

**Neutral Citation No. [2012] NICC 8**

Ref:

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: **02/03/12**

**IN THE CROWN COURT IN NORTHERN IRELAND**

**DUNGANNON CROWN COURT**

**11/077913**

**QUEEN**

**-V-**

**THOMAS CHRISTOPHER CHARLES WARD**

**His Honour Judge McFarland**

[1] You were convicted by a jury on the 12<sup>th</sup> January 2012 of the sexual assault of a 44 year old lady. She had been out jogging and walking in the Cookstown area on the 1<sup>st</sup> February 2010, and you followed her for about a mile. On the Orritor Road she realised that you were behind her and following her. In an attempt to evade you, she quickly turned and ran past you. As she came alongside, you reached out and grabbed her between her legs. Fortunately she was able to brush you aside and she made her escape seeking refuge in the nearby home of a friend, but in a very distressed state. It was clearly a shocking incident for her, but due to her good sense and a degree of good fortune she was able to avoid a more serious assault.

[2] I have no doubt that it was your intention to carry out a more sustained assault on her. You have a criminal record. On the 17<sup>th</sup> March 2006 you restrained a woman within your car, and indecently and physically assaulted her. You received a custody probation order of 4 years detention followed by 3 years probation. After your release from custody on the 21<sup>st</sup> May 2008, there has been a sustained history of non-compliance with the terms of your supervision within the community. You were in breach of your probation order and in January 2009 you received a substituted sentence of 12 months, being finally released on the 15<sup>th</sup> June 2009.

[3] A Sexual Offences Prevention Order had been made, and when at large you have persistently been in breach of it, on the 3<sup>rd</sup> November 2008, 6<sup>th</sup> November 2008, 22<sup>nd</sup> November 2008, 15<sup>th</sup> December 2008, and 4<sup>th</sup> May 2010. When taken with your 4 convictions for driving whilst disqualified it is clear that you are a person in whom no confidence can be placed that you will comply with court orders put in place to protect the general public from criminal behaviour, and in particular sexual offending.

[4] The aggravating factors in this case are as follows –

- a. Your victim had been targeted by you when you saw her on Lissan Road and she was followed for a considerable distance and time until you closed in on her to assault her.
- b. She was a female on her own, just outside the town limits with no street lighting.
- c. You have a relevant criminal record, and a history of non-compliance with court orders.
- d. At the time of the offence you were on bail, were the subject of a Probation Order and were subject to a suspended prison sentence.

- [5] The mitigating factor in this case is –
- a. You are still a young man with very limited intellect with a verbal IQ of 66 placing you in the bottom 1% of the population. As such you may have difficulty in relation to compliance with the normal standards of conduct maintained by the general law abiding public.
- [6] The offence of sexual assault is a serious sexual offence as defined by the Criminal Justice (NI) Order 2008 and I am obliged to consider if you are dangerous, that is, is there a significant risk to members of the public of serious harm occasioned by the commission of further offences of the type specified in the 2008 Order. In considering the question of your dangerousness, I have followed the approach suggested by the Court of Appeal in the case of **R -v- EB [2010] NICA 40** and the English case of **R -v- Lang [2005] EWCA Crim 2864**
- [7] I consider that you are dangerous for the following reasons –
- a. This is the second offence of this type where a single female has been targeted and attacked in a sexual manner. Although no very serious assault occurred, this was more down to good fortune and the resilience of your victims, particularly the first lady who had to fight to escape from your vehicle.
  - b. Having received what was a long sentence of 4 years, you have not availed of the many rehabilitative schemes that would have been open to you both within the Young Offenders' Centre and whilst on Probation.
  - c. You have repeatedly failed to comply with the terms of your Sexual Offences Prevention Order

[8] In coming to my decision I have considered the Pre Sentence Report. You have been assessed by the Probation Officer in her Report as presenting a high likelihood of general re-offending. In addition you have been assessed as meeting the threshold of risk of serious harm with a determination that there is a high likelihood that you will commit a further offence, the impact of which could cause serious harm. She has later stated that as the Court will be considering what she describes as a public protection sentence, your sexual offending pattern needs to be addressed through a full psychological assessment to identify your treatment needs and the level of risk you pose to the public. The report did, however, already set out the conclusions of a Risk Management Meeting on the 13<sup>th</sup> February 2012 and it has already identified the level of risk posed. Treatment may be a separate issue, but given the contents of the psychological assessment already before the court (albeit one not focussing directly on treatment needs and risk of harm) treatment needs should be seen as a mid- to long-term matter and this can be completed during your period in custody. I do not think that delaying the case to obtain such an assessment would add much to the material already before the court. It is also unfortunate that the report does not address the actual wording used in the legislation - "significant risk", but I believe that the use of the phrase "a high likelihood that you will commit a further offence, the impact of which could cause serious harm" does, in my view, support the contention that there is a significant risk.

[9] I have considered the fact that the harm suffered to date by your two victims could not be categorised as serious harm and I am mindful of the comments of the Court of Appeal in R -v- Owens [2011] NICA 48. Morgan LCJ stated "Repetitive violent or sexual offending at a relatively low level without serious harm did not of itself give rise to a significant

risk of serious harm in the future. There might, in such cases, be some risk of future victims being more adversely affected than past victims but this, of itself, did not give rise to significant risk of serious harm.”

[10] I would distinguish this case from Owens in that the level of harm inflicted by Owens (mostly in a domestic violence context) was limited and controlled by the actions of Owens himself. In your case the level of harm visited on your victims has not been restricted by your actions, but by the ability of your first victim to struggle and escape from your vehicle, and by your second victim by her own actions and good fortune. In any event the harm inflicted in sexual offending is both physical and mental, whether it is at an emotional, psychological or psychiatric level. I am of the view that you are not an offender who limits himself to offending to cause harm of a non-serious type. You are someone who has the potential to cause serious harm.

[11] Dr. Adrian East, a consultant psychiatrist has reported that in his opinion you do not suffer from any mental illness. He has also concluded (at 17.13 in his report) that “there is sufficient evidence to state that [you pose] a significant risk of serious harm to others that is more than mere possibility”. Whilst not addressing the question that the court is asked to address, there would be support for the court’s conclusion that you should be assessed as ‘dangerous’ under the terms of the 2008 Order.

[12] As you have committed a ‘serious offence’ and having determined that you are dangerous, I am obliged to consider if an extended custodial sentence would not be adequate for the purpose of protecting the public

from serious harm occasioned by the commission by you of further specified offences.

[13] An extended custodial sentence is a sentence under which an offender receives a custodial term of at least one year. After he has served one half of that term he is eligible for release subject to the Parole Commissioners being satisfied that detention is no longer necessary for the protection of the public from serious harm. He must be released when he has served the full term. On release, whenever that may be, he then is obliged to remain on licence for a period of up to eight years in the case of a sexual offence, subject to any conditions imposed by the Department of Justice.

[14] I am of the view that an extended custodial sentence would not be adequate to protect the public from serious harm.

[15] In this case, given the nature of the offence, and even taking into account the criminal record, the commensurate term will be of a relatively modest duration. In the case of an extended custodial sentence the Department of Justice will be required to release you at the very latest after you have served the full sentence, even if your confinement is necessary for the protection of the public from serious harm. Dr. East at 17.17 has stated that should a sentence for public protection be made, then you should complete the Sex Offenders Treatment programme and either an Enhanced Thinking Skills course or the Think First course. He states that these should be completed before you are considered for release. I would not be confident that you will have enough time to complete such a course during the custodial term of any extended custodial sentence.

[16] During the licence period, which will be limited to a maximum of 8 years, I would have little confidence that you will comply with any licence

conditions placed on you after release. Your failure to comply with your Probation Order and with the terms of your Sexual Offences Prevention Order shows that, for whatever reason, you have difficulty responding to the requirements and restrictions placed upon you. These requirements and restrictions had been put in place in order that the risk posed by you could be managed within the community.

- [17] You will therefore serve an indeterminate custodial sentence.
- [18] I am obliged to specify a period that is appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. Now that our legislation for sexual offences has been codified along virtually identical terms to the English 2003 Act, courts in this jurisdiction have increasingly considered the guidance on sentencing set out by the English Sentencing Council published in April 2007. For sexual touching the suggested starting point is 12 months with a range of 6 months to 24 months. This case has involved momentary touching by a hand on the clothed genitalia and the sentence, taking into account the substantial aggravation in the case, would be in the upper part of the range. This guidance would include an element to satisfy other sentencing requirements such as rehabilitation which I must discount when determining this period.
- [19] In the circumstances you will serve the statutory minimum period of 2 years in accordance with Article 13(3)(b) of the Criminal Justice (NI) Order 2008.

[20] I would again remind you of the comments I made immediately after your conviction. The notification requirements of the Sexual Offences Act 2003 will apply to you, and I now confirm that they will apply indefinitely.

[21] Your name will appear on the Barred List in relation to both children and vulnerable adults under the provisions of the Safeguarding Vulnerable Groups (NI) Order 2007.

[22] I do not propose to make a Sexual Offences Prevention Order. The Department of Justice will be able to consider licence conditions that are appropriate at the time of release, and these can be revised from time to time to meet any change of circumstances. The English Court of Appeal in **R -v- MJ [2012] EWCA Crim 132** has recently confirmed that there is no need for such orders when an indeterminate sentence has been imposed as any risk can be better managed using licence conditions.