



THE COURT OF APPEAL

[16/13]

The President  
Birmingham J.  
Sheehan J.

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

V.

P.P. (NO. 2)

APPELLANT

**JUDGMENT (Ex tempore) of the Court delivered on the 19th day of October 2015 by Mr. Justice Sheehan**

1. This is an appeal against severity of sentence.
2. Following his conviction in July 2012, the appellant received the following sentences in respect of five offences of child sexual abuse in which the victim was his seven and half year old daughter. These offences took place on four access visits over a 12-month period between October 2009 and October 2010.
3. The facts of the case have been set out in the judgment of this Court delivered on 6th July 2015 in respect of the appeal against conviction.
4. The following sentences were imposed by the learned trial judge.
  1. Rape: 15 years imprisonment with the final 5 years suspended.
  2. Sexual assault: 5 years imprisonment concurrent with count No. 1.
  3. Sexual assault: 4 years imprisonment with the final 2 years suspended and consecutive to the sentence imposed on count No. 1.
  4. Sexual exploitation of a child: 1 year's imprisonment concurrent with the sentence imposed on count No. 1.
  5. Sexual assault: 3 years imprisonment consecutive to the sentence imposed in respect of count No. 3, namely, a sentence of 4 years imprisonment with the final two years suspended consecutive to count No. 1.
5. Counsel on behalf of the appellant contends that there are two errors in principle.
  1. That the overall sentence in this case of 22 years imprisonment with the final 7 years suspended was excessive and out of line with other cases.
  2. That the manner in which the sentence was constructed particularly in respect of the consecutive sentences imposed disclosed an error in principle.
6. Counsel on behalf of the Director of Public Prosecutions while conceding that the sentence in this case was on the high side, maintains that the sentences imposed were within the trial judge's discretion and that no error of principle is disclosed.
7. In *The Director of Public Prosecutions v. Drought* [2007] IEHC 310, Charleton J. conducted an analysis of sentences imposed by the Superior Courts in rape cases. This analysis has been subject to further scrutiny by Professor O'Malley in his latest work entitled '*Sexual Offences*' published by Round Hall in 2013, in particular Chaps. 25 and 26.
8. The court has found both of these authorities helpful.
9. The facts of this case speak for themselves and the seriousness of the offending does not call for further comment.
10. The court is of the view that the sentences actually imposed are somewhat out of line with sentences previously imposed by the Court of Criminal Appeal and by this Court. It is not necessary for us to conduct any further detailed analysis to enable this Court to conclude that this results in an error of principle.
11. The Court must therefore now proceed to sentence as of today. Two further matters have been brought to the court's attention by Counsel for the appellant in the event of the court finding an error in principle.
12. The first was a report from the Governor of the prison in which the appellant is presently serving his sentence. This is a favourable report and discloses that he had been well behaved during the course of his imprisonment.
13. The second matter relates to evidence presented in the form of a document from the prison to the effect that the appellant has been engaging on a regular basis with the prison psychologist. We consider this matter to be of significance in the context of the appellant's rehabilitation.
14. While the court proposes to reduce the overall sentence in this case by a period of three years, it will do so by imposing a higher sentence in respect of the rape conviction and will then direct that all the remaining sentences run concurrently with that particular

sentence. Accordingly, what the court will now do is that it will quash the original sentences imposed in this case and will substitute for the original rape sentence a sentence of 15 years imprisonment with the final three years suspended, as distinct from the final five years suspended and will direct that all other sentences imposed run concurrently with this sentence.

15. The court will direct that the appellant enter a bond in the sum of €500 on the usual terms namely, that he keep the peace and be of good behaviour for a period of three years following his release from prison.