



## THE COURT OF APPEAL

**The President  
Birmingham J.  
Sheehan J.  
68CJA/16**

**The People at the Suit of the Director of Public Prosecutions**

**Appellant**

**V**

**Seamus Buckley**

**Respondent**

### **JUDGMENT of the Court delivered on the 21st day of October 2016 by Mr. Justice Birmingham**

1. In this case the Director of Public Prosecutions seeks to review on grounds of undue leniency a sentence imposed upon the respondent to this application, Seamus Buckley. The sentence sought to be reviewed was imposed on the 16th February, 2016, in the Circuit Criminal Court in Cork, and it was a sentence of twelve months imprisonment imposed on each of 26 counts of indecent assault, all the sentences to run concurrently. The matter came before the Circuit Court on foot of signed pleas of guilty.

2. The background facts are that the court was concerned with abusive activity that took place between 1979 and 1985 at a time when the injured party was between six and twelve/thirteen years of age. The accused was approximately 21 years of age when the abuse started and approximately 27 years of age when it finished. During the abuse period, the accused was employed as a tractor mechanic by the injured party's father. Apart from being a long serving employee (he had 35 years service), he was also a trusted family friend and was regarded by the injured party as an "uncle [type] figure". The abuse consisted of the respondent fondling the complainant's vaginal area while he masturbated.

3. In July, 2014 the injured party contacted An Garda Síochána and reported what had occurred. Contact was made with the respondent on 7th November, 2014. Having been made aware of the allegations, he consulted a solicitor and then presented himself on the 25th November, 2014, at his local garda station, where he was interviewed and where he made full admissions in relation to the allegations that had been made. In the course of the sentence hearing, it was accepted by the investigating garda, Detective Garda Leahy, that these admissions were of considerable value and that absent those admissions this might have been a difficult case to prosecute.

4. The injured party addressed the court by way of a victim impact statement. It is clear that the abuse, as one would have expected, had a significant impact on the injured party and a lasting one. One matter which she emphasised was that because the abuse occurred in locations in and about her family home, this has meant that she has not felt comfortable in the vicinity of her parent's home and business premises since.

#### **Personal circumstances**

5. In terms of the personal circumstances of the respondent, he was 57 years of age at the time of the sentence hearing, was married with four adult children and had no previous convictions. A psychologist's report was put before the court which indicated that he himself had a history of having been sexually abused as a child. In the course of that report, the psychologist comments:-

"In my opinion Mr. Buckley has worked very diligently with me over the last year and I have no doubt that he is entirely remorseful for what he has done and is living on a daily basis with the consequences of not only his own experiences in childhood, but also the experiences as he perpetrated them on somebody else. In my opinion he is almost entirely unlikely to be a risk to society or to children and indeed the evidence of the last 30 years would seem to support this."

6. At the sentence hearing counsel on behalf of the respondent, Mr. Buckley, pressed strongly for a non custodial sentence. However, the trial judge said that he felt he could not do that given the nature of the abuse and what he saw as a breach of trust. Nevertheless, he said that he had to take into account the guilty plea and the fact that he was now dealing with a 57 year old man who had led an otherwise blameless life. He said that while he felt that he was obliged to impose a prison sentence, he would keep it to the absolute minimum. He commented that the approach of the Court of Appeal to a case such as this would be to think of a sentence of two years imprisonment with one year suspended, but he felt that it was more appropriate to impose a sentence of twelve months simpliciter on each count, and that is what he did.

7. In seeking a review of the sentence, counsel on behalf of the Director refers to the gravity of the offending conduct. She refers in particular to the young age of the victim, the duration of the abuse, the breach of trust element, and the location of the abuse, all of which meant that what ought to have been a place of safety for a young child was in fact a place where she had been abused with all the difficulties that that would give rise to thereafter. She says that a sentence of twelve months imprisonment for offending of this seriousness was a very short sentence, and was thus unduly lenient. She readily acknowledges that there are very substantial factors present by way of mitigation. The offences occurred well in the past, and the respondent has never come under garda notice. She accepts the significance of the contents of the psychologist report and in particular, and without equivocation, says that Mr. Buckley has done everything that he could possibly be expected to have done to address the issue in a proper way once the complaint emerged. This involved immediate admissions, communicating immediately that this was not a case that would be contested, entering pleas of guilty in the District Court and affirming those pleas in the Circuit Court. However, she says that while the court was of course entitled, and indeed required, to have regard to all those factors in favour of Mr. Buckley, notwithstanding all those matters, the sentence was too lenient and simply failed to reflect the gravity of the offending behaviour.

8. Counsel on behalf of the respondent emphasises the matters that are in favour of her client and says that while the sentence imposed might be regarded as a lenient one, it is not one that can be regarded as unduly lenient. She submits that there was no error of principle here and that, on all the authorities, the court should not intervene.

9. The principles applicable to undue leniency reviews are at this stage well established and have been applied on many occasions

since the first such review in the case of *The People (Director of Public Prosecutions) v. Byrne* [1995] 1 I.L.R.M. 279.

### **Decision**

10. This was a difficult case for the sentencing judge. The offending was for all the reasons identified by counsel for the Director very serious indeed. In that regard, the young age of the victim and the prolonged duration of the abuse were matters of particular significance. On the other hand, there were very powerful factors present indeed by way of mitigation. The Court agrees with the trial judge that powerful as those mitigating factors were, this was not a case where a custodial sentence could have been avoided. The Court also agrees that it was a case where the custodial sentence should be kept to a minimum in the sense that it should be no longer than the gravity of the offending behaviour demanded. The question is did the twelve month sentence imposed fall below the minimum sentence that was required. In the view of the Court, a more severe penalty was called for. The sentence imposed should not have been less than two years actual imprisonment, and to mark the seriousness of the offending behaviour a somewhat longer sentence, though part suspended, might well have been considered. In a situation where the Court has concluded that the sentence was unduly lenient, it is now called on to re-sentence and to do so as of today's date. The Court has on a number of occasions, when re-sentencing following successful undue leniency reviews, stated that it would impose a sentence less than what it would have regarded as appropriate at first instance to take account of the fact that being sentenced a second time is particularly burdensome. That comes into particularly sharp focus if the sentence imposed originally has actually been served, and the court is obliged to consider re-incarcerating an individual. That is not the situation here, but it is the case that the respondent has served the greater part of his sentence and is within weeks of his scheduled release date. If the Court in re-sentencing was to require the respondent to spend an additional period in custody, the extended period could not be unduly lengthy. The question then arises as to whether the interests of justice and the public interest would be served by extending Mr. Buckley's actual period in custody. The Court has decided, not without considerable hesitation, that that would not be an appropriate response. In the circumstances, what the Court proposes to do is to accede to the application of the Director for a review and to substitute for the sentence imposed in the Circuit Court a sentence of three years imprisonment, but the Court will suspend the final two years of that sentence.