



## THE COURT OF APPEAL

Appeal No. 34/15

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

**BETWEEN**

**The People At The Suit Of The Director Of Public Prosecutions**

**Respondent**

**- And -**

**J.P.**

**Appellant**

**Judgment (ex tempore) of the Court delivered by Mr. Justice Mahon on the 10th day of November 2015**

### **Introduction**

1. The appellant pleaded guilty in the Central Criminal Court to one count of sexual assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act 1990 as amended by s. 37 of the Sex Offenders Act 2001, in relation to the sexual assault of a fourteen year old boy on 12th May 2012 at a Bed and Breakfast premises in Killarney, Co. Kerry.

2. The appellant was sentenced on 26th January 2015 to twelve years imprisonment with the final two years suspended and eighteen months post release supervision in accordance with s. 10 of the Criminal Justice Sexual Offences Act of 2001. The appellant was also placed on the Sex Offenders Register indefinitely.

### **Background facts**

3. The appellant met the injured party in May 2012 in Killarney, Co. Kerry, having arrived there immediately following his release from Castlerea prison on completion of a six year prison sentence for a sexual assault offence. The injured party of fourteen years old at the time, and was a resident at a residential care unit in Killarney. The appellant met the boy on the street whilst he was standing outside a public house smoking a cigarette. He began talking to him and asked him did he want to have an alcoholic drink with him. The boy agreed and the appellant and the boy then entered the public house where they had four or five alcoholic drinks. At approximately 11 p.m. they went to the appellant's bed and breakfast accommodation where the sexual assault took place. The assault involved the appellant performing oral sex on his victim.

### **The appellant's personal circumstances**

4. The appellant is now fifty years old. He has a troubled background. As a child, and when in St. Josephs Industrial School in Tralee, he was himself sexually abused.

5. The appellant has a number of previous convictions for sex offences going back to 1992, involving teenage boys and young men. At least two of these offences involved violence or the threat of violence. Between May 2012 and the sentencing for this offence, the appellant breached the Sex Offenders Register requirements on four separate occasions. The appellant committed this offence within hours of being released from Castlerea Prison having served a six year sentence for a sexual assault.

### **The victim**

6. The victim of this crime was fourteen years old at the time of the commission of the offence. He himself had a troubled background and was living under the care of Social Services at the time that this incident occurred. He is described as a "vulnerable young person" with "a diagnosis of 'autistic spectrum disorder'". The learned sentencing judge was informed that the sexual assault by the appellant left the victim "feeling horrible", wary of strangers and with a difficulty in coping.

### **The learned sentencing judge's decision**

7. In his sentencing judgment, described by counsel for the appellant as somewhat "terse", the learned sentencing judge stated the following:-

*"The offence involved is inherently grave. Aggravating features are the nature of the accused's previous convictions and his persistent violation of orders made under the Sex Offenders Act. To take account of these matters, I sentence the accused to a term of twelve years imprisonment, to date from 17th November 2014. In favour of the accused is his plea of guilty. Even though it came late in the day, the evidence was that it was on considerable benefit to the victim. To take account of this, I suspend the final two years of the sentence on the accused entering into a bond in the sum of €1,000 to stay away from his victim in perpetuity. The bond may be entered into before the prison governor. I direct the accused undergo eighteen months post release supervision, and I am obliged by law to inform him that he may be liable to further imprisonment in the event of the breach of any of the terms of post release supervision".*

### **The grounds of appeal**

8. The grounds of appeal primarily relied on by the appellant can usefully be summarised as follows:-

- (1) The learned sentencing judge's apparent placing of the offence at the upper end of the scale of gravity was

inappropriate, and it ought to have been located at the upper end of the mid scale of gravity, thereby attracting a lesser sentence.

In support of this contention counsel for the appellant identified the following:-

- (i) It was a single isolated act,
- (ii) The assault took place in the absence of any threat, force or violence,
- (iii) There was (as counsel put it) no obvious breach of trust and,
- (iv) The victim was not specifically targeted, or in other words, the victim was approached on a random basis.

(2) The learned sentencing judge failed to consider fully the fact that the appellant's breach of the provisions of the Sex Offenders Act 2001 occurred in circumstances where the appellant was destitute and / or homeless.

(3) The sentence was not structured to provide for rehabilitation in the public interest, having regard to the appellant's previous propensity to commit sexual offences of a similar nature to this case.

### **Decision**

9. A particularly worrying feature of this most serious offence is the number of convictions of the appellant for sexually assaulting boys and young men, dating back to 1992, and the assault on this vulnerable young boy almost immediately following his release from a lengthy prison sentence for a very similar type of offence. This background serves to emphasise the extremely difficult efforts that face society in controlling the activities of serial sex offenders and for that reason the great care required to ensure that the public – and especially children – are protected from such activity.

10. In this case, the sentence of twelve years was entirely appropriate. Not even lengthy prison sentences imposed on the appellant had deterred him from committing repeat sex assaults on young males and prison sentences alone are unlikely to do so into the future.

11. It is clear that something has to be incorporated into the appellant's sentence to facilitate, and, hopefully, bring about his rehabilitation to some degree given that he will be released at some point in time. This is essential if the public is to be protected to the greatest possible extent. Insofar as the learned sentencing judge erred in his sentencing of the appellant, it was that he did not attach sufficient weight to the prospect of, and need for, rehabilitation, which is essential if the public is to be protected as much as possible. There is at least the possibility of rehabilitation if the appellant receives suitable treatment and counselling. The simple requirement that there be post release supervision, while undoubtedly of value, was insufficient in the particular circumstances of this case.

12. The court will therefore, while upholding the twelve year sentence, increase the two year suspended element to three years, but on the following conditions:-

- (i) The appellant seeks out and applies for suitable psychological treatment and counselling while in prison, and
- (ii) The appellant undertakes and completes all such offers of treatment and counselling while in prison, including the Better Lives programme and / or similar programmes.

13. In addition the period of post release supervision in accordance with s. 29 of the Sex Offenders Act, 2001 will be extended to two years and is subject to the same conditions as those indicated in the Central Criminal Court.

14. The three year suspended sentence will be for a period of three years. A fresh bond in the sum of €1,000 will be entered into by the appellant on the same terms as those imposed in the Central Criminal Court.