



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Mahon J.**

97/12

The People at the Suit of the Director of Public Prosecutions

Respondent

V

T.C.

Appellant

Judgment of the Court (ex tempore) delivered on the 8th day of December 2014, by Mr. Justice Sheehan

1. This is an appeal against sentence.

2. On the 24th February, 2012, the appellant pleaded guilty to six counts of sexual assault. These were deemed to be sample counts on a 21 count indictment. The appellant was sentenced to seven years imprisonment on each of the six counts all to run concurrently and to be backdated to the 1st January, 2011. In addition the learned sentencing judge placed the appellant on the sex offenders register and also imposed a seven year post release supervision order subject to certain conditions.

3. The appellant submits that the sentence imposed was excessive and in these circumstances disproportionate. He further submits that the learned sentencing judge failed to take proper account of the mitigating factors. The appellant contends that the learned sentencing judge erred in principle in failing to consider properly s. 29(1) of the Criminal Justice Act 1999, in view of the early plea of guilty as well as the appellant's cooperation with the gardaí.

4. It was further submitted that the sentencing judge failed to give sufficient weight to professional reports submitted on behalf of the appellant.

5. The respondent submits that the learned trial judge did not err in law or fact apart from one matter which we will deal with in the course of this judgment and that given the serious nature of the offences, the sentence was wholly proportionate to the crimes committed by the appellant.

Background facts

6. The appellant married the victim's mother and they moved to Ireland. The sexual abuse started in 1984 with an incident involving french kissing and proceeded by way of the appellant teaching the victim the facts of life when he touched her private parts and got her to masturbate him. The offender went on to have oral sex and then full sexual intercourse with the victim. She stated that she was basically afraid of the appellant who had told her that it was their secret and that she should not tell her mother. She said that sexual intercourse only happened when her mother was out of the family home. She never felt it was wrong as the appellant had always made her feel normal. Initially he did not wear a condom, but when the victim became older, he did.

7. The abuse ended when she was in the kitchen one day with her parents listening to a radio programme about child sexual abuse. Shortly after this, she told the appellant that she was going to tell her mother and the gardaí. Following this the appellant left her alone.

8. The injured party learned in 2009 that the appellant was serving a sentence for sexual assault on another person and although she had at this time left Ireland she decided then to make a complaint. The appellant made full admissions, cooperated with the gardaí and pleaded guilty at the first opportunity. In addition he had himself referred to the Granada Institute for assessment and assistance and was deemed by that Institute which specialises in assisting sex offenders to be at a low risk of re-offending.

9. In a short and moving victim impact statement, the victim sets out how her quality of life has been affected and says that the offences continued to have an effect on her intimate relationships. She says that although she is in long term relationship, she remains inhibited by low self esteem and very low self confidence. She does however conclude on a somewhat hopeful note by acknowledging that she now needs a lot more help.

Personal circumstances of the appellant

10. The appellant is now 67 years old. He grew up in England went to school there and subsequently graduated as an engineer. His work brought him to different countries and terminated as a result of a horrific work accident resulting in the loss of his arm. Prior to the accident he had achieved success in sport.

11. There are essentially three issues in this appeal. The first issue is whether or not the post release supervision order made by the learned sentencing judge was excessive in the sense that under the Act, the maximum post release supervision order in the case of a seven year sentence is one of three years. This error of principle is conceded by the Director of Public Prosecutions.

12. The second matter relates to the time which the sentence ought to have commenced. It is correct to say that there were delays of undoubted relevance to the appellant. However, in his sentencing remarks the judge did note his early plea and the fact that he had cooperated with the gardaí. The learned sentencing judge while not giving full credit for the time spent by the appellant in custody prior to sentence nevertheless backdated the sentence.

13. The final submission relates to the Granada Report. This Court finds that the learned sentencing judge did consider this report and

in all the circumstances of the case was entitled to adopt a cautious approach to the risk assessment that he was given at that time.

14. This Court notes the health issues signalled by the appellant's counsel, his age and the fact that on release, he will require sheltered accommodation. The court has considered the submissions of counsel on behalf of the appellant as well as those of counsel on behalf of the Director of Public Prosecutions and holds that apart from the error relating to post release supervision, there was no error in the length of sentence that was actually imposed.

15. Accordingly the only variation in sentence that this Court deems appropriate is one in which the post release supervision order will be reduced to one of three years. Otherwise we do not interfere with the original sentence.