THE COURT OF APPEAL

Birmingham J.
Sheehan J.
Edwards J.

Record No. 138/2013

The People at the Suit of the Director of Public Prosecutions

V

O. O'B.

Appellant

Judgment of the Court (ex tempore) delivered on the 16th day of November 2015 by Mr. Justice Edwards.

Introduction.
1. In this case the appellant appeals against the severity of six concurrent sentences of five years imprisonment imposed upon him by the Circuit Criminal Court on the 17th of May 2013 in respect of six sample counts taken from a twenty one count indictment, of sexual assault contrary to s.2 of the Criminal Law (Rape)(Amendment) Act 1990 as amended by the Sex Offenders Act 2001. The indictment had charged one count of sexual assault for each three month period from the 1st of January 2002 to the 31st of March 2007. The sample counts to which the appellant pleaded were counts no's 1, 6, 10, 14, 19 and 21 respectively. These pleas were acceptable to the Director of Public Prosecutions on the understanding that the case would be presented to the sentencing judge on a full facts basis.

2. The appellant appeals on the grounds that the sentencing judge failed to give adequate weight to the mitigating factors in relation to the offences and the personal circumstances of the appellant, and gave undue weight to the aggravating factors in the case at the expense of the mitigating factors.

The Facts of the Case
3. The appellant was in a long term relationship with "M" with whom he had a son born in 1999. "M" also had a daughter "S", from a prior relationship, who is the injured party in this case. "S" was born in 1995. The appellant and "M" had lived together for sixteen years prior to the abuse the subject matter of these proceedings coming to light in 2011. Moreover, the appellant and "M", and the two children mentioned, comprised a long standing family unit. Throughout the period when she was being abused "S" believed that the appellant was her biological father, although that was not in fact the case. The fact that the appellant was not "S's" biological father was not conveyed to her until after the abuse came to light. However, the appellant was at all material times in *loco parentis* to her and regarded "S" as his step daughter.

4. The abuse the subject matter of the charges came to light in the following circumstances. "S" had a friend who lived close to S's maternal grandmother, whom "S" visited regularly. On the 25th of June 2011, while on a visit to her maternal grandmother, "S" disclosed to this friend that the person whom she described as her Dad had been abusing her. The friend told her own mother who was very concerned, and that mother in turn informed two of "S's maternal aunts, who in turn informed "M" and S's maternal grandmother. "M" immediately sought out her daughter and found her in a tearful state. "S" then repeated to her mother what she had said to her friend.

5. The appellant was confronted in the family home by other family members shortly afterwards. When asked by "M" if he had done anything to "S", he said "Not that I remember", and then moments later added that "Something might have happened." He then admitted that he had lifted up the sheets and got into bed with "S" a few times and had touched and licked her private parts a couple of times. The appellant then suggested that they should go to the Gardai together but "M" said that she was not ready for that.

6. On the morning of the 28th of June 2011 "M" discussed the situation with her own mother who urged her to go to the Gardai. "M" was still reluctant to do so but it was made clear to her that if she didn't do so other members of the family, namely the grandmother and the aunts, would do so. "M" subsequently informed the appellant of what had transpired in her discussions with her mother, and the appellant decided at that point to go to the Gardai. "M" then drove him to a Garda station.

7. On arrival at the said Garda station, on the 28th of June 2011, the appellant presented himself at the public counter and stated to a Garda on duty there that he wished to confess that he had been sexually assaulting his stepdaughter "S" over a long period. He was immediately cautioned and offered the opportunity to avail of legal advice, which he declined. He was then taken to an interview room by two Gardai where he submitted to an interview under caution that was both video and audio recorded. In the course of that interview, and a subsequent follow up interview that was similarly conducted on the 26th of July 2011, when he voluntarily attended the Garda station for a second time by prior arrangement, the appellant made a series of admissions.

8. The appellant admitted to fondling the injured party in the area of her private parts and procuring the touching of his private parts by her. He stated that these incidents had taken place in the bedroom that he shared with "M" at two addresses that had at different times been the family home. He further described sometimes masturbating himself during these occasions. He told Gardai that he had stopped abusing "S" when she was 12 years of age.

9. Arising out of the appellant's admissions the Gardai commenced a formal investigation, and arranged for "S" to be interviewed by specialist interviewers. When "S" was interviewed she described having been subjected to abuse at a much more significant level than had been indicated or conveyed to the Gardai by the appellant in his initial statement. Counsel for the prosecution led evidence from the principal investigating Garda concerning the disclosures made by "S" during interview.

10. The Garda told the Court that "S" had described the abuse as happening very regularly and that as part of that abuse the appellant used to lavish treats and toys upon her. Her first memory of being abused was in her parent's bedroom. She described them both being naked and the appellant lying on top of her and engaging in simulated sexual intercourse with her. She said *"He made me*

close my legs because I was too small for him to stick it up me so he put his penis between my legs, between my thighs. He moved back and forth on top of me moving his penis back and forth between my thighs" and that "Every time he got an opportunity when my mother was out of the house he would do this. It was always the same, that he would take my clothes off and put me on the bed and put his penis between my legs. I can't remember what age I was. It happened maybe twice or three times a week".

11. "S" further stated *"When he would finish O would say we shouldn't be doing this. He told me not to tell anyone because he would get in trouble and be sent away. When I was small I didn't want this to happen. Every time O did something to me he would give me something like toys or money or bring me up to Smyths. He'd bring me up to choose a Brats Doll because they were my favourite."*

12. Such incidents occurred while the family were living at a particular location in a large provincial town, and while "S" was at a particular primary school. The family subsequently moved to a different part of the town, and "S" was enrolled in a different school. However, despite the change in address the abuse continued as before with regular simulated sexual intercourse in which he would place his erect penis between "S's" thighs and touching the outside of her vagina and rub it up and down. Sometimes he required "S" to engage in masturbatory stimulation of his penis. On other occasions the appellant would masturbate himself in front of "S" and while doing this would lick "S's" vagina and sometimes would lick her anus. He would insist on "S" watching him ejaculate. Sometimes he would put "S's toes in his mouth and suck them while masturbating himself. "S" recalled that on one occasion when the appellant was masturbating his penis was right up against her vagina *"so his hand was hitting off my vagina outside and inside the lips of my vagina but not up inside me."*

13. "S" described one particular incident when she was 10 or 11 when the appellant insisted on them taking a bath together. He required "S" to sit on his stomach in the bath, following which he told her to close her legs. Then he placed his penis between her thighs initially and with his hands on her waist moved her up and down on him rubbing his penis against her vagina and using liquid soap as a lubricant. When "S" complained that her vagina was sore he went back to moving her up and down with his penis between her thighs.

14. "S" described a further incident as occurring late one evening in the sitting room of the family home when everyone else had gone to bed. The appellant put on a porn movie, and again engaged in simulated sexual intercourse with "S" on the floor by the fireplace. She further described other specific occasions in which she was similarly abused. One occurred at Halloween one year when "S" recalled being abused while wearing nothing but a pair of devils's horns; and another, when she was about 10, in which the appellant had positioned a mirror in the bedroom so that he could see their reflection as he engaged in simulated sexual intercourse with "S". Yet another occurred in a red Mercedes motor car when, the appellant, who was driving "S" on some journey, pulled in to the hard shoulder of a wide road at a dark location and required her to submit to simulated sexual intercourse sitting while astride him in the driver's seat.

15. "S" also described how as a prelude to simulated sexual intercourse the appellant, having removed her clothes, would touch her breasts, her waist, her legs, her bottom and the outside of her vagina. She described him trying to put his tongue into her vagina but it hurt and she told him not to. She said that he licked the outside of her vagina with his tongue nearly every time.

16. "S" further described how on one occasion the appellant had taken photographs of her naked on a bed. She stated that he had instructed her to get on the bed with her legs in the air and he photographed her naked in that position.

17. "S" described a further occasion when the appellant had brought her into the double bed that he shared with "S's mother, and had engaged in simulated sexual intercourse with "S" while her mother was asleep on the other side of the bed.

Other evidence relevant to sentencing

18. The sentencing court received a victim impact statement indicating that the injured party, who was 17 years of age at that stage, was emotionally and psychologically affected by the abuse perpetrated on her, with the result that she is stressed and underweight, has difficulty sleeping, suffers regular nightmares, has low self esteem and had difficulty relating physically to her former boyfriend with whom she has now broken up. In addition, as part of the fallout from the disclosures and the break-up of the family unit she had had to move house twice, and school once, and she and her remaining family had experienced financial hardship. In addition the court heard that the injured party had had difficulties with concentration at school and her education had suffered.

19. The sentencing court heard that the appellant had no previous convictions, was a qualified accountant, was self employed as a Financial Consultant, had been in the employment of others in the past and had a good work record. The court was further told that the appellant had had a dysfunctional childhood and had grown up in a family where his father was violent towards his wife and children. Moreover, for a twelve month period following the uncovering of his abuse he had been homeless and unemployed.

20. The sentencing judge was also told that since the appellant's abuse was exposed the appellant had been taking steps to address his offending behaviour and had taken part in the Phoenix Programme run by the One in Four group. The court was furnished with an interim report dated the 3rd of September 2012 indicating the appellant's progress up to that point, and a further document dated the 2nd of April 2013 setting out the proposed further modules of the programme and the dates on which the appellant would be expected to attend, if permitted to do so. Counsel for the appellant sought an adjournment of sentencing from the sentencing judge to enable her client to complete the programme but this was refused.

21. The interim report placed before the court indicated, in summary, that the appellant had engaged with the Phoenix Programme with the view to gaining an understanding of possible motivations that led to him offending against his ex-partner's daughter. He was reported as just finishing the Initial Intake procedure which can take up to ten weeks or more if deemed necessary. It was not deemed necessary in the appellant's case, as he appeared motivated to begin in group. It was further reported that the appellant had begun to discuss some of the details concerning his early life history within the family, his family background, his education, relationship deficits and his own experience of victimisation from sexual abuse. The interim report commented that the appellant showed a lot of remorse and indeed devastation as he realised the impact on the victim and other members of his family who have been indirectly impacted by his offending behaviour. It highly recommended that he continue in treatment as he was highly motivated to understand the why? of his offending in order to prevent any recidivism in the future.

The judge's sentencing remarks

22. Having heard a plea in mitigation the sentencing judge made the following remarks in the course of sentencing the appellant:

> *"In the matter of the DPP v. O. O'B. In this case the accused has pleaded guilty to six sample counts of sexual assault contrary to section 2 of the Criminal Law (Rape) (Amendment) Act of 1990 as amended by the Sex Offenders Act of 2001. These charges on conviction carry a maximum sentence of 14 years imprisonment in cases where the person on whom the assault was committed was a child under the age of 17. The charges relate to a period on dates unknown*

between the 1st of January 2002 and the 31st of March 2007. The injured party in this matter is one "S" who is the daughter of the accused's ex-partner and to whom the accused was in loco parentis for several years.

In sentencing the accused in this matter, the Court has to consider the nature and gravity of the offences and is tasked with imposing a sentence that meets the particular circumstances of the offences and the offender. In determining what is a proper sentence in this case, the Court must decide where these particular offences lie within the range of sentences imposed for similar offences, and have regard for the range of sentences that are available to the Court. The Court must have regard not only to the offences but also to the offender in the case, to the range of cases involving sentences in this type of offence, and while consistency in the sentencing is desirable, consistency cannot and must not override the proper exercise of discretion which the circumstances of the particular case require. The Court must consider all possible sanctions available and will not either in principle or in practice rule out any of these. In short, in deciding what is a proper and proportionate sentence in this case, the Court must consider the nature of the offence, the impact that the offences had on the victim and on society, and the personal circumstances, including the history of the offender. A proper sentence is one that reflects the gravity of the offences and balances this with the other purposes of criminal sanction. These are punishment of the offender for the offences, the expression of revulsion of society and the hope for the rehabilitation of the offender. Again, in arriving at what a proper and proportionate sentence is, the Court must consider factors which are regarded as aggravating and mitigating in each particular case.

In this case, in considering the various factors it is appropriate to set out briefly the background of the family dynamic as outlined to the Court in evidence. The injured party was born on the 2nd of February 1995. It appears some time after that, the mother of the injured party began a relationship with the accused and they moved into a property in [a named location] in around 2001. The accused and the injured party's mother have a son who was born on the 17th of September 1999. In 2003 they moved to an address [another named location] where they continued to live as a family unit until this matter came to light. While it is a matter of fact that the accused is not the biological father of the injured party, he was for all intents and purposes in loco parentis up to June of 2011. Again, in accordance with the evidence and the transcript, the sexual abuse of the injured party commenced when she was approximately six years of age and continued up until she was 12 years of age. It is clear from the evidence that this matter did not come to light until June of 2011, when the injured party was approximately 17 years of age. It is clear from the evidence that the abuse happened over a very regular period, sometimes even twice and three times a week. Again, it is clear from the evidence that the abuse started in [the first naed location] and continued in the family home in [the second named location].

At the hearing of this case extracts were read from the statement made by the injured party which gave graphic detail of several incidents which took place over the years. While there is uncertainty as to the exact dates, it is quite clear that the incidents took place over a prolonged period of time. Again, the transcript reflects several incidents that the Court does not intend to go into detail on, but mainly to highlight them as they appear in the course of the evidence as given: the dress incident, the bath incident, the pornographic video incident, the Halloween incident, the mirror incident, the photograph incident, the incident in bed where the partner was present, the car incident. Furthermore, graphic evidence was also given of incidents of masturbation and oral contact with the injured party's private parts. As already stated, it appears that the incidents took place up until the injured party was 12 years of age and at that time demanded that the accused stop his behaviour, and it would appear that he did so.

The Court now intends to look at the aggregating factors in this particular matter. It is quite clear that the injured party in this case was only and remained all through the years of abuse a child aged between six and 12. It is quite clear that the accused was in a position of trust and for all intents and purposes was regarded by the injured party as her father and, indeed, as I understand this was still her persuasion up the time that the formal complaint was made. He effectively was in the dominant position at all times. It is quite clear that there was a disparity of age between the injured party and the accused at the time of the offences, the injured party being aged between six and 12, the accused being aged in his middle to late 30s. It is quite clear that these offences took place over a sustained period of five years. It is quite clear from the evidence that the type of sexual assault that the injured party was subjected to was of the most vile nature, particularly given the very young age of the child. It is quite clear from the evidence that the sexual assaults were planned and premeditated and must be considered base in the extreme, given their nature. It is quite clear that the sexual assaults were carried out for the sole purpose of the accused pleasuring himself. It is abundantly clear from the victim impact statement which was read into evidence that the injured party suffered serious psychological harm as a result of this abuse. The statement reflects a troubled young lady who was deeply affected by the abuse that took place and seems to have had very low self-esteem arising from the appalling abuse which took place at the hands of the accused. Despite the abuse, she has shown remarkable bravery in making the complaint and, indeed, remarkable resilience in that she hopes to complete her Leaving Certificate this year and hopes to further her studies at college. It is also clear that the abuse in this case in the main took place in the family home, a place where any child of such tender years would expect to feel safe and protected at all times by his or her parents. It is true that as a result of the abuse coming to light, the injured party has had to move house, change school and this has had an impact on her family dynamic and the family have had to cope with certain financial issues as well. Again, it is reflected in the victim impact report that the injured party felt that she was someone special upon whom the accused lavished various treats upon but now realises that this was all part of a premeditated plan to groom her for the accused's deviant behaviour. The nature of the sexual assaults is disturbing in that they involve masturbation, oral sex, simulated intercourse and again, as is already stated, most of which took place in the family home.

Insofar as the mitigating factors are concerned, the Court takes into account the following: the very early plea in this matter, indeed that there are unusual -- there are unusual aspects in this case in that the accused attended [a named] Garda Station on the 28th of June 2011 and made a voluntary statement, declining the opportunity to obtain legal advice, before the formal complaint had been made by the injured party. It must be stated that his attendance was somewhat motivated by the fact that his then partner, the injured party's mother, had threatened to go to the gardaí if the accused did not go first. Furthermore, the guilty plea cannot be under-estimated, given the very nature of the offences. The fact that the injured party has been spared the further trauma of having to give evidence in this matter and subjected to possible cross-examination must be considered a significant factor. In fairness again to the accused it is quite clear that he cooperated with the gardaí throughout the investigation and that he indicated a plea of guilty at every stage, even though it must be noted that he was not formally arrested until the 3rd of April 2012 for the purpose of charge. It is quite clear from the evidence adduced in this case that the accused expressed remorse for his deviant behaviour and was deeply concerned about the injured party receiving whatever assistance might be possible to help her cope with the appalling treatment that she had been subjected to for several years by the accused. The remedial steps which the accused has taken in an effort to try and deal with his difficulties; the Court has had the benefit of seeing a series of reports from the One in Four organisation which testify that the accused had engaged with the Phoenix

programme and has been part of that programme since November 2011. As stated, the Court has had the benefit of the extensive reports which were handed in in this regard. And the rehabilitation treatment which the accused is currently undertaking, it would appear that this treatment involves three modules and that the accused has completed module one and is partially through module two. Furthermore, it is noted that the accused has been responsible for the financing of his participation in this programme. The defence had asked that this case might be adjourned to enable the accused to finish the course; however this was opposed by the State given the length of time that was envisaged. The Court has also been asked to consider the fact that despite the difficulties the accused finds himself in he has managed to qualify as an accountant, passing his exams in 2010 and despite being out of work and homeless for a period of approximately 12 months, he has successfully managed to regain both accommodation and regain employment, and this is also evidenced by the testimonies that have been handed in this morning in this matter. The Court has also been made aware of the fact that the accused was also the victim of some sexual abuse himself and that there are matters currently before the Courts in which he will be a witness should the matter proceed to trial. The Court was asked to consider the accused's own -- details of his own difficult family circumstances were adduced in evidence and it is quite clear that he comes from a very difficult background in which violence and domestic abuse were a feature. The Court has been asked to consider the enormous consequence for the accused in that the family dynamic of which he has been such an integral part of has been completely shattered, albeit through his own fault, and that as a consequence of this he has now lost any contact with his son, a fact that he finds very hard to cope with. The Court has been asked to consider in this case the question of delay, in that the abuse took place over a six-year period from 2002 to 2007 -- I should say five-year period, and that the injured party did not make a complaint a formal complaint until June 2011, some five years later. The Court has given this its consideration and considers the delay was not excessive in the circumstances where the injured party and the accused were living in a family setting, and also given the very young age of the injured party at the time and the dominant position of the accused. The Court was asked to consider the accused's good character, the fact that he has no previous convictions, that he is 43 years of age, that there have been no -- there has not been any difficulties since these offences came to light. In the course of its plea in mitigation, Ms Kennedy, senior counsel for the accused, drew the Court's attention to a number of cases from the higher courts, which this Court has had the opportunity to consult and consider. Reference was also made to Professor O'Malley's book on sentencing. The Court has also had the benefit of the transcript, which allowed the Court time to consider this matter in great detail.

It is abundantly clear that this is a very serious case. The accused in this case has been guilty of cold, cunning, systematic, pre-meditated, calculated grooming and exploitation of a six-year-old child for the purposes of his own sexual gratification over a period of several years. He has been guilty of the most appalling breach of trust to a child who for all intents and purposes regarded him as her father. While the accused has pleaded guilty at all stages in this matter, the consequences of his deviant behaviour have had an enormous impact on the injured party. Her victim impact report makes it quite clear that she has suffered enormous psychological damage. The Court has considered the various options open to it, including the option of compensation, but feels the facts and the circumstances in this case are so serious that a custodial sentence is warranted. Again, having carefully listened to the plea in mitigation and having factored in all that has been said on behalf of the accused, one cannot get away from the fact that this case warrants a substantial sentence. The accused stole the innocence of youth of this child, something that she will never get to experience again. Accordingly, on count number 1 the Court is going to impose a sentence of five years imprisonment. On count six, five years imprisonment. On count 10, five years imprisonment. On count 14, five years imprisonment. On count 19, five years imprisonment. On count 21, five years imprisonment, all sentences to run concurrently.

Discussion

23. It was submitted by counsel for the appellant that the sentencing judge failed to give adequate weight to the appellant's cooperation with the Garda investigation throughout, incorporating his two voluntary statements given prior to any complaint being made, the admissions made therein, the very early nature of the appellant's plea of guilty and the assistance given to the prosecution case as a result.

24. It was submitted that in offences of this nature, a plea of guilty is of particular use as it obviates the need for the complainants to go through the ordeal of giving difficult evidence were the accused to exercise his constitutional right to test the evidence before a jury.

25. It was complained that when considering the appellant's voluntary statements, the sentencing judge made remarks which ascribed a particular motivation to the appellant's behaviour.

> *"It must be stated that his attendance was somewhat motivated by the fact that his then partner, the injured party's mother, had threatened to go to the gardai if the accused did not go first."*

26. It was submitted that these comments indicated that the sentencing judge did not take into consideration the full context of the appellant's attendance at the Garda station, in particular his refusal to take legal advice and his assertion that he was attending voluntarily "to do the right thing" and a later assertion that he wanted to "unburden myself and give her justice." It was submitted that the sentencing judge gave insufficient weight to the nature and circumstances of the appellant's attendance at the Garda station and the conclusions that could fairly be drawn from the early voluntary admissions made there.

27. It was further complained that the sentencing judge failed to give adequate weight to the appellant's efforts to rehabilitate himself since the time of his first voluntary interview with Gardai.

28. It was emphasised that the appellant had engaged with the Phoenix Programme, run under the auspices of the One in Four group, and was self financing his participation in a three module course. He had completed one module and was halfway through a second module at the time of the sentencing hearings, and sought time to be allowed to complete the programme prior to the matter being finalised. The sentencing judge had refused this application.

29. It was submitted that the sentencing judge had failed to structure the appellant's sentence in such a way that gave adequate weight to the public interest in the appellant's effective rehabilitation. In addition it was also contended that the trial judge had erred in failing to give enough consideration to the commitment shown by the appellant to rehabilitation. In support of this argument the Court was referred to *The People (Director of Public Prosecutions) v M* [1994] I.R. 306 and *The People (Director of Public Prosecutions) v Eccles* (unreported, Court of Criminal Appeal, 8th October 2003).

30. It was also submitted that the sentencing judge had failed to give adequate weight to the appellant's previous good character and had failed to properly consider that the offending behaviour had ceased completely for the four years prior to the making of the complaint by the injured party.

31. It was further pointed out that the offences were of some antiquity, the earliest of which had occurred eleven years prior to the sentence hearing ago and the most recent six years prior to the sentencing hearing. It was submitted that the sentencing judge ought to have had regard to the lapse of time between the cessation of the offending behaviour and the making of the complaint to the Gardai, and to have treated that as a mitigating factor. In support of this suggestion counsel for the appellant relies on the following passage from O'Malley on Sentencing:

> *"Just as the courts are seldom willing to restrain a prosecution where the accused can be said to bear responsibility for the delay in reporting, so they are reluctant to mitigate punishment on this ground once there has been a conviction. The lapse of time may however be relevant to sentence if the person has not offended in the meantime or if he has taken some steps to assists the victim or deal with his own criminal tendencies."*

32. Finally, at the oral hearing before this Court today counsel for the appellant complained concerning the manner in which the sentence was structured in as much as the sentencing judge did not indicate where on the range of potential penalties he was locating the offences before application of the mitigating factors. It was said that in the circumstances it was impossible to know precisely how much discount had been given for mitigation.

33. Counsel for the respondent has replied by contending that when his judgment is considered as a whole, it is clear that the learned sentencing judge carefully balanced these factors as he is obliged to do. The sentence which was pronounced emerged from a careful consideration of all the relevant factors.

34. Responding to the contention that the sentencing judge failed to give due consideration to the appellant's voluntary attendance at a Garda station prior to the complainant referring the matter to the Gardai it was submitted that the sentencing judge was entitled to have regard to the fact that it had been made clear to the appellant that if he chose not to raise the matter with the Gardai a complaint would be made on behalf of the complainant, most probably by her grandmother.

35. Responding to the contention that the sentencing judge failed to give due consideration to the alleged delay in the abuse coming to light, it was pointed out that while it was correct to say that the abuse ceased in 2007 and the complaint was not made until 2012, it had to be borne in mind that the time of the complaint "S" was only 17 years of age. The lapse of time involved is not inordinate and it was submitted that delay did not generate additional mitigation in this case.

36. The Court agrees with counsel for the appellant that it would have been much preferable if the sentencing judge had indicated where on the range of potential penalties he was locating the offences before application of the mitigating factors. The failure to do so makes the task of this Court more difficult, and while not an error of principle of the sort that might automatically lead to the setting aside of a sentence, represents a departure from best practice.

37. That having been said the sentencing judge in this case did say that he regarded the offences as being very serious and it is implicit in his lengthy and detailed judgment that he was locating them towards the upper end of the range before application of mitigating factors. It is also clearly to be inferred from where he ultimately ended up that he made a substantial discount for mitigation.

38. The sentencing judge was careful to identify all relevant mitigating factors in his judgment, and clearly took into account the steps that the appellant had taken towards rehabilitation. This Court agrees with counsel for the respondent that delay was not a factor that could have provided mitigation in this case. The appellant's complaint is not really that he failed to take account of any material mitigating factors but rather that he afforded insufficient weight to them and afforded too much weight to the aggravating factors in the case.

39. Having regard to where the sentencing judge ended up this Court is not satisfied that those complaints are made out. The sentences actually imposed were appropriate to the offences after due application of mitigation.

40. The Court therefore dismisses the appeal.