

IN THE CROWN COURT FOR NORTHERN IRELAND

-----  
THE QUEEN

v

JD  
-----

NICHOLSON LJ

[1] The type of offence which this case records has become notorious in recent years. In this case a man, now aged fifty-one years of age, who has worked successfully most of his life, is not apparently a heavy drinker or gambler and has never been convicted of a criminal offence, appears to have an insatiable lust for young children. He has never raped any of his victims. He has never buggered any of them. But between 1975 and 2001 he has carried out acts of indecency against seven children and has pleaded guilty to eighteen counts of indecent assault, almost all of which are specimen counts.

[2] I propose to start with MM. There are three counts (Counts 5 to 7) spread over seven years. She is the youngest of a large family. Her brother, the accused, came to live in their home in 1975 when she was ten years old. He was about fourteen years older than her. He would come into her bedroom at night, put his hand underneath the bedclothes, inside her pants and put his fingers into her vagina. He told her to say nothing about it, that if she did, her father would get the blame for it. He did this about three nights a week for six months.

Then he would put his head between her legs and perform oral sex on her. This continued until she was about thirteen years old. Then if she had her period, he would make her masturbate him until semen ejaculated over her chest. If not, he would touch her vagina, have oral sex and make her masturbate him. On one occasion he tried to rape her but he is not charged with attempted rape. He tried to get her to open her mouth so that he could put his penis in on one occasion. When she was fourteen years of age he stopped. She associated this with the return of another brother. He restarted, however, and when she became eighteen years old she told him that if he ever did it again she would stab him. He still continued to interfere with her. The first person in whom she confided was her present partner, whose name she has taken. The three specimen counts relating to her represent a period between 1 January 1975 and 31 December 1982.

[3] The Victim Impact Report on her indicates that she has had a loving relationship with her partner for fourteen years and they have a young son. During the period when she was sexually assaulted she considered suicide on several occasions “but did not have the courage”. Her first marriage at the age of twenty ended in divorce because she could not bear to be touched by her husband in a sexual manner. She suffers from anxiety, insomnia, inability to relax, fear of losing control, feelings of nervousness and heart pounding, depression, damaged self-esteem, reduced energy and appetite. She feels guilt for the children he sexually abused after her because she blames herself that she did not tell someone and “the guilt is terrible”.

[4] The accused was a family friend of MA. His sexual assaults on her started when she was five years old. He used her in the same way as he used his sister. The first four counts relate to her and to a period between 1 January 1979 and 31 December 1987, approximately eight years in all. She told a few people but did not do anything about it until

16 January 2001. Then she told her boyfriend's sister by agreement with her boyfriend. The sister telephoned the police.

[5] The Victim Impact Report on her indicates that she has lived with her boyfriend for a considerable period of time and that they have two children. Their sexual relationship is, however, difficult and causes problems between them. Her clinical symptoms indicate that she suffers from acute anxiety and severe clinical depression and post-trauma symptoms such as nightmares about the sexual abuse. She avoids a sexual relationship with her partner and cannot respond sexually. Her self-esteem has been damaged and she is at risk of developing substance abuse and eating disorders. She is suffering from post-traumatic stress disorder.

[6] The accused indecently assaulted his brother, M, on one occasion in 1975 when he was twelve years old, but for reasons given below I do not regard that as serious (Count 9). During a period of three months in 1993 he indecently assaulted R (Count 17). The accused was her uncle. Again, I do not regard this as serious. I say so because of the accounts given by M and R. They were able to resist his advances and do not appear to have been emotionally damaged.

[7] He indecently assaulted his niece K between 1 June 1996 and 30 November 2000. She was eleven years of age when he started. He touched her breasts and put his fingers into her vagina. These assaults went on for almost four years.

[8] He also forced her to watch pornographic videos. She suffers from moderate clinical depression, moderate anxiety effects, symptoms of post-traumatic stress. Her self-esteem has been damaged, she is insecure and self-critical. Counts 10 to 13 relate to her.

[9] He indecently assaulted his niece, Ch, between 1 March 1995 and 31 January 1997. She was eleven years of age when he started. He touched her breasts over her clothes and would try to touch her below the waist and put his hands under her skirt, but she pushed him away. He never succeeded in touching her below the waist although he often tried to do so.

[10] She still suffers from mild depression and anxiety and post-trauma symptoms of intense emotional distress. As a result she found it difficult to trust others but is currently in a loving and supportive relationship. She feels disbelief, anger and a sense of betrayal because the defendant abused others, including her brother and sister and aunts. The relevant Counts are 14, 15 and 16.

[11] Counts 18 and 19 involve indecent assault on D, a nephew. He was born on 3 June 1988. The sexual abuse began around May 1999 and ended when the defendant was arrested. He touched D's genitalia and, on occasion, asked D to touch his. He showed D internet pornography and engaged in oral sex on at least one occasion.

[12] D told Ms Kelly, the psychologist, that there is much about the sexual abuse which he "cannot remember". It is likely that he is too distressed or embarrassed to remember and talk fully about the sexual abuse. It is not possible to predict the long-term adult effects. His depression was in the clinical range. The effect on relationships with members of the other sex may not be known until later in his development. He may need counselling as there are events about which he is not speaking.

[13] The Pre-Sentence Report indicates that the defendant is a carer for his mother who is in a nursing home. He became sexually active at the age of sixteen and stated that he occasionally had consensual adult relations during his life. He does not perceive himself as sexually interested in children. His indecent assaults involve a younger sister and brother, two nieces and a nephew from one family, a niece from another and the daughter of friends. The ages of victims at the time of the first offence against each of them range from five up to the early teenage years and at least one of them was indecently assaulted into her late teenage years.

[14] He would give the children money, cigarettes and access to his computer and used "adult" videos with some of them to normalise the conduct. He accepts that he knew what he

was doing was “wrong”, that it represented a breach of trust and would have been injurious to the victims. He claims that he “struggled with his conscience” and often felt disgust and self-loathing after incidents. He states that he wishes to understand the underlying drives which motivated him to offend in the hope of learning to control the impulse.

[15] In the opinion of the Probation Officer he will continue to present a risk to children upon his release and should be required to address his sexual offending through a sex offender programme. The Probation Officer refers to a Custody Probation Order but does not appear to have considered an Order under Article 26 of the 1996 Order.

[16] He presented to Mr McClelland, the educational psychologist, as a pleasant and friendly man with a good sense of humour. I regret that I cannot endorse his other comments.

[17] He told Dr Bownes, the psychiatrist, that his sexual thoughts, urges and interests were exclusively heterosexual. He denied that he had any problems regarding his ability to socialise with women. He said that he had enjoyed mutually friendly relationships with all his victims. He denied that he had ever engaged in collecting or viewing pornographic material of any type involving children. He said that he obtained pleasurable thoughts about his offending behaviour so as to be unable to resist opportunities to repeat it. He had only a limited grasp of the impact of his actions on his victims. He was emphatic that he intended to engage actively with whatever treatment or advice was recommended to him.

[18] Dr Bownes comments that in the absence of mental impairment or severe personality problems, sexual offenders against children almost invariably develop a style of thinking that allows them to rationalise and excuse their behaviour. The nature and duration of the pattern of offending indicated clearly to him an established deviant sexual arousal pattern to children.

[19] He has apparently some insight into his need to take full responsibility for exercising the self-control required to avoid any further sexual contact with children in the future and Dr Bownes states that he appears to be strongly motivated towards avoiding any further

contact with the criminal justice system. I confess that I got very little help in determining the appropriate sentencing from his report. This is no criticism of him or his report.

[20] It was not until the passing of the Treatment of Offenders (NI) Order 1989 which came into operation on 3 October 1989 that the maximum sentence for indecent assault on a female was raised from two years to ten years and Section 52 of the Offences Against the Person Act 1861 was amended accordingly. It is difficult to understand how Parliament failed to increase powers of sentencing earlier. As a result the maximum sentence on any of Counts 1 to 9 is two years' imprisonment. Thereafter the maximum sentence on any count is ten years' imprisonment. It is only in recent years that people have been prepared to come forward and say that they were sexually abused as children and only recently have people realised the damage done to the children.

[21] The passing of concurrent or consecutive sentences is a matter for the discretion of the trial judge. In Attorney-General's Reference (No 1 of 1991) [1991] NI 218 at 224 Hutton LCJ said "Concurrent sentences are imposed more frequently than in England".

[22] Two principles are of importance:-

- (1) Where the offences arise out of the same transaction the sentences should normally be concurrent. A series of offences against the same victim can amount to the same transaction provided they are committed within a relatively short space of time. But a judge must not depart from this principle simply because he regards the maximum sentence available for a particular offence as inadequate. See R v Magill [1989] NI 51 in which the judge passed consecutive sentences for three offences committed within a period of a few weeks. The Court of Appeal held that the proper principle is to apply concurrent sentences when the offences occur within a relatively short period of time.

- (2) Where the offences do not arise out of the same transaction it is at the discretion of the court whether the sentences should be consecutive or concurrent. An illustration of this is where the accused commits an offence during the period of a suspended sentence.

[23] The most important principle is that the totality of the sentences, whether made up of concurrent or consecutive sentences is appropriate. Where the sentences are ordered to be consecutive the total period should not exceed what is just and appropriate to the overall gravity of the law breaking.

[24] Mitigating factors will include the age of the offender, the fact that he has pleaded Guilty and the circumstances in which he does so and the fact that it is his first term of imprisonment. The accused is fifty-one, he admitted all the offences when confronted with the allegations and this is his first period of imprisonment.

[25] As with rape, so in cases of indecent assault, the courts in Northern Ireland should in my view take a more serious view of such offences than in England. I have not found much assistance from the English authorities although the Court of Appeal has been attempting to bring into line the disparate sentences passed by courts in England and Wales. The difficulty of setting guidelines is increased by the wide range of cases, and the differences in circumstances that each case presents.

[26] Having regard to the maximum sentence of two years' imprisonment on individual counts I sentence you, JD, to fifteen months' imprisonment on each of Counts 1 to 4. These relate to offences against MA. I cannot regard these specimen counts as other than separate transactions as they are spread over a period of eight years. Accordingly they will run consecutively. The total is five years' imprisonment.

[27] For the same reasons I sentence you to fifteen months' imprisonment on Counts 5 to 7. These relate to MM. Again they will run consecutively but concurrently with

the sentences imposed in respect of MA. On Count 9 I sentence you to six months' imprisonment to run concurrently with the sentences imposed in relation to MA and MM. This count relates to M. Count 8 is to rest on the books, not to be proceeded with without the leave of the court or the Court of Appeal.

[28] In respect of Counts 10 to 13 I sentence you to five years' imprisonment to run consecutively to the sentences imposed on you in relation to MA and MM but to run concurrently with each other, notwithstanding the period of time over which they were committed. I have to have regard to the principle of totality. These offences relate to K. On Counts 14, 15 and 16 I sentence you to four years' imprisonment to run concurrently with the sentences relating to K. These offences relate to Ch. Although the period over which they were committed is lengthy, again I have to have regard to the principle of totality.

[29] I have already indicated that on Count 9 I sentence you to 12 months' imprisonment to run concurrently with Counts 1 to 4. That relates to M. On Count 17 I sentence you to twelve months' imprisonment to be served concurrently with the sentences imposed in relation to K and Ch. This relates to R.

[30] On Counts 18 and 19, I sentence you to 5 years' imprisonment to run concurrently with the sentences imposed in relation to K, Ch and R. This relates to D.

[31] I have had regard to the provisions of the Criminal Justice (Northern Ireland) Order 1996. I am satisfied under Article 19(2) that the combination of offences is so serious that only a custodial sentence can be justified for all these offences and that only such sentences will be adequate to protect the public from serious harm from you. The facts which I have set out lead me to the opinion that you are a danger to children and teenagers and the medical report which I have received explains why I am of that opinion. I have taken account of all the matters which I am required to do under the Order and all that has been said by your Counsel.



[32] I have applied Article 20(2)(a) but not 20(2)(b) though I have considered applying 20(2)(b). I do not consider a Custody Probation Order to be appropriate. I do however consider that I should make an Order under Article 26 as Article 26(1)(a) applies and I order that this Article shall apply, having regard to the need to protect the public from serious harm from you. By serious harm I mean serious sexual harm to children and teenagers when you come out of prison. I also have regard to the desirability of preventing the commission by you of further offences and of securing your rehabilitation. As a result, instead of being granted remission of your sentences, you shall on the day that you might have been discharged if the remission had been granted, be released on licence under the provisions of this Article.

[33] The effect of these sentences is that you are sentenced to a total of ten years' imprisonment and when released from prison will be released on licence under Article 26.

[34] I order that you sign the Sex Offenders Register for an indefinite period.

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

-----

THE QUEEN

v

JD

-----

JUDGMENT

OF

NICHOLSON LJ

-----