



## THE COURT OF APPEAL

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

**95/16**

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

**Respondent**

**V**

**P.G.**

**Appellant**

**JUDGMENT of the Court (ex tempore) delivered on the 17th day of November 2016 by Mr. Justice Sheehan**

1. This is an appeal against sentence.
2. On the 4th December, 2014, having pleaded guilty to two counts of indecently assaulting his daughter on unknown dates between August 1983 and August 1985, when she was fourteen to fifteen years old, the appellant received a sentence of five years imprisonment with the final two years of that sentence suspended on the usual terms. The appellant has less than four months to serve.
3. The first assault involved digital penetration and the second assault involved oral sex.
4. These assaults were committed when the victim had gone to bed and occurred in the context of a hostile and oppressive home life. The victim stated in the course of her victim impact report that she had been regularly humiliated and beaten by her father during the course of growing up. In the course of her victim impact report she further stated that she was the third eldest of six children and had been living in fear and dread until one Saturday morning she could no longer take it and ran away to England. She was eighteen at the time and she did not return. Fortunately she has made considerable progress and is now married with her own family. She speaks about having a hugely supportive husband and also has an important position as a school administrator.
5. The appellant cooperated with the garda investigation and pleaded guilty and by the time of the sentence hearing, had referred himself voluntarily for counselling. He also cooperated with the Probation Service who found him to be someone unlikely to re-offend. He is now 75 years old and suffers from terminal cancer. It is not irrelevant that in addition to having no previous convictions and having worked in a responsible position all his life, it transpires that he also was a person who had been a victim of sexual and physical abuse when he was a young.
6. At the time of the sentencing hearing, the sentencing judge had a medical report before him to the effect that the appellant had a few short years to live. Mr. Colgan S.C. on behalf of the appellant submits that the sentence was unduly severe and that the trial judge failed to give adequate consideration to the appellant's age, medical condition and the elapse of time between the commission of the offence and the date of sentence.
7. In support of his submissions, counsel has referred us to O'Malley on *Sentencing Law and Practice* (3rd Ed.) at pp. 183 and 184:-

"As in the case of ill health and disability, regard must be had to the impact with imprisonment is likely to have on the particular offender bearing in mind his or her medical condition and other circumstances. A court contemplating a long determinate sentence should be alerted to the possibility that for an elderly offender it may amount to a life sentence and that in any event he may have little worthwhile life left after his release. For these and other reasons a given term of custody may impact more severely on an elderly offender than on a younger person and when that appears to be the case, it is entirely consistent with proportionality to treat old age as a mitigating factor."
- O'Malley goes on to say:-

"Evidence that an offender has made genuine efforts to deal with an addiction or some other problem contributing to the commission of the crime may influence sentence, perhaps to a significant degree."
8. Counsel also relies on the judgment in the case of the *DPP v. M.J.* [2002] 1 I.R at 363.
9. Ms. Baxter BL on behalf of the respondent points out that at no stage was there any suggestion that the prison authorities would be unable to address the appellant's health issues and submits that in light of the aggravating factors the sentence imposed was not unduly severe, notwithstanding the appellant's age and ill health.
10. In the course of his sentencing remarks the trial judge stated that the appellant was entitled to a little credit for his plea of guilty, notwithstanding his acknowledgment that this plea of guilty was of considerable benefit to the victim in this case.
11. This Court has previously emphasised the importance and benefit of a plea of guilty in cases such as this. In the first instance, victims have frequently stated that a plea of guilty is of benefit. Secondly, it is important that others who are guilty of similar offences will know at the outset that cooperation with a garda investigation and early pleas of guilty generally speaking, will be met by the courts with a significant reduction in sentence.
12. The fact that this Court might have imposed a somewhat shorter sentence in light of the medical report is not the issue in this

case. We are obliged to afford a margin of appreciation to a sentencing judge. In this case the appellant sexually assaulted his daughter when she was fourteen years old at a time when she was terrified of him. When confronted as an elderly man by these matters the appellant responded appropriately and we note as we have already pointed out that he himself was abused as a child.

13. That said the sentence imposed was proportionate and although he did not expressly say so, it is clear from the judgment that more than a little credit was in fact given for the plea of guilty in this case. Accordingly we dismiss the appeal against sentence.