



THE COURT OF APPEAL

**Birmingham J.
Mahon J.
Edwards J.**

The People at the Suit of the Director of Public Prosecutions

247 17

Respondent

V

R. McC.

Appellant

JUDGMENT of the Court (ex tempore) delivered on the 22nd day of January 2018 by

Mr. Justice Birmingham

1. This is an appeal against severity of sentence. The sentence under appeal is an aggregate or global sentence of seven years imprisonment that was imposed on 11th November, 2017 in the Circuit Criminal Court in Dublin. That sentence was imposed in a situation where the appellant had, on 26th July, 2017, been convicted of a number of offences of a sexual nature following a contested trial.
2. The background to the matter is that the case involved two complainants, O.F., whose date of birth was 15th July, 1960 and his brother D.F., date of birth 17th November, 1964. The situation is that the F. family bought a site with a view to building a home on it outside Boyle, and as they visited the site they got to know the appellant. The abuse perpetrated by the appellant started on an occasion when O. and the family were visiting. O. was invited by Mr McC. to go fishing with him. He went out with the appellant on a boat to an island located in a lake close by. On the way, the appellant touched O.'s penis through the short trousers he was wearing. On the island, Mr McC. pulled down O.'s shorts and started to masturbate him. After the family moved in to their new home Mr McC. started visiting regularly. He then proceeded to carry out a large number of acts of abuse of a similar nature to those described above in the sitting room or downstairs room of the house. Abuse also occurred regularly in a car when he would take the injured party out for drives. The indictment contains a number of sample counts but also a number of counts that were specific by reference to events such as the showing of the film *Dirty Harry* and the film *Shaft* in a local cinema. The offences involving O.F. occurred between **1st [1st in speaking notes but not in court]** April, 1972 and 31st December, 1973 at a time when the appellant was between 29 and 31 years of age and the victim O.F. between 11 and 13 years.
3. The second complainant, D.F., as we have seen, was born on 17th November, 1964. In his case, the court was concerned with three specific offences that were committed in the living room of the family home in the period 1st August, 1972 – 31st December, 1973. At the time of the offending here, D.F. was between seven and nine years of age and the complainant was 30 or 31 years.
4. So far as the background and personal circumstances of the appellant are concerned, he was born in June, 1942 and so was 75 years of age at the time of the sentence hearing. In terms of his previous record, he had received a sentence of seven years and ten months imprisonment, with the final two years of that sentence suspended to date from 25th July, 2014. That sentence was imposed in the Circuit Court in Sligo in respect of five complainants aged between ten and thirteen years, the offences there occurring between October, 1981 and August, 1986. His background is that he was a long-term post office worker, he is a married man, the father of three adult children and his eldest child is profoundly handicapped.
5. The sentencing court was told that he had not insignificant health difficulties, though as his counsel properly acknowledged in that court, these were very far from being catastrophic. At the time of the sentence hearing in the Dublin Circuit Court he was well into the sentence that had been imposed following his conviction in the trial involving the five complainants with whom he had contact as a Gaelic football coach that had taken place in Sligo. These offences (the offences dealt with in Sligo) had occurred between October, 1981 and August, 1986. As we have seen, a total sentence of seven years and ten months from 25th July, 2014 was imposed with the final two years of that sentence suspended. That gave rise to an issue as to whether the offences being dealt with in Dublin were in fact subsequent convictions. In that regard, the offending dealt with in Sligo was later in time than the offending dealt with in Dublin but the Sligo convictions were recorded before the Dublin convictions. It was, it may be noted, publicity associated with the Sligo convictions that caused the two complainants in the present case to come forward. As we have seen, the sentencing judge proceeded on the basis that it was best to approach the case on the basis that the maximum sentence for the individual offences was capped at two years. This Court will do likewise.
6. The grounds of appeal advanced include the fact that no headline sentence was nominated. It is said that this means one cannot say with any certainty what credit was given for the mitigating factors that were present. Counsel says that at the sentence hearing he accepted that his client's period in custody was going to have to be prolonged and took no issue with that but that what he did take issue with was the extent of the prolongation. It is merely to state the obvious to say that the offending that the court was dealing with was very serious indeed, directed as it was against two young children. It was clear from the sentence hearing that the offending has had a very serious impact on both complainants. The complainant O.F. made a very powerful victim impact statement which can have left nobody in any doubt about the extent to which he has been affected and continues to be affected by what occurred. Again, there was a statement read into the record in relation to the other complainant. There can be no doubt that it was appropriate that Mr McC.'s period in custody should have been extended and not just by a token amount but that it should have been extended by a significant extent. However, in considering the extent of the prolongation one cannot lose sight of the fact that the offences occurred approximately 45 years ago though neither should sight be lost of the fact that the offences were committed when Mr McC. was an adult. His age at the time of the sentence hearing, his relatively poor health and the age that he was likely to be when he could expect to be released also fell to be considered, as did the fact that the Court had a number of very impressive testimonials that had been provided by individuals who are fully aware of Mr McC.'s situation.
7. The Court does feel that the aggregate sentence or global sentence for both the Sligo matter and Dublin matter is excessive, that the aggregate or global sentence is disproportionate and is not fully compatible with the totality principle. The Court is of the view that aggregate sentence in respect of the Dublin matters of four years rather than seven years would have been more appropriate. Accordingly the Court will set aside the sentence of seven years and it will impose a sentence of one years imprisonment in respect of count 14, a sentence of one years imprisonment on count 15, which is to be consecutive to count 14, a sentence of one year on

count 16, which is to be consecutive to count 15 and one year on count 18, which is to be consecutive to count 16. Those are the counts in respect of which the sentences were imposed in the Circuit Court and this Court would maintain the same structure. The Court will then leave in place the sentence of 18 months imprisonment that was imposed in respect of count 29 which sentence was made concurrent in the Circuit Court and will be so dealt with in this Court. The remaining counts in respect of which convictions are recorded will be taken into consideration.

8. The sentence will date from the same day as the sentence from the Circuit Court.