



**THE COURT OF APPEAL**

**Record Number: 12/19 & 16CJA/19**

**Birmingham P.  
Edwards J.  
Kennedy J.**

**BETWEEN**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT/APPLICANT**

**AND**

**T. S.**

**APPELLANT/RESPONDENT**

**JUDGMENT of the Court delivered on the 15th day of October 2019 by Ms. Justice Kennedy.**

1. The appellant was convicted of one count of rape contrary to s.4 of the Criminal Law (Rape) (Amendment) Act 1990 and two counts of sexual assault contrary to s.2 of the Criminal Law (Rape)(Amendment) Act 1990. Following his conviction, he was sentenced to five years' imprisonment with the final two years suspended in respect of the rape count and three years' imprisonment in respect of the counts of sexual assault, all to run concurrently. The appellant now seeks to appeal against the severity of this sentence. The Director of Public Prosecutions seeks a review pursuant to s.2 of the Criminal Justice Act 1993 of the sentence imposed on the grounds that it was unduly lenient. For the avoidance of confusion, the Director of Public Prosecutions will be hereinafter referred to as "the Director" and Mr S. will be referred to as "the defendant".

**Background**

2. The offences in question were perpetrated by the defendant against his wife and took place on the evening of the 30th August, 2015, in the studio flat in which they then lived in Rathmines. There had been a disagreement between the parties on the previous day and the defendant warned the complainant not to come home the following day. However, the complainant did come home and when the defendant arrived home that night, a row ensued. The complainant described how this culminated in her lying face down on the bed and the defendant proceeded to jump on top of her. He ripped off her clothing and covered her mouth with his hand, so she could not scream. She was crying with his hand over her mouth. He then sexually assaulted her by digitally penetrating her anus; he moved his finger in and out of her, hurting her and then removed his hand from her mouth to retrieve some oil from the bedside table. He got on top of her, poured the oil on her bottom area and inserted his penis into her anus and continued until he ejaculated. He also at some point, digitally penetrated her vagina. Afterwards, the victim went to the bathroom and noted that there was some blood on the tissue. She was also in pain.
3. The complainant contacted an Garda Síochána the next day and made a complaint. On the 3rd April, 2017, the defendant was charged with two counts of sexual assault, a count

of assault, a count of vaginal rape and a count of s.4 rape. The defendant pleaded not guilty and was tried over a three week period in the Central Criminal Court in July, 2018. The trial judge directed a verdict of not guilty in respect of the assault count and the jury disagreed on the vaginal rape count but in respect of the remaining offences the defendant was found guilty.

### **The Sentence Hearing**

4. During the course of the sentence hearing, the initial victim impact report of the complainant, obtained in September, 2018, was handed into the Court. The Court heard that the complainant subsequently wrote a letter addressed to the trial judge. This letter was dated the 30th October, 2018, and was, essentially a plea for clemency by the injured party on behalf of the defendant: -

"Please to accept my husband T.S forgiveness for his conduct towards me. I've completely forgiven him and without a doubt I still have strong feelings for my husband and I'm pretty sure that he also does. I do not want him to go to prison. I totally understand that it may be difficult for the Court to accept this apology but I hope that this letter might give me an opportunity to help prove his remorse. I just want the Court to know about how I feel about this case. I sincerely regret the things that I did. I never thought it was going to have such a big impact on our children's lives and especially on my life and I will admit that it was a huge mistake and that I should have never made it in my life. So for these reasons, I want the Court to forgive me as I did it all in a moment of anger. I really do need my husband with me to be able to be build a great future for our kids."

The complainant went on to detail the difficulties she faced both financially and in relation to taking care of her children without her husband. She also spoke of the positive role her husband played as a father and the positive impact he has had on the children.

5. In imposing sentence, the sentencing judge first identified a headline sentence by assessing the gravity of the offences. In this regard, the sentencing judge referred to several aggravating factors including: that the defendant put his hand on the victim's face and restricted her breathing, he ripped off her clothing and the sexual assaults involved the digital penetration of the anus and vagina. The sentencing judge also referred to the impact of the offending on the complainant and the fact that rape always constitutes a savage attack on the bodily and psychological integrity of the victim. In light of such factors, the he identified a headline sentence of six years' imprisonment in respect of the count of anal rape and four years' imprisonment in respect of the counts of sexual assault.
6. The judge then considered the general mitigation present including the defendant's lack of previous convictions; he had not come to the attention of an Garda Síochána since the offending in question, during which time he lived with the complainant without complaint or incident; he had a long history of hard work; he is acknowledged to a devoted and caring father and his children are greatly attached to him as their primary carer and he had, albeit, after the verdict, acknowledged his guilt and remorse for the offences

committed and for the ways in which he hurt his wife throughout their marriage. Taking account of these factors, the trial judge reduced the sentences to terms of five years for the count of rape and three years' imprisonment for the counts of sexual assault.

7. The sentencing judge then went on to consider the complainant's plea for clemency. The judge accepted that there was no suggestion that the complainant's plea was not genuine but the Court was careful to look at the letter in the context of the evidence as a whole and remarked: -

"The Court notes, with no little concern, the fact that she said she regrets her decision to go to the Gardaí as "a huge mistake that she should never have made". This suggests that she has a misplaced and wholly inappropriate sense of guilt about going to the Gardaí to report the fact that she'd been raped and sexually assaulted by her husband."

The Court went on to consider: -

"In this case, the victim has pleaded for clemency on the basis that a custodial sentence will, in effect, only add to her suffering, because it would deprive her of the benefits of a normal family life that she now seeks for herself, her children, and her mother in law. Therefore, implicit in her plea to the Court is a statement of belief on her part that her husband has rehabilitated, at least to the extent that he can be trusted to live normally within the family unit as a caring and devoted husband and father. The Court is somewhat sceptical about her optimism, not least because it is at variance with the evidence that Mrs S gave to the jury in the course of the trial, but also because she appears to be actuated, at least in part, by a misplaced sense of guilt about making her complaint to the Gardaí in the first place.

The Court, nonetheless, must be mindful not to unnecessarily or gratuitously cause detriment to the victim, and must also give some credit to the defendant for his belated acknowledgment of guilt and expression of remorse to his victim. At the very least, his change of attitude is the first, critically important step towards rehabilitation."

To take account of the reasons underlying the plea of clemency, the sentencing judge suspended the last two years of the five-year term of imprisonment in respect of the rape offence, giving an effective sentence of three years' imprisonment, backdated to the 30th July, 2018, the date on which the defendant first went into custody in relation to these matters

#### **Personal circumstances of the defendant**

8. The defendant is a native of Mauritius, he moved to Ireland in 2009 and he was joined by his wife in 2010. He has two children with the complainant, aged approximately thirteen and fifteen years old, with whom he is very close. At the sentence hearing, a letter was handed into the Court from the defendant in which he apologised to his wife and family

and accepted that the jury came to the right decision in finding him guilty. The defendant has no previous convictions.

**Grounds of appeal of the Director in the undue leniency appeal**

9. The Director puts forward the following grounds of appeal:-

1. The learned judge erred in principle in imposing an unduly lenient sentence in all the circumstances, being a sentence of five years imprisonment with the final two years suspended on condition that he keep the peace and be of good behaviour for a period of two years post release in respect of the offence of rape contrary to section 4 of the Criminal Law (Rape) (Amendment) Act, 1990 and a concurrent sentence of three years imprisonment in respect of the two offences of sexual assault contrary to section 2 of the Criminal Law (Rape) (Amendment) Act, 1990 as amended by section 37 of the Sex Offenders Act, 2001.
2. The learned judge erred in failing to attach appropriate weight to the aggravating factors in the case.
3. In particular, the learned sentencing judge failed to have appropriate regard to the aggravating factors which obtained in relation to the offence of rape contrary to section 4 Criminal Law (Rape) (Amendment) Act, 1990, and erred in determining the headline sentence as being one of six years.
4. The learned judge erred in according undue and excessive weight to the mitigating factors in the case and in particular to the personal factors relating to the defendant and the plea of clemency by the injured party on behalf of the defendant.
5. The sentence imposed fails to reflect the nature and gravity of the offences committed by the defendant.

**Submissions on the undue leniency appeal**

10. Ms. Lawlor S.C. on behalf of the Director submits that the six-year pre-mitigation sentence identified by the trial judge was simply too low given that the offences constituted a very serious breach of trust on the part of the defendant, the offences were committed in the injured party's home, the act of covering her mouth, thus restricting her breathing and ability to cry out and the ripping off of her clothing.
11. It is fair to say that in submissions, Ms. Lawlor focused on the most serious of the convictions, namely; the conviction for anal rape and in this regard says that the headline sentence of 6 years does not adequately reflect the gravity of the offence. She also argues, that the downward adjustment for mitigation was too great and this is particularly so, given that the most powerful mitigation, a prompt plea of guilty, was not present. Moreover, she says that excessive discount was afforded to the defendant for the plea for clemency made on his behalf by suspending the final two years of the sentence. Overall it is submitted on behalf of the Director that if the judge had nominated a greater pre-mitigation sentence, that she would not complain of the discount afforded for mitigation, namely; a downward reduction of one year for mitigation and the suspension of the final

two years to take account of the plea for clemency. However, where the sentence was reduced by 50% and in circumstances where the pre-mitigation figure was six years imprisonment, she argues that this amounts to an error in principle. In conclusion it is submitted that the sentence was a substantial departure from the appropriate sentence and thus the judge erred in principle.

12. In reply Mr Dwyer SC for the defendant contends that this was a case where the trial judge took great care to determine the correct sentence in a matter which was extremely complex. He argues that the director and the defendant found themselves in unexplored territory and could not call in aid any precedent which accurately reflected the complexity of the prevailing circumstances. It is argued on behalf of the defendant that the director is simply incorrect in characterising the defendant's position as being a plea for clemency on the basis of the injured party's forgiveness and the hardship which would be suffered by others if the defendant's imprisonment is prolonged.
13. Mr Dwyer argues that his client is a man with no previous convictions, that he acknowledged his guilt and expressed remorse after conviction, that there was a three year period between the date of the offending conduct and the sentencing of the defendant in which there had been no further incidents or complaints notwithstanding that the defendant and the injured party had resumed relations and lived together for a period of six months. He places particular emphasis on the evidence given by the injured party that the defendant's continued incarceration made matters difficult for her financially and in terms of caring for her children, who are very attached to their father.
14. In written submissions and to a certain degree in oral submissions, Mr Dwyer sought rely upon the evidence of a social worker, who gave evidence in the sentence hearing. However, it is apparent that the social worker was unaware of the stance taken by the defendant at trial and had not had direct dealings with the family.
15. In summary, Mr Dwyer argues that the sentence imposed was not a substantial departure from the appropriate sentence and that the director has failed to establish an error in principle.

#### **Cross-appeal**

16. The defendant has lodged an appeal against severity of sentence and in summary seeks to argue that the trial judge erred in failing to give sufficient or appropriate weight to alternatives to custodial sanction.
17. This court will however first address the appeal on the part of the Director.

#### **Plea for Clemency**

18. There is an unusual feature to this case insofar as the victim, the defendant's wife, following a conviction of her husband for section 4 rape and sexual assault, wrote to the trial judge pleading for clemency for her husband to which plea we will return.

#### **The sequence of events**

19. Following the defendant's conviction, a victim impact report was ordered which was obtained in September, 2018. This report was read to the court in the course of the sentence hearing. The impact report disclosed the effect on the injured party and in particular emphasises the emotional pain for the injured party in witnessing the consequences of the verdict on her children. In her impact statement, the injured party stated that she was not scared anymore, that she goes home and she is comfortable, that she is safe. It is common case that the relationship was from time to time volatile and chaotic. She refers to this in terms in her impact statement and she concludes by indicating that she is moving forward with her focus on her children to give them the best life possible.

20. On the 30th October, 2018, the victim wrote the aforementioned letter praying for clemency for the defendant. This letter was addressed to the trial judge and in it the victim expresses regret in the context of the case. She stated as follows: –

“Please to accept my husband TS forgiveness for his conduct towards me. I've completely forgiven him and without a doubt I still have strong feelings for my husband and I'm pretty sure that he also does. I do not want him to go to prison. I totally understand that it may be difficult for the court to accept this apology and I hope that this letter might give me an opportunity to have proved his remorse. I just want court to know about how I feel about this case. I sincerely regret the things I did. I never thought it was going to have such a big impact on our children's lives and especially on my life and I will admit it was a huge mistake and that I should have never made it in my life. So for these reasons, I want the court to forgive me as I did it all in a moment of anger. I really do need my husband with me to be able to build a great future for our kids.”

21. In the letter, the victim addresses their financial commitments in Mauritius and her financial difficulties in this jurisdiction and praises her husband's abilities to provide for her and the family. She then sets out in some detail the close relationship between the defendant and their two children and emphasises their suffering as a result of his incarceration. She then concludes as follows: –

“I have to say that they were always most attached to their father then they word to me. They are still very young to face this situation and I am really hoping that my husband and I together could make them to become happy again and give them their best life that they really deserve. The purpose of this letter is to convey to you, your honour, and the court my sincere apologies for any inconvenience with have both caused. Please, judge, we would be grateful if you would take all these things into consideration. Thank you very much.”

22. The victim also gave oral testimony in the course of the sentence hearing and indicated inter alia that she forgave her husband and did not want him to go to jail she really needed him for her to children. She also stated that she wants to build a new relationship with him she confirmed in re-examination that her primary concern was her children; her daughter at the time of sentence was 15 years of age and her son 12 years of age.

23. When asked by the judge about the what she had said in her victim impact statement; she said that she was no longer fearful but that she was not happy and this seemed to centre on her children's unhappiness due to their father's absence. The sentence hearing was adjourned for further evidence and on the 21st January, 2019, the judge imposed sentence.

### **Discussion**

24. The jurisprudence in s.2 appeals by the Director is well known commencing with *The People (Director of Public Prosecutions) v. Byrne* [1995] 1 ILRM 279 The principles were summarised in *The People (Director of Public Prosecutions) v. Stronge* [2011] IECCA 79 where McKechnie J stated: –

- “(i) the onus of proving undue leniency is on the DPP;
- (ii) to establish undue leniency must be proved that the sentence imposed constituted a substantial or gross departure from what would be the appropriate sentence circumstances. There must be a clear divergence and discernible difference between the latter and the former;
- (iii) in the absence of guidelines or specified tariffs for individual offences, such a departure will not be established unless the sentence imposed falls outside the ambit or scope of sentence which is within the judge's discretion to impose: sentencing is not capable of mathematical structure and the trial judge must have a margin within which to operate;
- (iv) this task is not enhanced by the application of principles appropriate to an appeal against severity of sentence. The test under section 2 is not the converse to the test on such appeal;
- (v) the fact that the appellant court disagrees with the sentence imposed is not sufficient to justify intervention. Nor is the fact that if such court was the trial court a more severe sentence would have been imposed. The function of each court is quite different: on a s. 2 application it is truly one of the review and not otherwise;
- (vi) it is necessary for the divergence between that imposed and that which ought to have been opposed to amount to an error of principle, before intervention is justified finally;
- (vii) due and proper regard must be recorded with the trial judge's reasons for the imposition of sentence, as it is that judge who receives, evaluates and considers first-hand evidence and submissions so made.”

### **The victim impact statement and the plea for clemency**

25. In her victim impact statement, the victim was very concerned, indeed distressed to see the effect of her husband's incarceration had for her children. It is quite clear that this had a devastating effect on her. Notwithstanding her concerns for her children relating to

their difficulty in coming to terms with their father's absence and the reason for this, she expressed her fear for the defendant and the fact that she no longer felt scared.

26. In assessing the weight to be attributed to the plea for clemency, the judge analysed the reasons behind the plea. He assessed the evidence which he had heard regarding the relationship between the parties; the fact that the defendant left his native Mauritius and came to Ireland in 2009 and was joined by the injured party in 2010 while their children remained in Mauritius. The defendant and the injured party lived together until the date of the offences, in August, 2015. In December, 2015, the children, together with her paternal grandmother came to live with the defendant in Ireland and, notwithstanding the complaint of rape and sexual assault, the injured party reconciled with the defendant and they lived together with the children between March and August, 2016. Thereafter, the children lived by choice, for the most part with their father and paternal grandmother until 30 July, 2018, when the defendant was convicted of the within offences. It is common case that the children are very attached to their father and that the victim was enormously distressed to witness the effect their father's incarceration had on them.
27. The judge considered the victim impact statement of September, 2018, the letter to the court of the 30th October, 2018, and the subsequent evidence to court and concluded that the victim had fundamentally modified her position between the date of her victim impact statement and her letter seeking clemency for the defendant. By the time she gave evidence in the sentence hearing, she indicated a desire to reconcile with the defendant and pleaded with the court not to send him to prison primarily on the basis of her children's distress and the presenting financial difficulties. She also gave evidence that she wished to reconcile with her husband and that she forgave him.
28. The sentencing judge had regard to her impact statement in assessing the gravity of the offending conduct in terms of the effect of the offences on her and observed that rape constitutes a savage attack on the bodily and psychological integrity of the victim.
29. He considered the weight to be afforded to the plea for leniency and suspended two years of the sentence take account of this plea.

### **Analyses**

30. Pursuant to the provisions of s.5 of the Criminal Justice Act 1993, as amended, a court in imposing sentence shall take into consideration the impact of the offence/s on the victim. In the ordinary course, a victim impact statement is prepared and furnished to the court and victim may, if he or she so wishes give oral evidence as to impact. The question of sentence is of course, ultimately one for the sentencing judge. Section 5 of the 1993 Act, as amended, does not alter this. The impact on the victim is one of the factors which a court shall take into consideration in imposing sentence. On rare occasions a court may receive evidence on the part of the victim expressing a forgiving attitude towards the person to be sentenced. This does not alter the fact that this is but one of the factors which a sentencing judge may take into consideration in imposing a sentence. It is true, as in the present case, that leniency may be sought by a victim in order to preserve the family unit and ordinarily this is something to which courts attribute some weight. In

considering a plea for leniency on the part of the victim, Charleton J. observed in *The People (Director of Public Prosecutions) v W.D.* [2008] 1 I.R. 308, at p. 319 of the judgment: -

“a forgiving attitude by the victim towards the perpetrator can be a factor in sentencing, on the decided cases. It can never, however, be determinative because crime is an attack on society and not simply a private wrong.”

31. The judge concluded that the victim regretted her decision to make a complaint to the gardaí and, by saying in her letter that this decision was “a huge mistake that she should never have made”, suggested that she had a misplaced and wholly inappropriate sense of guilt regarding the making of her complaint to the gardaí. With this conclusion we are in entire agreement. It is clear from the content of the October letter that the victim felt that she herself was to blame for her children’s distress, whereas in fact no complaint would ever have been made save for the defendant’s misconduct.
32. The attitude of the victim of a crime is a factor which a judge may take into consideration in sentencing an offender. However, as observed by the judge, the offence is an attack on society and not simply a private wrong, and therefore the attitude of the victim is not determinative. It is a factor to be taken into account and weighed in the balance in order to achieve a proportionate sentence; that is a sentence proportionate to the gravity of the offence and the personal circumstances of the offender. The judge assessed the plea for clemency as being one of the factors to be taken into consideration in constructing a proportionate sentence and in this regard, we are satisfied that the approach of the trial judge was beyond reproach.

#### **The pre-mitigation sentence**

33. We first address the rape offence. The judge determined upon a pre-mitigation sentence of six years imprisonment. The penalty for this offence ranges from a non-custodial option to life imprisonment. However, having regard to the well-established jurisprudence, a rape offence in almost all but the most exceptional cases, merits an immediate and substantial custodial sentence as stated in the seminal decision of *The People (Director of Public Prosecutions) v Tiernan* [1988] I.R. 250.
34. In the instant case, the intrinsic gravity of the defendant’s actions was aggravated by the very significant breach of trust, the restriction of the complainant by the defendant so that she could neither breathe or scream, the forcible removal of her clothing and the pain caused to her. Moreover, she was humiliated and degraded in her own home. We do not believe that there is any scope to differentiate between marital rape and any other category of rape, save that in the instance of marital rape, the gravity of the offence will always be aggravated by the breach of trust and betrayal of the victim which arise by virtue of the circumstances in which the offence is committed.
35. We are of the view that the offending conduct by the defendant was of a grave nature. We have already stated the aggravating factors as identified by the judge but, in addition, we would add the physical pain suffered by the victim, the blood which she observed on

the toilet tissue in the aftermath of this offence, the very significant breach of trust and betrayal and the humiliation of the victim.

36. The sentence imposed was a lenient sentence but the issue is whether the sentence was a substantial departure from the appropriate sentence in the prevailing circumstances. The very fact that a sentence is lenient does not give rise to intervention by a reviewing court. Nothing short of a substantial departure from what would be the appropriate sentence justifies an intervention by a reviewing court.
37. In our view while the judge identified the aggravating factors, and whilst he may have considered, if not expressly stated, the significant breach of trust in that analysis, we conclude that the headline sentence did not adequately reflect the gravity of the offending conduct. The pre-mitigation sentence of six years was simply too low in the circumstances of this serious offending conduct and this, we are satisfied, amounts to an error in principle as the sentence of six years constitutes a substantial departure from the appropriate sentence in the circumstances.
38. However, before we move to quash the sentence and re-sentence the defendant, we will deal with the further argument advanced on behalf of the Director; that the judge erred in permitting excessive discount for mitigation.

#### **Mitigation**

39. In that regard, he took into consideration the absence of previous convictions, that the defendant had not come to the adverse attention of the gardaí since the date of the offences, during which period, and rather unusually, he resided with the complainant for a period of approximately six months, his work history, his relationship with his children and the fact that he is the primary caregiver, the belated acknowledgement of guilt and expression of remorse which followed conviction. Accordingly, the headline sentence for the rape offence was reduced by one year and to take account of the plea for clemency, the final two years of the sentence were suspended on terms. This, Ms. Lawlor urged, amounted to a 50% discount of the headline sentence which was excessive in the circumstances of the case.

#### **Conclusion**

40. In her oral submissions Ms. Lawlor S.C. placed considerable emphasis on the inadequate assessment of gravity, whilst she contended that excessive discount was given to the defendant for mitigating factors and the plea for leniency, the greater issue concerns the headline sentence. The discount afforded for mitigation and the plea for leniency would not, in our view, have impacted significantly on the sentence so as to amount to an error in principle had the headline sentence properly reflected the gravity of the offending conduct.
41. Whilst the judge may have permitted of greater discount than may have been strictly necessary, the reduction of the pre mitigation sentence by some 50% was within the judges' margin of appreciation in the unusual circumstances of the case. The judge cannot be criticised for the manner in which he treated the mitigation present and the plea for clemency.

42. As indicated, we conclude that the error in principle lies with the headline sentence and not with the discount afforded for mitigation or the manner in which the judge dealt with the plea for clemency.

**Re-sentence**

43. As we have identified an error in principle, we now quash the sentence and proceed to re-sentence the defendant. As is well established the gravity of an offence must be measured by reference to an offender's culpability and the harm caused. In assessing the aggravating factors, which include the significant breach of trust and the factors already identified, we are satisfied that the appropriate pre-mitigation sentence for the offence of s.4 rape in the present circumstances is one of 10 years imprisonment.
44. We take account of the mitigating factors, already identified, namely; the absence of previous convictions, that the defendant did not come to adverse garda notice since the commission of the offences, during which time he resided with the victim for the period of some six months without complaint, his work history, and his devotion to his children. Whilst we also taken into account his acknowledgement of guilt and expression of remorse after conviction, to these factors we attach very little weight. An acknowledgement of guilt and expression of remorse post-conviction must be viewed with considerable scepticism.
45. We are satisfied in all the circumstances to reduce the sentence to one of 7½ years imprisonment on foot of the mitigation.
46. The sentencing judge very carefully analysed and considered how he should approach the plea for clemency and having assessed the reasons underlying that plea, he then suspended the final two years of the sentence. An *ad misericordiam* plea is but a factor to be considered on the question of sentence. We are satisfied that the judge was correct in looking to the reasons underlying the plea for clemency in assessing the weight to be given to it. The function of a sentencing court and indeed any court is to administer justice and a plea for leniency does not remove this function from a sentencing court. In analysing the reasons underlying the plea for mercy, the victim made it quite clear that she was most affected by the impact of the defendant's incarceration upon her children, her financial circumstances, her hope of reconciliation and the impact on the wider family. Thus it was clear that she indicated to the court that a custodial sentence for the defendant would only add to her suffering. However, the letter seeking mercy cannot be viewed in isolation. The victim had expressed in her victim statement just one month earlier that she was no longer scared. This is clearly due to the fact that her husband was incarcerated. It is apparent from the impact statement that she was anxious to move forward and focus on her children and her letter of October, 2018, must be viewed against that background. Nonetheless we are conscious of the plea for mercy and the underlying reasons for such plea and, as ordered by the sentencing judge, we will suspend the final two years of the sentence taking that factor into account and also to incentivise rehabilitation. We will not intervene in the sentence imposed on the sexual assault counts and post-release supervision to remain as directed by the judge.

47. As we have concluded that the sentence was unduly lenient, it follows that it is unnecessary to address the defendant's appeal.