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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

DANIEL CURRAN

Before: Morgan LCJ, Higgins LJ and Girvan LJ

MORGAN LCJ (giving the judgment of the court)

[1] This is an appeal against a sentence imposed on a plea of guilty by Judge Smyth QC at Downpatrick Crown Court on 29 February 2012 on five counts of indecent assault on a male attracting a total period of 4 years imprisonment comprised as follows:

Count 1 – 3 years (counts 1-4 are against the same victim)
Count 2 – 3 years concurrent
Count 3 – 3 years concurrent
Count 4 – 3 years concurrent
Count 5 – 1 year consecutive (different victim)

The maximum sentence for indecent assault on a male is fixed by section 62 of the Offences Against the Person Act 1861 at 10 years.

Background

[2] These offences form part of a wider history of similar offending. Between 1977 and 1993 the appellant committed indecent assaults on a number of male children when serving as a parish priest. All of the offences occurred when the boys were invited, along with other boys, to stay at a seaside cottage near Tyrella Beach which belonged to the appellant's family. There have been three previous sets of charges relating to different victims.

[3] The appellant first appeared at Belfast Crown Court in June 1995. He pleaded guilty on one Bill of Indictment to one count of assault occasioning actual bodily harm, eight counts of indecent assault and one of gross indecency. These offences involved attacks on nine children aged between 9 and 14 between January 1990 and March 1994. On a second Bill he pleaded guilty to one count of attempted buggery, one count of indecent assault and one of gross indecency in relation to the same child who was 12 years old at the time.

[4] The offences of indecent assault followed a consistent pattern. The appellant would make a meal after the boys had been playing outside and despite the young age of the boys would make cider and beer available to them. When they went to bed the appellant would share the same bed as a couple of the boys and the victim would soon become aware of the appellant touching his private parts. In most cases when the child awoke and made it clear that he objected to what was happening the appellant stopped.

[5] These offences came to light on 18 March 1994 when the appellant had a drunken and violent confrontation with a 13-year-old boy who was staying at the cottage as a result of which the child ran to a neighbour. The police were called and further offences came to light. In relation to the first Bill the most serious offence involved a child C who awoke to find that his trousers had been pulled down and the defendant had his naked penis touching one of the child's buttocks. When the child tried to pull up his trousers and pants the appellant prevented this, touched him on the genitals, tried to kiss him and asked the child to touch the appellant's penis.

[6] The victim of the attempted buggery and related offences on the second Bill was C's brother who was aged 12 at the time. He awoke to find the appellant in bed beside him ripping open his boxer shorts and pushing his erect penis in an attempt to bugger the child. The appellant then turned the child over and sucked his penis before trying to force him to suck the appellant's penis. Victim impact reports showed that these incidents had significant effects on both C and his brother. C had counselling for several months and his brother was referred to the Childcare Centre for treatment. Although an opportunity for victim impact statements in relation to the other children was provided no further reports were submitted.

[7] The learned trial judge noted the evidence that the appellant had benefited from clinical and therapeutic work to deal with his psychosexual problems. He had demonstrated a profound level of remorse and regret for his actions and was aware of the harm he had inflicted upon his victims. The learned trial judge gave the maximum allowance by way of reduction in his sentence for his pleas of guilty and considered that a total sentence of seven years imprisonment was appropriate. On the first bill he imposed a sentence of 12 months imprisonment in relation to the assault and a consecutive sentence of 2½ years imprisonment in relation to the attack on C. He imposed concurrent sentences of 12 months imprisonment on the other

counts on that Bill. In relation to the second Bill he imposed a sentence of 3½ years imprisonment in relation to the attempted buggery and concurrent sentences of 2½ years imprisonment on the other counts.

[8] The appellant then appeared at Downpatrick Crown Court in April 2005. He pleaded guilty to 2 offences of indecent assault committed on 14 June 1986. The victim was 11 years old, he had been given alcohol and one of the counts involved a charge of oral sex. The prosecution accepted that if this count had been dealt with at the time of the earlier offences the overall sentence would have been the same. We are surprised by that concession given the different timeframe. Although the victim had been interviewed in 1994 he had not made disclosure of the offence until much later. In light of the prosecution concession the learned trial judge imposed a sentence of 18 months imprisonment suspended for two years. The sentence was not referred by the Attorney General.

[9] The appellant's next appearance was at Belfast Crown Court in May 2006 when he was sentenced to 14 months imprisonment concurrently on five counts of indecent assault committed between 1977 and 1982 upon a child who was aged between 8 and 12 during the relevant time. He was returned to prison to serve that sentence.

[10] The offences with which this appeal is concerned involve two victims. The first four counts relate to the period from December 1989 until December 1992 when the victim, L, was aged between 9 and 12. The abuse consisted of the appellant coming into the bed where L was asleep and either placing L's hand on the appellant's penis under his underwear and moving it up and down or placing his own hand on L's penis under his underwear and moving it up and down. On one occasion the abuse continued until the appellant ejaculated when L's hand was on his penis. The prosecution case was that the abuse occurred on around 10 occasions in total.

[11] The fifth count is specific and relates to the second complainant, G. It concerns an occasion on 12 February 1988. G complained of abuse in the loft of the cottage which was reached by a ladder. He was aged 9-10 at the time. The boys were upset by the wind and the appellant was called up and comforted them. The complainant later awoke and was abused in the bed. The appellant placed his penis against the complainant's bottom and rubbed the complainant's penis inside his clothing. On the other occasions when G stayed at the cottage the ladder was retracted by the boys and no abuse occurred. G was not interviewed during earlier investigations and the first person to whom he disclosed the abuse was his wife.

[12] The effects on both victims had been substantial. L pursued a nursing career in London but found that he was unable to cope and returned to live with his family for support. He continues to re-experience the trauma of the events and still has difficulties with sleep. He shows the symptoms of Post-Traumatic Stress Disorder. G

has similarly been significantly affected. He re-experiences the sexual abuse on a daily basis and also has difficulty in getting to sleep and staying asleep. He has symptoms characteristic of a post trauma response of moderately severe degree.

[13] The learned trial judge noted the following aggravating factors:

a. the offences represented a gross abuse of trust. The appellant was a priest in the victims' parish. Additional trust was placed in him by the parents of the children he abused who allowed them to stay at his cottage;

b. there were two victims;

c. the abuse of L was repeated on more than 10 occasions over a period of two years, amounting to a campaign of abuse;

d. at the time of the offences, his victims were aged between 9 and 11 and 9 and 10 respectively;

e. preplanning encompassing deliberate targeting and grooming of vulnerable victims;

f. alcohol was used to commit the offences;

g. in respect of L, ejaculation occurred on one occasion; and

h. the effect on the victims.

[14] By way of mitigation it was accepted that the appellant's plea was volunteered at the first available and reasonable opportunity. The judge noted that the appellant was assessed as presenting a medium risk of reoffending and did not meet the criteria for assessment as presenting a risk of serious harm to a section of the public. He noted that the appellant had given up alcohol and that there had been no concern about his behaviour towards children since his release from prison in 1998. He concluded that he should look to the offending behaviour principally and should then consider mitigating factors and totality.

Consideration

[15] Like the single judge, Maguire J, we consider that the appeal raises the question of whether the recently imposed 4 year term was manifestly excessive or wrong in principle when set against the background of multiple sentencing exercises in respect of a pattern of behaviour on the part of the appellant over a sustained period. It is submitted that the Judge should have given greater weight to the previous sentencing than he did, that more weight should have been given to the absence of any offending by the appellant after his detection in 1994 and to the fact

that if all of the offending had come before the Court at the same time he would not have received a sentence of a length which would equal the aggregate total of the sentences now received, a total sentence when all four sentences are added together of 13 years and 8 months.

[16] This court has considered the applicable principles in historic sex cases where previous offending emerges after the imposition of a sentence of imprisonment for offences committed at or about the same time in AG Reference (No 4 of 2005) (Martin Kerr) [2005] NICA 33. The starting point is to consider the sentence appropriate to the offences in respect of which the offender has been found guilty. The court accepted that where the offences were part of a catalogue of offences in respect of which the offender had already been sentenced it was necessary to have regard to the totality principle which would have applied if the offender had been sentenced for these offences at the same time. The reason is because the totality principle is designed to secure a global sentence that is just and proportionate (see AG Reference (No 1 of 1991) [1991] NI 218).

[17] Although the learned trial judge correctly identified the relevant principles there were a number of criticisms of the matters upon which he relied in coming to his conclusion. The first related to his assessment of the total sentences imposed on the appellant. In his judgment he calculated the total period of imprisonment at 12 years 4 months inclusive of the sentence imposed by the learned trial judge. He does not appear to have taken into account the sentence of 18 months imprisonment suspended for 2 years imposed at Downpatrick Crown Court on 29 April 2005. That sentence could still be implemented if it were established that the appellant committed any further offence in the 2 year period after 29 April 2005. In an earlier part of his judgment the learned trial judge accepts that it is a sentence of imprisonment. That means, therefore, that the total of the sentences of imprisonment imposed on the appellant was 13 years 8 months.

[18] In his sentencing remarks the learned trial judge noted that the records from the clinical and therapeutic facility at Stroud where the appellant had obtained treatment after his initial detection in 1994 had not been made available. He treated this as giving rise to a concern and further concluded that the appellant had not shown true remorse either at the initial hearing in 1995 or subsequently. Unlike the learned trial judge we have been provided with a transcript of the hearing before Judge Hart QC in 1995 which shows that detailed evidence about his treatment in Stroud was given at that time which included evidence of a profound level of remorse. We accept, therefore, that whatever the reason for the failure to produce the records from Stroud this failure should not have impacted adversely upon the appellant.

[19] In assessing the total sentences of imprisonment the learned trial judge indicated that the total sentence which he felt was appropriate on a contest for this campaign of abuse was 18 years imprisonment. Taking that as a starting point it

appears that on each occasion the appellant has entered pleas of guilty at a stage which has prevented any concern that victims would have to give evidence and each judge has considered it appropriate to allow him full credit for those pleas. We have also dealt with the issue of remorse. In those circumstances a total sentence of in or about 12 years imprisonment was appropriate. Since the total sentences of imprisonment imposed come to 13 years and 8 months we consider that the sentences imposed were manifestly excessive.

[20] We substitute for the sentences of 3 years imprisonment on the first four counts a period of 2 years imprisonment. To that extent the appeal is allowed. The sentence on count five remains consecutive and the article 26 licence remains in place. The ancillary orders also remain as they were.