcohol problem. There is confirmation in relation to this in what X told the police in his ABE interview. Intoxication is not a defence nor, in the view of this court, does it provide any mitigation. These were offences that were not isolated. They followed a pattern and they extended over a lengthy period of years. The court accepts that people when intoxicated can do acts that they would not do if sober. This is not that kind of case. It was a case where Mr Curran systematically set out to abuse children who had been placed in his care. He knew exactly what he

was doing at the time and knowing this he persuaded parents to allow their children to be in his care.

- [29] I have been referred to many authorities by both Mr Gallagher and Mr McDowell. In particular Mr Gallagher has referred to the Attorney's Reference (number 4 of 2005) in R v Kerr. There are many similarities between that case and this but there are also many differences. The court has to look to the offending behaviour principally and the presence (or absence of aggravating factors). It then has to consider the mitigating factors and must have regard to both totality and to what has been described as "double jeopardy". I have also given close consideration to the English case Attorney's Reference number 53 of 2005.
- [30] The sentence should be the one that the court believes appropriate taking all these factors into account. In making that assessment it must have regard to what the overall sentence would have been if imposed at the time in respect of all the offences. The court also has to make an allowance for the fact that this is the third return to prison. Mr Curran is now 61. He was 44 when first sentenced in 1995.
- [31] Nonetheless there were at least 13 victims. The time span was just short of 17 years. The abuse of trust was of great magnitude. The impact on victims, their parents and upon public trust and confidence was considerable. While Mr Curran's approach to these allegations did not result in the delay in the victims coming forward I am satisfied that his approach to these matters in 1995 and in 2005 and 2006 lacked the kind of penitence that could allow the court now to accept true remorse.
- [32] Would you please stand up Mr Curran?
- [33] I give you substantial discount for your timely plea of guilty and the admissions made in this case together with all the matters I have mentioned above. In particular there is your return to prison for the third time taken together with the lack of any subsequent significant record.
- [34] I sentence you in each count regarding X to a period of three years imprisonment. All these sentences will be concurrent with each other.
- [35] There will be a consecutive sentence of one year in relation to count five that relates to Y. *The overall sentence I am imposing is therefore one of 4 years.*
- [36] With the period already served the overall term that you will have served upon release on Article 26 licence will be 12 years and four months.

- [37] When you consider this sentence together with the other sentences you have already served, it means that you will have been subject to a total period of imprisonment of 12 years and 4 months since you were first convicted in 1995.
- [38] I would if you had been convicted by a jury of all these offences regard a sentence of 18 years appropriate. Looked at individually these offences may not be at the most grievous end of the scale. The number of victims, the age of the children, the extent of the breach of trust, the public interest in that breach of trust (against children placed in your care by trusting parents) are aggravating factors. You set out upon a systematic campaign of abuse.
- [39] I appreciate the severity of this sentence when taken with the previous sentences however I am firmly convinced that the public interest (properly expressed) demands a severe sentence.
- [40] I have considered the application for Sexual Offences Prevention Orders and regard them, with the agreed amendment, as appropriate and proportionate. I make the Orders. The notification period is for life.
- [41] Can I be advised on what the position is about placing on the Barred List where offences are committed prior to the Act?