

**Neutral Citation No. [2010] NICC 29**

Ref:

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

Delivered: **18/6/10**

**IN THE CROWN COURT SITTING AT OMAGH**

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**R**

**-v-**

**JOHN MICHAEL McDERMOTT**

**JAMES FRANCIS McDERMOTT**

**OWEN ROE McDERMOTT**  
—————

HHJ McFARLAND

[1] On Bill 09/47663 each of you and your brother Peter Paul McDermott were charged with a catalogue of sexual offences alleged to have been committed against a number of children living and growing up in the village of Donagh in County Fermanagh.

[2] You John Michael McDermott were born in March 1950 and are now 60 years of age. You have pleaded guilty to the following counts -

- 4 x indecent assaults of 'A'
- 3 x acts of gross indecency against 'A'
- 1 x attempted buggery against 'A'
- 5 x indecent assaults of 'B'
- 5 x acts of gross indecency against 'B'
- 1 x attempted buggery against 'B'
- 3 x indecent assaults of 'C'

- 3 x acts of gross indecency against 'C'
- 2 x buggery of 'C'
- 4 x indecent assaults of 'D'
- 2 x indecent assaults of 'E'
- 2 x acts of gross indecency of 'E'

[3] These acts were committed when all the victims were children. 'A' was born in 1960 and he was abused during the years 1969 and 1976 when he was aged 9 to 16 and you were in your late teens and 20s. 'B' was born in 1972 and he was abused during the years 1982 and 1985 when he was aged 10 to 13 and you were in your 30s. 'C' was born on in 1975 and he was abused during the years 1986 and 1989 when he was aged 11 - 14 and you were in your mid to late 30s. 'D' was born in 1985 and he was abused in 2001 when he was 16 and you were in your early 50s. 'E' was born in 1961 and she was abused during the years 1971 and 1977 when she was 10 - 16 and you were in your 20s.

[4] You James Francis McDermott and Owen Roe McDermott were both found by me to be unfit to plead due to mental incapacity. A jury then found that you had committed certain sexual acts. This finding is not a conviction, but rather a finding beyond all reasonable doubt, that you committed the physical acts as alleged. The orders that I make today are therefore in no way a sentence or an attempt to punish you, but are rather focussed on the need to protect the public from further harm.

[5] The findings of the jury were as follows -

James Francis McDermott -

- 4 x indecent assaults of 'A'
- 4 x acts of gross indecency against 'A'
- 4 x acts of gross indecency against 'B'

Owen Roe McDermott -

- 2 x indecent assaults of 'F'
- 2 x indecent assaults of 'E'
- 1 x attempted rape of 'E'
- 1 x common assault of 'E'
- 1 x indecent assaults of 'A'

[6] You Owen Roe McDermott were born in December 1956 and are now 53. At the time of the abuse of 'E' she was 10 - 16 and you were 16 - 20, 'F' was 6 or 7 and you were 28 - 30, and 'A' was 7 - 15 and you were 11 - 19. You James Francis McDermott were born in April 1949 and are now 61. At the time of their abuse 'A' was 9 - 14 and you were 20 - 25, and 'B' was 13 - 14 and you were 36 - 37.

[7] Your brother Peter Paul McDermott had pleaded not guilty, but he died during the course of his trial, in what appears to have been a suicide. In the circumstances no finding was made in respect of the allegations against him.

[8] In some respects Donagh is a quiet picturesque village in County Fermanagh, but it was a far from idyllic childhood for those growing up there. It is clear that 'A', 'B', 'C', 'D', 'E', and 'F' had been subjected to horrific abuse. Some, of course, suffered more than others, some for longer periods, and some were abused by one or more of the brothers. It is also clear that there are allegations that other adults were involved in this systematic abuse.

[9] It would be wrong of me to attempt to create a hierarchy of victimhood. Each has suffered in his or her own individual way - each had to undergo the pain, the confusion, and the humiliation of the individual

assaults and acts of abuse. Each then had to undergo the stress and frustration of having to cope with the abuse, and the foreboding that it will be repeated by the perpetrator, and possibly by others.

[10] It was a frustration heightened by the inability of the children to seek solace and comfort and indeed protection from trusted adults within the Donagh area, or the wider community. In short this was a village that had an appalling secret, and it was the children who bore the brunt of the tidal wave of abuse.

[11] During the course of one of the hearings, I heard evidence from 'A', 'B', 'F' and 'E'. The others fortunately were spared the ordeal of having to give evidence. I was impressed by the victims who had to give evidence. They were clearly uncomfortable about having to relive the appalling chapters in their lives but they gave their evidence in a dignified manner, and without any hint of antagonism or vengeance. Each of the victims has had to relive these events many times, they had their childhood stolen from them, and has had to live, and are still living, with the repercussions ever since. For some it has taken a heavy toll on their own lives, and on their relationships with others.

[12] I have read various impact statements that have been submitted on behalf of the victims. These are very moving documents. I do not propose to quote from them in open court. They describe how the impact on their lives that each has had to suffer - enduring the abuse as children, the mental anguish of attempting to cope with the memory of the abuse as adults, the impact on their relationships with others, coming to the individual decisions to report the matter to the police, and then dealing with the criminal justice process. It has been a long and difficult journey for each victim.

[13] Having considered all the evidence in this case, my assessment is that within this community there was a substantial background of physical dominance and bullying by adults over the children. As a consequence, the younger children were not treated with any respect or dignity; they were physically abused, emotionally abused, and ultimately sexually abused.

[14] I now propose to deal with you John Michael McDermott first, and then deal with James Francis McDermott and Owner Roe McDermott.

[15] John Michael McDermott, the aggravating factors in your case are -

- The number of victims, five in all
- The fact that your criminal activity has been carried out over a long period of time - 1969 - 2001 (over 30 years)
- In the case of 'C' there was prolonged and repeated offending involving repeated buggery of this young boy.

The mitigating factors are as follows -

- You are now 60 years of age.
- You grew up within a family where there was a highly deviant culture of sexually abusing children. It would appear that this was a family where there was little moral guidance or structure
- Apart from a short prison sentence in the Republic of Ireland for larceny you have a completely clear record.
- In addition to your lack of criminal convictions, you have had a reasonable employment record, having been employed from time to time in a general labouring capacity for Fermanagh District Council and St. Patrick's GAA.

- Having been a member of a family well integrated into the community, these convictions will now mean that you will be ostracized to a degree from that community, and at 60 this will be difficult for you.
- You cooperated with the police, gave frank interviews, confessed your crimes, and pleaded guilty to the majority of the charges on arraignment, and later to all the charges. Early co-operation and pleas of guilty are very important in cases like this. Not only is it evidence of remorse, but it vindicates the victims' complaints, and it avoids each victim from having to prepare to give evidence in court. That co-operation has also been extended into your frank discussions with the Probation Board staff.

[16] The pre-sentence report and its addendum conclude that you are someone who could cause serious harm through carrying out a contact sexual or violent offence. The Probation Board identify male and female children to be at greatest risk, however that risk is not assessed as imminent given the degree of supervision, and the high degree of current awareness within your family circle and the wider community.

[17] In the cases of O'Connell [2004], Gilbert [2006] and Sloan [2008] the NI Court of Appeal expressed the view that the courts in Northern Ireland should consider following the guidance issued by the Sentencing Guideline Council (SGC) in relation to sexual offending. It can be very difficult to fit individual cases into the categorisation set out by the Guidelines. The Guidelines also cover offences committed after 2003, and many sexual offences have been reclassified. The relevant sections are (and I would add that these figures are for cases after the charges have been contested) -

- Single act of rape - child under 13 years - 10 years, child between 13 and 15 - 8 years.

- Repeated raping of a single victim over a period of time – 15 years (In this context rape now includes what had previously been defined as buggery and an indecent assault involving oral penetration. ‘C’, having been born in 1975 was 11 in relation to Count 24, and was between 11 and 15 in relation to Count 27.)
- Sexual assault including contact between genitalia and the victim’s body – range between 1 year and 5 years.

[18] Earlier I said that I was not going to create a hierarchy of victimhood. The law does however recognise that some offences are more serious than others. The maximum sentences available given the dates of your crimes are as follows –

- The offences of buggery, and attempted buggery of boys under 16 years - life imprisonment.
- Acts of gross indecency – 2 years.
- Indecent assault of a male child – 10 years.
- Indecent assault of a female child – 2 years.

(If ‘E’ is present, I can only explain that this difference was a hangover from Victorian days, and sadly was only rectified by Parliament in 1989. After that date indecent assaults of males and females both carried a maximum of 10 years).

[19] I have considered the full catalogue of offending. I propose to impose a sentence, which will be under the provisions of the 1996 Criminal Justice (NI) Order, to reflect the full extent of the offending, taking into account the sentencing principle of totality. Although consecutive sentences would be justified, I believe that concurrent sentences best deal with the situation.

[20] Counts 24 and 27 reflect the buggery of 'C'. In his statement he said that the conduct had gone on for a period, several times a week, with very rarely a week going by without any assault. They are of course specimen counts reflecting a course of conduct to which the SGC guideline refers.

[21] Taking everything into account, I consider that the appropriate sentence, before applying any mitigating factors, and after a contested hearing, should be in the range of 18 - 20 years. Applying the mitigating factors and, in particular, the plea of guilty I consider that the appropriate sentence should be one of 12 years.

[22] I am obliged by the 1996 Order to consider whether there is a need to protect the public and to facilitate your rehabilitation. Clearly there is such a need. In the circumstances I can order a Custody Probation Order if you consent, whereby you will serve a period in custody and then be under the supervision of a Probation Officer on your release. In the circumstances I am obliged by the legislation to reduce the period of custody to take into account the period of probation.

[23] I understand that you do consent to such an order.

[24] The total sentence of the court will be 9 years custody followed by 3 years probation. The sentence I would have passed without making such an order would have been 12 years.

[25] There will be 3 conditions in the Probation Order and they are set out in the PSR.

[26] There will be a Disqualification Order under the Protection of Children and Vulnerable Adults Order 2003 preventing you from working with children.



[27] There will also be a Sexual Offences Prevention Order (SOPO). Three conditions are sought. I agree to the first - You must not have any unsupervised access to or any association with any young person under 16 years, unless an assessment has been carried out by Social Services, although I would add "and it approves (in writing) of such association". The second condition is not necessary as it is already covered by the Disqualification Order. The third condition creates a difficulty as your home, and probable residence after release is adjacent to a school and a play park. However, I believe that the public need to be protected so there will be an order prohibiting you from being in areas designated on the map, save that you will be allowed onto the premises of St. Patrick's GAA club only in the constant presence of an adult approved of, in writing, by Social Services. The SOPOs will apply to you for life.

[28] The provisions of the Sexual Offences Act 2003 with regard to notification will apply to you for the rest of your life. On your release you are required to notify police of your full name, date of birth, and address. Should you change your address, or your name, you have a continuing obligation to report such changes. You will be handed a document setting out your obligations.

[29] I now turn to the orders in relation to James Francis McDermott and Owen Roe McDermott. I have had the benefit of reading the medical reports submitted at the time of the fitness to plead hearings. These were -

- A joint report from Clinical Psychologists Sharon Beattie and Lynsey McCleery
- Dr. Ian Hanley, Clinical Consultant
- Dr. Patrick Manley, Consultant Psychiatrist
- Dr. Michael Curran, Consultant Psychiatrist.

In addition further more recent reports have been obtained from Dr. Fred Browne Consultant Psychiatrist and a set of various reports submitted by the Western Health and Social Care Trust, including Dr. Curran. I would like to place on record my appreciation for all the work that the medical and social work professionals have undertaken in this case.

[30] As I stated before the orders will be aimed at protecting the public. There are 4 orders available in the circumstances of your cases -

- Hospital Order
- Guardianship Order
- Supervision Order
- Discharge

[31] In view of the seriousness of the offences I will immediately dismiss a discharge as a possible order.

[32] I accept the opinion of Dr. Browne that there may be problems in relation to both the Hospital Order and the Guardianship Order. There are doubts as to whether either of you satisfy the criteria for me making either order, and even if I made the order, there would be further doubts as to its durability.

[33] Dr. Curran has identified certain elements of a management plan to enable both of you to be supervised in the community. It is clear that the Western Health & Social Care Trust, through its Learning Disability Directorate and Local Area Public Protection Panel are alert to the issues in your cases. The supervision and therapeutic intervention will not be a short term matter. Dr. Curran has described them to be "expected to extend over years".

[34] In all the circumstances, the Supervision and Treatment Order, is the most suitable means of dealing with your cases and I have heard evidence that your mental conditions are such that they require and may be susceptible to treatment. A supervising officer, Sandra Murray, is willing to undertake supervision, and that arrangements have been made for treatment.

[35] I am obliged to explain to you the effect of these orders -

- The order will last for 2 years. I would have preferred to make the order for longer but the legislation does not allow for any longer period
- There will be a requirement that you shall submit during this period to treatment by or under the direction of a medical practitioner
- There will be a requirement that you reside at an address approved by your supervising officer
- The Magistrates' Court can amend the provisions of the orders, but cannot extend it beyond 2 years

[36] I also consider that because of the short duration of the Supervision Order, SOPOs are required to protect the public, and I will make the same SOPOs that I have made in your brother's case, with the additional Order that you must not undertake any activity in a paid, private, voluntary or charitable capacity which affords you access to any persons under 16 years.

[37] The notification requirements of the Sexual Offences Act 2003 will apply to each of you for the period of 5 years, as set out in that Act.