Neutral Citation Number: IEHC (2007) IEHC335

THE HIGH COURT

THE CENTRAL CRIMINAL COURT
THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS
v.
P. H.

Judgment of Mr. Justice Charleton delivered the 15th day of October, 2007.
1. The accused, who I will call P. H., was found guilty, after a trial lasting five days, of four counts of rape and four counts of indecent assault against his stepdaughter, whom I will call N. He was acquitted on thirteen other charges, and in respect of two charges the jury disagreed. The offences with which the accused was charged ranged in time between January, 1980 and July, 1986. What characterises the offences in respect of which the jury found the accused guilty, is that these were all incidences which were supported in the victim's evidence by a narrative relating the crime to a particular context. In cases of this antiquity, relating the charges in the indictment to the evidence given on behalf on the accused and on behalf of the victim can be particularly problematic. Since my purpose in giving judgment today is to decide on an appropriate sentence, it is as well to look at the narrative surrounding these particular events.

The Offences
2. The victim was born in 1974. Her stepfather began a relationship with her mother when she was about three years of age. The narrative of her evidence to the jury followed a pattern which is familiar to anyone who has dealt with the issue of child sexual abuse. The offender began his assaults on her by fondling, which became progressively gross in terms of its sexual intrusion, moving from attempted penetration to actual intercourse.

3. I will describe the indecent assault convictions first. In respect of count 27 in the indictment, the jury accepted that on a date unknown between the 14th July, 1982, and the 8th September, 1982, the victim, then aged 8 years, was sexually assaulted by the offender. The victim's sister described this event by recalling that a car battery had been put to the front door of their house in rural Ireland, that she had been brought to a bedroom in the house where she was left standing in a corner, and that her sister was put on the bed while the offender got on top of her. At that point she shut her eyes. From the evidence of the victim, the jury were not satisfied that penetration took place on this occasion. Count 37 in the indictment related to an offence which happened between the 9th and 27th of April, 1979. It was proved that this was an Easter break from school. The victim described her mother asking her about a choice of Easter egg and then leaving to go to the shops. She was then in bed with an infection. She was called by her stepfather into a bedroom and there was an attempt at penetration. In her evidence she could not say whether the offender succeeded or not. Count 38 in the indictment related to an occasion when her brother A. was born in November, 1980 and her mother was confined in hospital. The victim recalled that, during this time, she had to wear her mother's night dress and sleep in bed with her stepfather. She recalled her stepfather coming up from behind her in the bed and assaulting her with his penis. Her evidence was of recollecting looking at the curtains and crying out loud, of being scared and in pain. The last count of indecent assault on which the jury found the accused guilty was count 40. This refers to an incident of indecent assault between the 1st July, 1984, and the 30th June, 1986, which involved oral penetration. The victim who could then have been around eleven years old, recalled in her evidence that, during this time, her head was held and pushed on top of the offender's penis. She recalls choking. An opportunity had been created by the absence of her mother who attended a regular bingo evening.

4. I turn now to the counts in which the offender was found guilty of rape. Count 17 in the indictment described an offence which occurred when the family were living in a caravan and the victim, as a girl of eight, had to look after her baby sister. She recalled being put lying down, having lubricant put on her and some penetration taking place. The events detailed in Count 18 occurred when the victim was between eight and ten years of age. In her evidence she said she was eight or nine years old. The attack happened at Christmas. The offender was in the attic getting down Christmas lights. The victim was called upstairs; she was lifted up into the attic and then directed into a bedroom where, after lubrication, the jury has found there was some penetration. The victim describes herself as "crying silently". The offence in count 19 in the indictment happened when the victim was about ten years of age. She had just gotten her ears pierced. She had been playing out at the front of the family home when she was called in by her stepfather, put lying down in a bedroom, while the offender knelt over her and penetrated her. The final offences which I am concerned with happened when the victim was six or seven years old. She had an uncle and aunt who lived a few miles away and they had a happy home which was a refuge to her. One day, however, her father suggested that they would walk there together along the railway tracks. In her evidence, the victim recalled that she was small enough for a piggy back. On a deserted railway embankment she was put lying down and then penetrated.

The Defence
5. The evidence of the accused, which the jury rejected, was to the effect that there was always someone in the home with him and his stepdaughter, and that he was often out of the house on the occasions when these offences were supposed to have happened, being very busy with work and music. He said that as there were social workers involved with the family, the evidence of the victim as to why she would not complain had become incredible. He said that he believed that the victim had been indecently assaulted and raped by somebody and his strong belief was that the culprit was her uncle. In other words, he denied the offences. But, in speculating that they may have happened, blamed the crimes on a dead man.

Purpose
6. My purpose in giving judgment on the issue of an appropriate sentence for this offender was to attempt to determine whether the precedents would offer substantial guidance. I am obliged to impose a sentence which is appropriate. In doing so I am guided by the relevant precedents of sentencing that have been set down over many years in the judgments of the Superior Courts. In referring to some decided cases therefore, my aim is to dispose of the case consistently with the penal policy of the Superior Courts.

Right to trial
7. It is the right of every accused person to challenge the accusation made against him or her. Many decided cases, howsoever, emphasise the value of an early plea of guilty. In the course of his judgment in *The People (D.P.P.) v. Tiernan* [1988] I.R. 250 at p. 255, Finlay C.J. stated:-

> "I have no doubt, however, but in the case of rape an admission guilt made at an early stage in the investigation of the crime which is followed by a subsequent plea of guilty can be a significant mitigating factor. I emphasise the admission of guilt at an early stage because if that is followed with a plea of guilty it necessarily makes it possible for the unfortunate victim to have early assurance that she will not be put through the additional suffering of having to describe in detail her rape and face the ordeal of cross-examination."

In the later case of *The Director of Public Prosecutions v. G.* [1994] 1 I.R. 587, Finlay C.J. emphasized that a genuine admission of wrongdoing was of very considerable importance in mitigating or sentence for rape and other violent offences. It can be the case, however, that the nature of the wrongdoing involves a situation where even an early admission of guilt cannot mitigate the appropriate punishment below the maximum potential sentence for rape, which in life imprisonment; *The People (DPP) v. R. McC.* [2005] I.E.C.C.A. 71.

8. An early admission to a violent crime certainly involves an obligation on the sentencing judge to consider discounting the appropriate sentence by a substantial factor. What that factor is will depend on the circumstances. An admission of guilt can occur between a polarity established by two extreme sets of circumstances. An offender may admit guilt even in the absence of an accusation made against him. That might occur, though I have never seen it, where, for instance, a child victim is cowed from making an approach to the authorities but the accused spontaneously condemns himself. At the other extreme is the case of the offender who pleads guilty at the very last moment because all the relevant witnesses have turned up to give evidence at his trial and the case is deemed from the book of evidence to be almost impossible to defend.

9. It may seem that the failure of the courts to apply an appropriate mitigation to the relevant tariff in sentencing occurs because the accused has pleaded not guilty. That is never the case. The accused in this case, for instance, is not entitled to a discount in respect of his sentence because he has shown no remorse, and therefore has taken no obvious step towards rehabilitating himself but has instead challenged every aspect of the victim's version of events. He is not to be sentenced in respect of the trauma that she has suffered consequent upon having to come to court and relive these events, and to have her credibility challenged: but rather no discount is available to the accused.

Delay

10. These offences occurred over a seven year period between 1979 and 1986. The victim was then aged between four and eleven years of age when these acts of sexual abuse took place. The rapes occurred when she was seven, eight, ten and eleven years of age. Twenty years have therefore passed since the last of these offences was committed. Many other such cases have come before the courts of offences in respect of which there is a big gap between offending and trial. Often such a gap is understandable because the abuse of children takes place in private and in circumstances where there can be a continuing dominion over the child even into adulthood.

11. Many decided cases emphasise that the obligation on the court is to sentence the offender as he now is, while recognising that the conviction recorded against him declares the wrongdoing for which he must bear responsibility. Where, as could often be the case, a gap of year or two has occurred, between an offence and sentencing by reason of the ordinary process of investigation and charge, counsel will rightly emphasise in a plea in mitigation any factor which shows that the accused has been put on the path to reform. Equally, emphasis can often be laid on the likelihood that an offender will not transgress the law again. Some degree of evidence, perhaps slight, in support of this plea can be offered by a clean record maintained during the lead up to the disposal of an offence. In *R. v. Tutty* [1998] 3 NZLR 165 at p.169, the New Zealand Court of Appeal emphasised that a delay between offending and sentencing is not of itself significant. What happens during that time, however, maybe of considerable significance. For instance, an offender may have reoffended or, at the other extreme, led a life of exemplary charity:-

> "… matters which have transpired during that time may be pertinent. Thus, if the offender has not offended since the offending he will have a longer unblemished record to put before the Court. Similarly, his conduct over the years may count in his favour. He may have faced up to and acknowledged his problem, demonstrated genuine remorse, obtained counselling or treatment where necessary, or in some other way sought to reform himself and atone for his earlier misdeeds. He may have obtained assistance for his victim. He may have made amend in many ways and be able to show that he has led an explenary life since his early offending. In all such cases it is these factors rather than the lapse of time in itself which will be taken into consideration on sentencing. While in such circumstances the need for deterrence in the case of the offender him or herself may have diminished or disappeared altogether, the need for a sentence which will serve as a general deterrent to such offending remains. So, too, the need for a sentence to mark society's denunciation and abhorrence of such offending is unaffected".

In *The People at the Suit of the Director of Public Prosecutions v. J.(T.)* (Unreported, Court of Criminal Appeal, Keane J., 6th November, 1996), Keane J. noted that dominion over a child can explain why an immediate complaint of sexual offences does not occur. He referred to the increasing frequency with which cases where there is a lengthy gap between offending and prosecution are coming before the courts. It is appropriate to quote the judgment of the court:-

> "The lapse of time may be relevant in the first place because of the conduct of the accused in the interval. In a case where the trial occurs, as it normally should, within a relatively short period from the commission of the offence, the conduct of the accused will probably be of little assistance to the court of trial (and none where he is in custody) in determining to what extent he is likely to re-offend. Similarly the time involved, even where he is at liberty, will be insufficient to lead to a conclusion as to whether one major objective of any humane penal system, the rehabilitation of the accused, has been already achieved. That is in contrast to a case such as the present. Here the offending conduct came to an end, according to both the complainant and the applicant, at least 10 years ago. He has not offended in that or any other respect since then, is married with a family and was in steady employment. All the evidence points to these having been incidents in his past which he bitterly regrets and which have never been repeated. The lapse of time is significant in the second place because of the very different climate of opinion which prevails today in respect of offences of this nature. The public are now acutely conscious of the major evil in society represented by the sexual abuse of children, particularly when perpetrated by parents or older members of a family in whom the child places a special trust or by persons in positions of responsibility such as teachers or religious. In the early 1980s, the public awareness of this whole area was far more limited and as Mr. Lanigan-O'Keeffe frankly and properly conceded on behalf of the respondent, the applicant, if prosecuted then would, if sentenced to a term imprisonment, have received a significantly less severe sentence. The court is satisfied that the criminal justice system cannot be indifferent to the fact that an accused person would probably have received a significantly more lenient sentence, had he not been deprived in the particular circumstances of the case of what would otherwise have been his constitutional right to an expeditious trial. What weight must be given to that factor will obviously depend on the facts of the individual case. Finally, the court in imposing sentence in a case of this nature must have regard, not merely to the consequences which the applicant's conduct have had for the complainant, but also to the serious consequences of the conviction for the applicant himself, altogether apart from the effect that any sentence imposed by the court might have. The court is satisfied that the trial judge was in error in giving insufficient weight to all of these factors. It will accordingly treat the application for leave to appeal as the hearing of the appeal, allow the appeal and substitute a sentence of 6 months' imprisonment for the sentence imposed in the Circuit Court."

12. These principles have been endorsed by many times by the Court of Criminal Appeal. In particular I note the judgments of Hardiman J. delivered on the 28th May, 2003, in the case of *The People (D.P.P.) v. Patrick O'Connor*, and on 27th July, 2000, in *The People (D.P.P.) v. Terence Hudson*, and that of Keane C.J. in *The People (D.P.P.) v J.M.*, [2002] 1 I.R. 363.

13. Having regard to these authorities, and benefiting, as I do, from the treatment of this issue in O'Malley, *Sentencing Law and Practice*, 2nd Ed., (Thompson Roundhall, 2006) para. 6.73 to 6.77, there is a principle here which should be isolated. It seems to me to be impossible to apply sentencing principles derived from history, as if this court was sentencing this offender in 1986, as it might have been. I do not know that sentences for this kind of offence were less in those days. What it seems to me to be important to determine is whether the accused has shown any remorse; any insight into the nature of his offending and how it impacted on the victim; and whether his life in the interval between perpetrating the offences and sentencing has been marked by factors which could legitimately be taken into account in the sentencing process. Absence from re offending is certainly one relevant factor and pursuing an ordinary life of work and good conduct is another. Following a life devoted to others might provide particular evidence of remorse and rehabilitation prior to the intervention of the criminal process.

Aggravation and Mitigation
14. In *The People (D.P.P.) v. Wayne Drought* [2007] I.E.H.C. 310, I noted, from the authorities, the following factors as aggravating rape sentences:-

> "The courts have placed particular emphasis on the harm that rape does to the victim and where there is special violence, more than usual humiliation, or where the victim is subjected to additional and gratuitous sexual perversions, these will have a serious effect on the eventual sentence. Abusing a position of trust, as with a person in authority, misusing a dominant position within a family, tricking a victim into a position of vulnerability or abusing a disparity in ages as between perpetrator and victims also emerge as aggravating factors. Abusing a particularly young or vulnerable victim increases the already serious nature of the offence of rape. Coldly engaging in a campaign of rape, shows a particularly remorseless attitude which is not necessarily mitigated by later claims of repentance. Participating in a gang rape involves a terrifying experience for the victim and using death threats and implements of violence for the purpose of wielding authority or sexual perversion are also serious aggravating factors. Attacking the very young or the very old also emerges as an important aggravating factor from these cases."

15. In addition to the foregoing, I noted the other aggravating and mitigating factors taken into account in the sentencing process. One matter needs to be added here. The purpose of sentencing is to attempt to make the punishment of the offender appropriate to the crime which he or she has committed. I am obliged to look at these particular offences as well as this particular offender. In these cases of a considerable lapse between offending and prosecution, one can often come across an offender who is elderly. With age can come a decline in physical powers and also illness. In *The People (D.P.P.) v. Patrick O'Connor* (Unreported, Court of Criminal Appeal, Hardiman J., 28th May, 2003.) Hardiman J., at p. 7, for the Court of Criminal Appeal, noted that a sentence imposed on a man in his seventies will occupy a more significant portion of his life then a sentence imposed had the offences been reported immediately. I would add that it can be the case that the imprisonment of a more elderly offender may be more burdensome because of declining health. *The People (D.P.P) v. J.M* [2002] 1 I.R. 363 was a case where the Court of Criminal Appeal, in discounting the sentence from the tariff imposed by the Central Criminal Court, emphasised the extreme ill-health, advanced age and real remorse of the offender.

Lenient Sentences
16. I do not intend to examine all the relevant precedents here. Rather I hope to look at the more significant cases and to attempt to determine whether principles can be derived from these.

17. In *The People (D.P.P.) v. J. (T.),* (Unreported, Court of Criminal Appeal, Keane J., 6th November, 1996) there was an eleven year delay between the offences and the proceedings. The offender pleaded guilty to five counts of indecent assault over a four year period. An effective sentence of three and half years was imposed in the court of trial. The Court of Criminal Appeal reduced that sentence to one of six months imprisonment. The victim's statement to the Gardaí complained of rape, buggery and indecent assault. Only the latter offence was charged however, and that is the basis of the sentencing decision at trial, and on appeal. In the intervening eleven years, the perpetrator had given up any offending conduct, had engaged in steady employment, and had established a happy family life with children. I note that, in a similar fashion, the Court of Appeal in England reduced a sentence of two and half years' imprisonment to one of twelve months in *R. v. Matthews*, [1999] 1 Cr. Ap. R. (S.) 309. The court emphasised the delay of thirty years in the prosecution of the offences of attempted rape and indecent assault on a girl who was then aged ten and to the subsequent exemplary character of the offender. He had learning difficulties and had, in addition, been abused as a child. In *The People (D.P.P) v. J.M.*, [2002] 1 I.R. 363, the offender had committed multiple indecent assaults on schoolchildren in his care between 1946 and 1983. A state of extreme age and ill-health allowed a three year sentence to be suspended when the remorse of the accused and his mental state were considered after he had already served a period in jail awaiting his appeal.

18. The *People (D.P.P.) v. R.O'D.* [2000] 4 I.R. 361 illustrates that wider considerations of family and society can tend to suggest a lenient sentence. The original sentence for rape and sexual assault was structured around a tariff of five years for rape, and three years for sexual assault with suspensions on both requiring the actual time served to be only one year. In the Court of Criminal Appeal, these sentences were suspended in their entirety, again after a period in jail awaiting an appeal hearing. The victims had requested that no custodial sentence should be imposed. The offender had made good progress in an institute at a time when the relevant therapy was not available in prison. The court also referred to the public interest in rehabilitation and in maintaining the family unit in the light of the forgiveness offered by the victims towards the perpetrator.

The views of victims cannot determine an appropriate sentence. Committing a crime involves an attack on society in general, as well as on particular victims. If the victims of a crime are able to offer forgiveness or are able to maintain an offender as part of the family, that can offer evidence of the effect of the crime on them and the possibility of rehabilitation of the offender. If the victim had been badly traumatised by a crime, the precedents show that a sentence should take this into account too. Finally in the *People (DPP) v P.H.* (Unreported, Court of Criminal Appeal, Keane C.J., 22nd February, 2002) the applicant was 87 years old when he pleaded guilty to indecent assault on three young children. He was sentenced by three years imprisonment with the final year suspended. This had been adjudged by the trial judge to be appropriate to his age and state of health. On appeal it was argued that his age and state of health had not been sufficiently taken into account. Keane C.J., in a judgment dismissing the appeal, said that there had been no error of principle having regard to the offences and the consequences of their commission on the victims. The age and medical condition of the offender justified the suspension of the final year of the sentence.

Ordinary Sentences
19. An ordinary sentence for offenders pleading guilty to rapes that occurred many years before can be five years. Particularly gross circumstances, serious effects on the victim and multiple victims can cause that tariff to be exceeded. In *The People (D.P.P.) v. Murray, Irish Times*, 6th February, 2007, a grandfather pleaded to guilty to three sample charges of rape on his grandchildren all aged

nine to sixteen. It would appear that the guilty plea, and perhaps other circumstances which are not all mentioned in the report, allowed for the imposition of a sentence of five years imprisonment. In *The People (D.P.P.) v. Fahy*, a report of which is found in the *Irish Times* on 12th May, 2005, a penalty of five years was imposed on an 85 year old defendant. He had pleaded guilty to two sample charges of rape and seven sample charges of sexual assault. The victims were aged between seven and sixteen years old and the offences took place between 1981 and 1992.

20. It would appear to me, having examined the relevant precedents, that where the accused has contested the charges, the ordinary tariff for elderly cases of multiple rape and sexual assault on young people by a person who is in a position of trust tends to be between seven and nine years. In the case of *The People (D.P.P.) v. Doherty, Irish Times*, 11th October, 2006, the accused was found guilty on a charge of rape and indecent assault in 1985, when his victim was then aged thirteen years. The sentence imposed was seven years imprisonment. In *The People (D.P.P.) v. Morrison*, reported in the *Irish Times* on 21st January, 2006, the Court of Criminal Appeal reduced a sentence of nine years' imprisonment to seven, indicating that the trial judge had failed to take sufficient account of the defendant's age, health, family circumstances and absence of previous convictions. In *The People (D.P.P.) v. Anonymous* reported in the *Irish Times* on 13th February, 2007, I note a similar sentence. The offender pleaded guilty to counts of rape and sexual abuse between 1997 and 2001 and was sentenced to eight years imprisonment. The victim was the daughter of his girlfriend, then aged between five and nine years of age. A quite similar sentence of eight years' imprisonment was imposed in the case of *The People (D.P.P.) v. Anonymous , Irish Times* 30th April, 2005. The accused pleaded guilty to seven counts of rape and eight counts of other related offences. The offences occurred between 1973 and 1987 and the victims were his daughters. The case of *The People (D.P.P.) v. Anonymous,* reported in the *Irish Times* on 14th November, 2006, involved a sentence of nine years' imprisonment with five years' post-released supervision. Eighteen sample charges of over two hundred counts were the basis of a plea of guilty by the accused. The offences took place between 1992 and 1997 and involved the siblings of his then girlfriend. So, although the offences were up to fourteen years old, the offender could not have been elderly.

21. In an unusual case of consent, but where the victim felt herself under the control of the applicant, a sentence of twelve years imprisonment for incest counts was reduced by the court of criminal appeal to eight years' imprisonment in *The People (D.P.P.) v. P.H.,* (Unreported, Court of Criminal Appeal, Keane C.J., 1st February, 2000).

Serious Sentences

22. In respect of pleas of guilty to multiple counts of rape I consider that two sample sentences of fifteen years may illustrate the circumstances indicating such a tariff. In *The People (D.P.P) v. J.R.,* (Unreported, Central Criminal Court, Carney J., 4th December, 1995), fifteen years was imposed by Carney J. where the accused had pleaded guilty. There were ten counts of rape, four counts of unlawful carnal knowledge, six counts of indecent assault and five counts of sexual assault. The matter involved a gross breach of trust, and the victim was badly affected. Although there was a statement of admission and a guilty plea, the heinousness of the crimes and their multiplicity brought the sentence to this level. Similarly, in *The People (D.P.P) v. G.* [1994] 1 I.R. 587 a sentence of fifteen years was imposed on twelve counts of rape. The case involved a breach of trust involving the abuse of two nieces and a neighbour's child. The Court of Criminal Appeal reduced the original sentence of life imprisonment to that tariff.

23. In *The People (D.P.P.) v. B.*, (Unreported, Court of Criminal Appeal, 14th December, 1998), the perpetrator appealed his sentence. It was imposed by Carney J. as a term of imprisonment of fifteen years on ten sample counts of rape, indecent assault and incest perpetrated against his three daughters over a period of years. The Court of Criminal Appeal stated:-

> "We think that perhaps the judge went just a bit far in having regard to what he thought were outrages so numerous that they could not be quantified. They were quantified to the extent of constituting 70 counts on the indictment and one needs no reminding that that is a very substantial number in itself. There is the fact that he did go with great speed to the police to give himself up, to make a clean breast of his deeds. Of course, he did not put the girls to the upset of having to give evidence at a trial and so forth. All in all we think some allowance should be made but we have to have regard not only to past cases but also to give some sort of warning for the future. In the circumstances we could not reduce the sentence much below twelve years but we will do so bringing it back to eleven years to take account of the period that he had served before he was sentenced."

24. A life sentence can also be imposed. In *The People (D.P.P.) v. R. McC*, [2005] I.E.C.C.A. 71, the Court of Criminal Appeal upheld a decision of Carney J. to impose a sentence of life imprisonment on a plea of guilty. The indictment involved 43 counts of rape, attempted rape, sexual assault and assault against six different children, of which the offender pleaded guilty to twenty sample charges. It is useful, in referring to the particular circumstances, to quote the judgment of Fennelly J.:-

> "The appellant commenced to commit the offences against his own daughters in his own home when they were very tender years, as young as five or six. One of the rapes and the single attempted rape were committed against one of his daughters. A remarkable and aggravating factor is that the fact he had several opportunities to amend his behaviour. The first period of offending from early 1986 to October of that year, when one of the daughters complained to her mother and the appellant, upon being confronted, admitted responsibility. Husband and wife went to a priest, leading to an acceptance of his wrongful behaviour and a promise that it would not happen again. Nonetheless, he recommenced the abuse in about May, 1987. A second confrontation in the autumn of that year led to attendance upon a doctor and counselling from social workers. Finally, the appellant made a full statement to the Gardaí, accepting responsibility for the offences against his daughters in November of that year, 1987. But there was no prosecution. What was not then known was that the appellant, while admitting the abuse of his daughters, had also been abusing several of his very young nieces at his home over the same period. For a time, the appellant agreed not to reside in the family home, but he abused his nieces instead. He went to the Lebanon for several spells on Army service. Some of the offences were committed even after his return. The appellant usually arranged to commit the offences in the home, while his wife was out playing Bingo, which he encouraged. He frequently abused one of his daughters in front of the other. He was devious, calculating and ruthless. While it might be claimed that there was no additional violence or injury beyond that intrinsic to the offences themselves, it clear that the appellant's daughters lived in genuine terror of his predatory and insatiable demands upon them. The depravity of the appellant's behaviour is of smaller importance than the extreme gravity of the repeated injury done to six innocent victims."

25. On the question of the imposition of a possible life sentence, the judgment of the Court of Criminal Appeal in *The People (D.P.P.) v. John Adams*, (Unreported, Court of Criminal Appeal, 21st December, 2004), is also instructive. The accused pleaded guilty, eventually, as the Court records, to six offences; four of unlawful carnal knowledge and two of sexual assault. A 64 year old man, he had a history of sexual offending "of quite an alarming type". There were three girls involved of between seven and twelve years of age. A friendship was abused and the girls were cajoled to go to his flat were the offences took place, aggravated by the taking of photographs. Kearns J. stated at p. 3 of the unreported judgment:-

"Here there is a significant and extremely alarming history of sexual offences. Three incredibly young lives were damaged in a very significant way by what happened and the plea of guilty, when it came, came only seven years down the road when eventually this matter came before Judge Carney in the Central Criminal Court on 28th July, 2003. But the court obviously is having careful regard to all the points that have been made… that he did enter a plea of guilty … and that this must be taken into account and the court agrees that [to] the limited extent this particular plea was worth, the court must take it into account. A plea of guilty is of greater value when it is entered early and much less when it comes at the end of a series of legal challenges brought to stop a trial and try and effectively stop the ultimate stage of the proceedings where sentence is imposed. It was only at that stage when all these remedies, which I stress [the accused] was entitled to pursue, but it was only when those remedies were exhausted that this plea of guilty was eventually tendered and the court is disposed to accept Mr. Gageby's submissions in this regard, that a plea offered in those circumstances is of considerably less value to an appellant or an accused person than one which is offered at a very early stage. We would also take the view that a life sentence should only be imposed in these sort of cases in exceptional circumstances but the factors to which I have adverted and the previous history of the accused and the modus operandi of deceiving and gradually embroiling these young girls in systematic and depraved abuse shows that there are quite exceptional circumstances operating in this case. We are conscious of the age of the appellant [64] but it does not seem to us that we can rule out the possibility that, insofar as any determinate sentence is concerned, that at least for the foreseeable future that the risk for re-offending may not be present, having regard to the past history. Mr. Gageby has drawn our attention to the other factors which he says are extremely important in this case, that there were multiple episodes of sexual abuse and it involved three girls. It went on for a period of 21 months. There was an absence of remorse and the victims were left waiting, hanging about, effectively, for a long period of years before the matter eventually came to a conclusion in the Central Criminal Court. The taking of the photographs has to be seen as an aggravating feature and it is distressing for the court to note that these young children, as they were at the time, the happy expressions on their faces at the initial stages of the photographs and the humiliation and degradation to which they were subjected thereafter, as time went on is a really shocking aspect of this case."

Approach

26. Having read the relevant precedents, some of which are quoted above, I have attempted to discover the approach of the Superior Courts in sentencing offenders, sometimes elderly, on what are offences that were between 10 and 40 years in the past. It seems to me that in cases of rape or serious sexual abuse, an approach that might usefully taken by the sentencing court in delayed cases is as follows:-

1. The actual circumstances of the offences should be analysed as if they had occurred recently and were commenced so as to be brought before the court with minimal delay. The penalty should be fixed taking into account the ordinary factors, including the offender's behaviour; the effect of the offences on the victim; the depth of depravity and the period of time over which the crimes were committed.

2. The ordinary principles of mitigation and aggravation should be applied to the circumstances of the case. For instance, if there was a plea of guilty or if there were circumstances in the offender's own background which might explain the depraved behaviour, then such circumstances might mitigate the penalty. If the offences were systematic; involved an abuse of trust; or involved predatory behaviour over a period of years; or multiple victims, then the tariff must reflect this.

3. The court might then usefully look at the date on which the offences were committed. A sentencing court, in structuring any sentence, is obliged to have regard to the subsequent life circumstances of the victim. In terms of settling on the final tariff of sentence, the offender's conduct in the intervening years will be of particular importance. If there was evidence of genuine repentance of the offending; if the offender had led a good life of family, or friendship, and work; or if the offender had sought in some meaningful way to make up for his abuse of the victims, this should be taken into account. The reason that I mentioned these factors is that part of the settled sentencing principles operated by the Superior Courts emphasise that while punishment must be meted out to an offender in order to ensure the social stability of the community, and that deterrence is a necessary aspect of sentencing policy, one of the ultimate goals of the sentencing processes is the rehabilitation of the offender. If he has managed to effect that purpose, in the intervening years between offending and sentence, by his own efforts, then, it seems to me, a discount, perhaps substantial in appropriate cases, of the relevant sentence might be contemplated.

4. The age and health of the offender should be looked at. If the offender is so elderly, or so unwell, then prison will be a special burden to bear, the sentence should reflect how a particular term may punish him as much a longer term for a younger offender in reasonable health.

5. Finally, an offender is not to be sentenced, should it be the case, for episodes of depraved offending, such as further sexual abuses alleged by other offenders, which occurred between the commission of the offences before the court and a sentencing hearing. These are to be subject of separate analysis and separate charge. In the worst cases, where there is no real evidence of intervening good conduct, it might simply mean that there was no basis for considering applying any discount to the relevant sentence by reason of the elapse of time between offending and prosecution.

In sentencing this offender, I consider that the real punishment is being locked away, without personal freedom, for a substantial period. I am conscious that the chance of redemption should be considered for every offender. It is up to the offender whether he comes out of jail as he went in. Programmes designed to assist against reoffending can only work if there is a determination to engage with them and to otherwise grasp the chances to take education for the benefit of a future life. Offering hope to an offender should be considered as a possible component of the sentencing process. Visiting jail as a judge, I could not but be impressed with the level of literacy, fitness, musical and general education that is now available. The sexual offenders' treatment programme, in particular, offers the chance of real insight into the dynamic of sexual exploitation and the harm it does to a victim. However, these things do not work like an antibiotic: a cure is effected whether you want it or not simply because of the presence of the medicine. The offender taking up a programme in prison, in contrast, must engage with a determination to consider change. If he does not, the exercise is of punishment merely, that of being held away from society. But in considering punishment, an offer of hope may be appropriate, while following the appropriate precedents as to sentence, in order to encourage rehabilitation.

This victim and this offender

28. This offender had little education. Of itself, this is not an excuse. He has two siblings who died in their 20s and another who died recently. He is in his 60th year and his health is problematic: as a result of a fall he has recurring intermittent back pain and has heart problems that he fears may end his life prematurely, as bad health runs in his family. It has been urged on me that the time of his life

will make a sentence more severe for him than for a younger man and the authorities support such an approach. The offender has spent a life of normal and mostly part time work. Two family relationships have now failed though he now has a supportive partner. Some contact is maintained with three of his children and a tenuous relationship with some others. He has had a tough life as an emigrant before returning to Ireland when he worked intermittently and was capable of hard work, it seems. Since the offences were first disclosed, he has been the subject of a barring order and no matter how bad he is, this severing of ties must be a burden, albeit one he has brought on himself. His new partner has health problems too and travelling to visit him may be a problem, depending on the location of imprisonment; a matter that is not for me. I take all of this into account in sentencing the offender. The most important factor, without which, I would have to think of a sentence in the highest range, as this series of offences clearly deserves, is that the offender has had no charge laid against him outside his own family, and there appears to be no offending for 20 years or so.

The victim has eloquently described the pain that she suffered in having her childhood torn from her by sexual abuse. These offences have had consequences for her, including physical ones of stress related illness and psychological trauma that will never leave her. I cannot, and do not, take into account the conduct of the accused in contesting these charges and in taking unsuccessful judicial review proceedings that were dismissed by the Supreme Court last year. It is another case where an early admission would have led to an appropriate sentence, which by now would have concluded. Instead, the denial has visited further trauma on the victim. That means that I am unable to discount the offender's sentence for the most important reason of admission of guilt. The victim, on the other hand, has faced up to these abuses with courage. She is, by any reckoning, and extraordinary young woman, who has pushed through the destruction wrought by sexual abuse to become a caring member of society, in the widest sense and as a professional person. This she attributes to the refuge that she had as a child with her uncle and aunt and the support of adult friends, most especially her husband. For society, having read the report on the offender from the Central Mental Hospital, I must impose an appropriate sentence and here a longer than usual post supervision period is called for. These offences are particularly bad.

The sentence

29. This sentence is being imposed under the Sex Offenders' Act, 2001. I therefore sentence the perpetrator to 10 years' imprisonment but I will suspend the last 3 years of that on his undertaking to enter into a bond to keep the peace and be of good behaviour towards all the people of Ireland during that time and on condition that he should enter a course of counselling as a sex offender during his time in prison, after his appeal to the Court of Criminal Appeal, and should be subject to the direction of the probation service for those 36 months on his release and will come up, if called upon to do so, to the serve the portion of the sentence this Court has now suspended. This condition is imposed without prejudice to any rights of appeal that the accused may wish to exercise. The fact that he has agreed to enter into a bond is not taken by me to be an admission, nor is his agreement to attend a course of instruction that may assist in rehabilitation. In the event of any further serious offending by P.H., this balance will have to be served if a further offence is committed within that time, together with any further sentence imposed consecutive to that. If P.H. fails, without reasonable excuse, to comply with any of the supervision period conditions during the relevant period of the suspended portion of his sentence, then under s. 33 of the Sex Offenders' Act, 2001, an offence is committed and the potential penalty is a fine of what was £1,500, to imprisonment up to twelve months or both. Such imprisonment, if it happens, suspends the period of supervision and it will continue until it expires on his release from prison. The bond is to be in the sum of €500.

On the basis of the sentencing exercise conducted, the effective sentence is thus 7 years, with supervision held over him after that, as indicated for 3 years. He is to be registered as a sex offender as well.