IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-V-

DARREN BOYD

MACDERMOTT LJ

NICHOLSON LJ

The applicant was tried before Judge Hart QC (as he then was) and a jury on 2 counts of Buggery, 2 counts of Indecent Assault, one count of committing an act of Gross Indecency and one count of Theft and was convicted on all counts on 30 September 1996. He was sentenced to a total of 12 years imprisonment.

He applied for leave to appeal against his conviction and sentence to a single judge who refused leave on 28 November 1996. He applied to this Court for leave to appeal and the application was heard on 20 March 1997. Mr Creaney QC and Mr Hamill appeared for the Crown and MR McDonald QC and Miss McGuiness appeared for the applicant.

The evidence at the trial was given partly by way of television link. A boy, who was 10 years old, gave unsworn evidence that he had lived at an address in Newtownards, County Down close to the home of the applicant, that while his mother was in hospital having a baby, he went to the applicants bedroom on the first day she went to hospital, was handcuffed with very long chained handcuffs, lay on the applicants bed with his tummy on the bed, had his trousers taken down by the applicant and was buggered by him; shortly afterwards he left the bedroom; on the next day he went to the same bedroom with another boy in order to get back a computer game which he had left behind; the other boy and he were handcuffed; he had his trousers taken down by the applicant and was buggered; the applicant then peed over the other boy's head and 'wanked' himself over the other boy. On the first day the applicant tried to put a hamster into the boys backside; he had previously visited the applicant's bedroom and seen him putting his penis up a hole in the back of a doll and into its mouth about fourteen times; he was told by the applicant that if he said anything to his mother the applicant would cut the fingers off his baby sister; eventually he made a complaint to his mother about what had happened.

…

On the issue of sentence counsel for the applicant referred to his age and unfortunate background and to the guidelines in cases of this sort.

Attorney General's Reference (No. 1 of 1989) must be our starting point. In that case the offender pleaded guilty to one count of rape and to 5 counts of gross indecency with or towards a child. He was sentenced to 5 years' imprisonment on the count of rape and 2 years' imprisonment on each of the 5 counts of gross indecency and all the sentences were ordered to run concurrently. The reference by the Attorney General related only to the sentence of 5 years' imprisonment for the offence of rape. The psychiatric report of Dr McAuley stated – " on balance at this stage in view of the child's reasonable adjustment prior the event and the family's sensible handling of the events do I suspect that she will develop normally and will not suffer any marked psychiatric or psychological future consequences." At an interview with the police the appellant said: " I don't know why I did these disgusting things to L. a little girl who I am really fond of and I am really sorry I let myself and my mother and L's father and mother down. I am glad I could speak to you about all this because I know I need some sort of help."

In November 1988 the Court of Appeal had laid down guidelines for sentencing in rape in its judgement in R v McDonald, R v Taggart and R v Farquhar in which it stated

" We ……. Consider that in this jurisdiction for rape committed by an adult without any aggravating features or mitigating features, a sentence of 7 years …. Should be taken as a starting point in a contested case."

In the case of Farquhar who was a man of clear record and pleaded guilty to one count of rape, 4 counts of indecent assault and one count of indecent conduct against a little girl aged between 8 and 9 and the offences appeared to have been committed within a period of a few weeks, the sentence of 20 years passed on Farquhar was reduced to 10 years. The Court of Appeal stated: "Rape against a little girl is very grave in any circumstances and must carry a severe sentence."

Having outlined aggravating and mitigating factors the court increased the sentence on the 1989 Reference to 8 years' imprisonment. Both Farquhar and the 1989 Reference were cases in which the victim was a young girl but sexual offences against young boys are equally grave and can also be seriously damaging. In the 1989 Reference Lord Hutton said "The threat of sexual abuse to children in modern society has become so grave and the duty resting on the courts to deter those who might be tempted to harm little children sexually has become so important that severe sentences must be passed on those who commit rape against little children even if before the offence they had good records and good reputations."

We readily endorse that view making it clear that the welfare of both boys and girls is the concern of the Courts and that buggery and rape are both extremely grave and potentially traumatic offences.

Several recent cases may also be mentioned but we do so mindful of the fact that proper sentencing is not achieved by perusal of the facts of somewhat similar cases and we refer to the observations of Carswell LJ (as he then was) in R v Williamson.

In Attorney General's Reference (No.9 of 1996) (John Michael Johnson) [1997] 1 Cr. App. R (S) 113 an offender who pleaded guilty to a count of buggery of a boy aged 14 (among other sexual offences) had his 8 years' sentence increased to 11 years.

In Attorney General's Reference (No.9 of 1994) (Graham Anthony Grove) [1995] 16 Cr. App. R (S) 366 a 6 years' sentence of imprisonment for sexual offences (including buggery) was increased to 9 years' imprisonment. At p 389 it was stated: -

"We are further satisfied that the court could, in all circumstances in these offences, properly drawn the conclusion, and should have drawn the conclusion, that these offences were such a character as in the opinion of the court to make it necessary to pass sentence of such dimensions as will protect the public from serious harm from the offender. There can be no doubt that presently the offender fails to be considered as a continuing danger to young boys…"

See also Attorney General's Reference (No. 19 of 1992) (R v Mc Morrow) [1993] 14 Cr. App. R (S) 330.

The present case was contested. There were a number of aggravating factors. The boy who was buggered was 9 years of age; another boy against whom indecent acts were performed was 6 years of age. The psychiatric report and the Social Workers reports on the elder boy show that he has been severely damaged in the short term and he has been suffering from a post traumatic syndrome. The psychiatrist says that is impossible to predict the long-term effect. The difficulty which he has in understanding, his limited comprehension and ability to reflect upon what happened may make therapeutic work more difficult. He may have difficulty in coping with sexual maturation. It is difficult to deal with feelings of anger and he feels angry and ashamed, as a result of which he suffers from social isolation. There was a considerable amount of sadism involved in the abuse of him. Self-isolation or anti – social behaviour can be consequences arising some years after the original damage.

The social worker refers to a number of studies in which it is stated: "it is not the majority of sexually abused children who go on to being perpetrators."

The younger boy was traumatised and is now a most vulnerable child. The applicant may well have been sexually abused as a child and by 1991 a psychiatrist

has concluded that he had homosexual paedophile tendencies. At some stage of his adolescence he moved in with an older man who had served a sentence for child sex offences. He attended the Alderwood Centre, a probation treatment facility for sex offenders, but indicated that he was not prepared to seriously examine his sexual interest in children. The probation report on him and his own evidence at the trial indicate that he is and will remain a danger to young children.

In theses circumstances an indeterminate life sentence has to be seriously considered so that the child abuser is only released back into society if he responds to treatment.

In the present case a fixed term of imprisonment of 12 years was imposed. Having regard to the sentences imposed in other cases referred to above, and the circumstances of the present case, it is plain that the sentence was not excessive.

Accordingly the applications for leave to appeal against conviction and sentence are refused.