IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

SAMUEL McMILLAN

KELLY LJ

Samuel McMillan is 57 years of age and lives at Ballymcrea Road, Portrush. He pleaded guilty to one charge of buggery of a boy under 16 years, 3 charges of attempted buggery of the same boy and 2 charges of indecent assault against the same. These offences were committed during a period between 1973 and 1978 and during those years the victim was a boy of 6 years' to 11 years'. He was sentenced by the learned County Court Judge to 5 years' for buggery, 3 years' on each of the charges of attempted buggery and 3 years' in respect of each charge of indecent assault.

One of the aggravating factors in this case was that the victim was the nephew of the appellant and the evidence indicates that these offences were committed in the boy's home and during a time when his parents had separated and when he was entrusted with looking after him. The appellant was then in his mid 30's and the boy as I have said when these offences started was only 6 years of age.

These offences, revolting in nature, to cause this young boy at the time physical pain and a great deal of distress. Although they took place 15 years' ago they have left emotional scars on him to this day. He is now a young man in his mid 20's and we find it painful to read the Doctor Kerr's opinion:

"I have no doubt that this young man's early life experiences have a considerable bearing on his personality development and attitude to life generally. He has become confused as regard to the sexual orientation, suspicious of other people, specially older men leading to depressive bouts from time to time. He is however receiving counselling and benefiting considerably from it".

On the other hand there were some mitigating factors. The learned trial Judge gave credit for the fact that the appellant admitted at once to the police that he had committed these offences. He pleaded guilty and thereby he spared the young man

the painful experience of giving evidence in the witness-box. Furthermore, the appellant has not previous record of offences of this kind.

One factor which we consider the Judge did not appear to take into account, whether he was conscious of it or not is not clear but there is no reference to it in his careful and detailed judgment. That is, the very marked lapse of time between the date of these offences and their prosecution. This delay has not been caused by any default on the part of the prosecuting authorities. The fact is the matters only came to light, when the victim reported him to the police, in very recent times, approximately 15 years' later.

We think that this is a legitimate mitigating factor it was referred to in R v Tiso [1990] 12 Cr.App.R (S) (5) 122 by Taylor LJ (as he then was) as follows:-

"Offences involving sexual abuse within the family all by their very nature likely to remain undetected for substantial periods partly because of fear, partly because of family solidarity and partly because of embarrassment. We consider that whilst any factors which have positively emerged in the time between the offences and the trial are open to the court to be taken into consideration, the mere passage of time cannot attract a great deal of discount by way of sentence...".

On the same point, the Court of Appeal in R v Murphy [1990] 12 Cr.App.R (S) 530 has this to say: Lord Lane LJ:-

"Perhaps the most important matter in the 16 year delay between these offences and the occasion when he stood his trial. One of the most difficult tasks of a sentencing Judge is to know what allowance or discount it is proper to make when the offence took as long ago as in this present case. 16 years' in his experience of the members of this Court, is the largest period we have experienced".

In total sentence of 6 years' imprisonment for 4 counts of incest and 4 counts of indecent assault was reduced to 3 years' imprisonment.

In the instant case, the relevant period was 15 years'. We consider that some discount should have been given, particularly be reason of the fact that during that period, the appellant has not been convicted of any custodial offence and appears to be leading a normal social and sexual life. That discount must be small having regard to serious nature of the offences and the distressing consequences that have followed.

On the count of buggery for 5 years' we substitute 4 years' and, on the 3 charges of attempted buggery we substitute for 3 years' the period of 2 years' for the 2 charges of indecent assault we substitute for 3 years' the period of terms of imprisonment of 2 years'.