



**THE COURT OF APPEAL**

**Birmingham J.  
Sheehan J.**

**Mahon J.**

**176/14**

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

**Respondent**

**V**

**R.A.**

**Appellant**

**Judgment of the Court (ex tempore) delivered on the 4th day of March 2016, by Mr. Justice Birmingham**

1. At this stage having dismissed the appeal against conviction the court is concerned now with the element of the appeal that is against severity of sentence. In that regard two points really are made by the defence. They say that the sentence imposed by the trial judge and in particular his starting point is one that is more linked to the upper range perhaps the lower points in the upper range rather than a mid range sentence and that this was a mid range offence.
2. They point to the fact in that regard that the rape allegation is an allegation of attempt rather than completed rape and that that allegation of an attempt at penetration occurred on one occasion only.
3. The second point that is made is that it is said that the defence was conducted with a degree of considerable restraint and that the cross examination was as sensitive as is possible to be in these circumstances and that some recognition of that fact ought to have been given.
4. So far as references to mid range and upper range are concerned, while these are helpful there is always an element of imprecision about this. What has to be said is that this was clearly very serious offending. It involved offending against a young child by a person who was in a position of trust. While it is true that there was it seems that there was one attempt at actual penetration the actual offending persisted over a very significant period and certainly a very significant portion of a childhood.
5. This Court has on many occasions stressed that it is not a question of it asking itself what sentence would it have imposed and is it the same sentence as the trial judge actually imposed. The court's role is to engage in a review of sentences and it intervenes only when an error in principle has been identified. Only when the sentence falls outside the range available will a sentence be altered.
6. In this case there was no plea which of course is always regarded as a matter that provides significant mitigation in the case of sex offences. It is clearly a comfort to a victim when, when they hear their abuser admitting guilt and accepting responsibility and that is in addition to all the other arguments that apply generally as to why pleas are given recognition. That there was no plea here is not an aggravating factor but it does mean that the scope for mitigation and therefore leniency is reduced. The court accepts that from its reading of the transcript that then defence counsel was, as one would expect, restrained and responsible but in truth that is really only what is to be expected. Overall the court takes the view that the sentence imposed cannot be said to fall outside the ranges of sentences that were available to the trial judge.
7. In those circumstances the court refuses the appeal against severity of sentence.