



THE COURT OF APPEAL

**Ryan P.
Birmingham J.
Sheehan J.**

87/12

The People at the Suit of the Director of Public Prosecutions

Respondent

V

John Cotter

Appellant

Judgment of the Court (ex tempore) delivered on the 13th day of November 2014, by Mr. Justice Birmingham

1. This is a case where there are some unusual features present and that will be reflected in the procedures the Court proposes to follow. This is an appeal against severity of sentence. The sentence appealed being one of two years imprisonment on each of five charges of sexual assault that were imposed in the Circuit Court on the 28th February, 2012. The unusual feature is provided by the fact that on the 8th July, 2013, at a time when the appellant was within a matter of a month or less of completing the sentence allowing for normal remission, he was admitted to bail by the predecessor of this Court, the Court of Criminal Appeal.

2. We have said that it was an unusual case, but it was also a very difficult and a very distressing case. It is a case involving very serious offences where there were three injured parties and we will just refer to them by their Christian name. The offences go back to the period of 1992/1993 and Laura, when the offences occurred, was between four and six years of age, Elaine in 1991/1992 was seven or eight years of age and Claire, their cousin and also the cousin of the appellant, was ten years of age. The offences which occurred while the appellant was in a position of trust, babysitting, were very serious. The information about the age of the victims shows how serious the offences were.

3. It is also clear from the victim impact reports that were presented that the offences have had a very serious impact on each of these three victims, one case in particular has had a very serious effect indeed. But in each of the three cases there has been a serious and lasting affect, so that is one side of the coin. On the other side of the coin, there were some very significant factors present by way of mitigation.

4. First of all it is the case that the offences occurred when the appellant was himself a teenager. There was some doubt and some confusion perhaps in terms of the transcript as to his exact age, but by reference to the dates that are referred to in the charge sheets and by reference to his date of birth, the offences occurred when he was between fifteen and a half years of age and a maximum of seventeen and a half years of age.

5. It is also the case that the appellant had himself, before becoming involved in this activity, been the subject of sexual abuse. That was strikingly confirmed this morning when it was explained that he had left custody to give evidence against his abuser. The appellant had no previous convictions and since this offending period, he has lived a responsible and constructive life with a good work record. He is married, he is the father of two children and at the sentence hearing, his wife gave cogent and convincing evidence on his behalf as to how good a parent and father that he was and how good a husband he was.

6. This was very difficult case facing the judge in the Circuit Court. We are of the view, serious as the offences were and in particular serious as the offences were having regard to their very considerable impact and the fact that impact lasted right up to and beyond the sentencing date, that the trial judge necessarily was considering a custodial sentence, but on the other side of the coin, he was facing an offender with these remarkably strong arguments in his favour and the fact that the offences had occurred when he was so young, the fact that he was himself the victim of abuse and the fact that so much time had passed when he lived a responsible life.

7. It appears to the Court that in those circumstances, there was an error of principle in approaching the case, as it seems was done, on the basis that a sentence of less than two years was not an option. In the court's view a sentence of less than two years could have been considered. In a situation where the appellant has now been out on bail since July 2013, to embark on a formal resentencing hearing, with the option of putting him back in custody, for another few weeks would be, it seems to this Court, extremely harsh. For that reason, the court proposes to deal with the case by proceeding to suspend the balance of any sentence that is outstanding as of today's day.

8. The terms of that are the usual ones, the sentence will be suspended on terms that Mr. Cotter will be bound to keep the peace for a period of twelve months.