THE COURT OF APPEAL

Record Number: 236/2022

The President.
McCarthy J.
Kennedy J.

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

S.H.

APPELLANT

JUDGMENT of the Court delivered (*ex tempore*) on the 11th day of July 2023 by Ms. Justice Isobel Kennedy.

1. This is an appeal against severity of sentence. On the 17th November 2022, the appellant was sentenced to an effective sentence of six and a half years' imprisonment for the sexual offending of her son.

2. The offending can be divided into two tranches, the first tranche between 1984 and 1987; indecent assaults when the injured party was aged between zero and 3 years and the second between 1992 and 1995; sexual assaults, when he was aged between 7 and 11 years approximately.

3. The appellant pleaded guilty to count 1 (indecent assault) on the arraignment date and entered further pleas subsequently to the indecent assault offences relating to the first time period. A trial date was fixed for the 20th June 2022 and on that date, further pleas were entered to the sexual assault offences relating to the second period. A sentence of six years' imprisonment was imposed on count 1, to reflect that period of offending and a sentence of two years' imprisonment was imposed on count 14, to reflect that period of offending. The sentence of 2 years was imposed on a consecutive basis. Twelve counts of indecent assault and three counts of sexual assault were taken into consideration. 18 months of the sentence was suspended.

Background

4. The latter period of offending became known when the injured party attended at a Garda Station in late 2017 and made a formal statement of complaint.

5. The injured party recalled an incident occurring when he was lying in his mother's bed under the covers with her where she used his arm for sexual gratification. He was about 7 years old. This

type of conduct continued for several years with a frequency of three times a month. The offending including using his body, arms or leg for the purposes of self-gratification.

6. The injured party also disclosed matters to his family. The appellant expressed shock and denied the allegations flatly. Her husband continued to ask the appellant about the injured party's complaint and she admitted the offending to him. It transpired also that her sister in and around 2000 had complained to the Gardaí that she had seen the appellant touching the injured party inappropriately when he was a baby. When asked about this at that time by the Gardaí, she denied such conduct and no prosecution was initiated due to the absence of independent evidence. When questioned by her husband following her son's allegations, she made admissions to him regarding her earlier misconduct.

7. The appellant then attended One in Four in November 2017 and made admissions. Information was exchanged between One in Four, Tusla and An Garda Síochána and the admissions made during the course of the programme, the admissions to her husband and to the Gardaí formed the basis for the charges in respect of the early period of the injured party's life. It was accepted in evidence in the court below that without those admissions, it would not have been possible to proceed with the prosecution of the earlier periods of offending.

8. She attended the Garda Station voluntarily in December 2018 following her son's complaint regarding the offending between 1992 and 1995 and it seems that she was extremely distressed and she was confused in terms of the timeframe. This was explained at the appeal hearing by Mr Kennedy SC for the appellant, in that the appellant felt the inappropriate incidents had occurred at an earlier time; namely when the injured party was a baby. She was again interviewed by the Gardaí in March 2019, and she ultimately made certain admissions.

9. The impact on the injured party is understandably severe and long lasting. He read a moving victim impact report in the court below.

The Sentence

10. The judge observed that the appellant used her son over these periods for her own gratification and that the abuse was persistent and prolonged. The judge went on to remark that what was involved was a "*huge betrayal*" on the appellant's part in relation to her son, who was entitled to unconditional love and protection from his mother. He stated that the appellant had a high degree of moral culpability and we entirely agree with this assessment.

11. The judge acknowledged the pleas of guilty; the appellant's co-operation, admissions, and absence of previous convictions; her long work history and contributions to her community, her own personal history and circumstances as a person who was, herself, previously sexually abused. The sentencing judge further took note of the rehabilitative steps the appellant had taken to address the underlying causes of her misbehaviour. He noted the appellant's numerous attendances with therapists and experts in this area, her undergoing of multiple sessions of treatment and therapy to deal with her underlying problems. He also acknowledged the testimonials and references handed in to the court below.

12. The first tranche of offences carries a maximum penalty of 10 years' imprisonment and the maximum sentence for the second tranche is one of 5 years' imprisonment. In respect of count 1, the indecent assault, the sentencing court imposed a custodial term of 6 years, taking into account all of the offences involved in the first tranche. In respect of counts 14, 15, 16, and 18 (sexual

assaults), a custodial disposal of 2 years was imposed, the remaining counts taken into consideration. The sentencing judge further ordered that these sentences were to run consecutively, and that the final 18 months of the aggregate 8 year custodial sentence were to be suspended to aid the appellant's rehabilitation and reform.

13. Accordingly, the appellant was sentenced to a global sentence of 8 years' imprisonment, the final 18 months thereof suspended on express terms that she be of good behaviour while in custody and for the period of 18 months post-release, and that for a period of 1 year post release she places herself under the supervision of the Probation Service and abides by that service's instructions and directions.

Grounds of Appeal

14. The appellant appeals the severity of her sentence on the following six grounds:-

"(i) The learned sentencing Judge erred in principle in failing to set a headline sentence in respect of the offending behaviour.

(ii) The learned sentencing Judge erred in principle in attaching any or insufficient weight to the antiquity of the offences.

(iii) The learned sentencing Judge erred in principle in failing to attach any or significant weight to the Appellant's extensive efforts to rehabilitate herself in the time between the commission of the offences and the sentence date.

(iv) The overall sentence imposed by the learned sentencing Judge was excessive in all the circumstances and failed to have adequate or sufficient regard to the principles of proportionality and totality.

(v) The learned sentencing Judge erred in principle in failing to take proper and/or adequate account of the mitigating factors in determining what reduction ought to be applied to the appropriate sentence on taking such mitigating facts into account.

(vi) The learned sentencing Judge failed to have any or any adequate regard to the psychological report and testimonials that were before the Court."

Submissions of the Parties

Headline Sentence

The Appellant

15. The appellant submits that it is unclear how the court arrived at the sentence imposed as the sentencing judge failed to identify a headline sentence based on an assessment of the seriousness of the offences taking into account aggravating factors before applying mitigation.

16. Reliance is placed on the following excerpt from *People (DPP) v Farrell* [2010] IECCA 116:-

"A sentencing court must first establish the range of penalties available for the type of offence and then the gravity of the particular offence, where on the range of penalties it would lie, and thus the level of the punishment to be imposed in principle. Then, having assessed what is the appropriate notional sentence for the particular offence, it is the duty of the sentencing court to consider the circumstances particular to the convicted person. It is within that ambit that the mitigating factors fall to be considered."

17. *People (DPP) v Kiely* [2016] IECA 252 is also cited, as are the Supreme Court authorities in *People (DPP) v Molloy* [2021] IESC 44 and *People (DPP) v MJ* [2022] IESC 50.

18. In essence, it is said that it is unclear how the court arrived at the sentence imposed and the allowance for mitigation.

The Respondent

19. The respondent says it is abundantly clear that the ultimate sentence imposed reflected not only the gravity of the offending but also the mitigation in the case. It is submitted that in imposing sentence, the judge summarised the mitigating factors and emphasised that he "*must*" take them into account.

20. It is said that there is a reluctance to rigidly insist upon the adoption of such a procedure in every case. Reliance is placed on *People (DPP) v O'Byrne* [2013] IECCA 93 as follows:-

> *"This Court does not consider that sentencing should be approached in an overly punctilious or pedantic way. The formulaic repetition of a checklist is not necessarily the sign of a proper sentence. The function served by having standard steps and criteria which are expected in any sentence is in the first place to remind the sentencer of the factors which need to be addressed, secondly to explain to interested parties and the public at large the reasoning process by reference to which the particular sentence is arrived at, and thirdly thereby to facilitate review in an appropriate case. However, it remains possible to arrive at a correct sentence without specifically invoking familiar headings as it is indeed possible to name check standard criteria and yet arrive at an incorrect sentence."*

21. It is said that the ultimate tariff was correct and that the remarks of this Court in *People (DPP) v David Flynn* [2015] IECA 290 are apposite:-

> *"However, the mere fact that best practice has not been followed in terms of adequately stating the rationale behind the sentence does necessarily imply an error in principle. At the end of the day if the final sentence imposed was correct and there was no obvious error of principle the sentence may be upheld."*

Antiquity of the Offences

The Appellant

22. The appellant says that offences were committed between 26 and 37 years prior to the sentencing hearing and that the judge did not refer to the antiquity of the offences during the course of his sentencing remarks.

23. The following excerpt from *People (DPP) v PH* [2007] IEHC 335 is relied upon:-

> *"The court might then usefully look at the date on which the offences were committed. A sentencing court, in structuring any sentence, is obliged to have regard to the subsequent life circumstances of the victim. In terms of settling on the final tariff of sentence, the offender's conduct in the intervening years will be of particular importance. If there was evidence of genuine repentance of the offending; if the offender had led a good life of family, or friendship, and work; or if the offender had sought in some meaningful way to make up for his abuse of the victims, this should be taken into account. The reason that I mentioned these factors is that part of the settled sentencing principles operated by the Superior Courts emphasise that while punishment must be meted out to an offender in order to ensure the social stability of the community, and that deterrence is a necessary*

> *aspect of sentencing policy, one of the ultimate goals of the sentencing processes is the rehabilitation of the offender. If he has managed to effect that purpose, in the intervening years between offending and sentence, by his own efforts, then, it seems to me, a discount, perhaps substantial in appropriate cases, of the relevant sentence might be contemplated."*

24. It is noted that this dictum was recently cited with approval by the Supreme Court in the *MJ* case *supra.*

The Respondent

25. The respondent contends that the sentencing judge did take account of the historic nature of the offences in imposing sentence. While it is accepted that their antiquity was not overtly referenced, it is submitted that the fact that he was dealing with historic sexual abuse was, at all times, implicit in the judge's judgment.

Rehabilitation

The Appellant

26. The argument is advanced that insufficient weight was given to rehabilitation and reference is made to *People (DPP) v O'Driscoll* [1972] 1 Frewen 351, *People (DPP) v O'Brien* [2018] IECA 2 and *People (DPP) v Fagan* [2020] IECA 290.

27. The appellant's efforts to rehabilitate prior to the sentence date are relied upon. She attended Corcoran and Associates counselling service over thirty years ago and had disclosed the offending behaviour and underwent 2-2 ½ years of intensive therapy. It is further outlined that the appellant engaged with the One in Four programme between 1994 and 1999 and attended 118 sessions of counselling at the Beacon of Light over a three year period between 2018 and 2019.

28. While it is acknowledged that eighteen months of the two-year sentence was suspended, it is submitted that in light of the very significant efforts taken by the appellant to rehabilitate herself between the commission of the offences and the sentence date, insufficient weight was attached to the principle of rehabilitation by the sentencing judge.

The Respondent

29. The respondent argues that the sentencing judge attached sufficient weight to the appellant's rehabilitation. Express reference was made to the steps taken by the appellant to address her underlying problems, and there was an acknowledgment of attendance at therapy sessions. It is emphasised by the respondent that the sentencing judge suspended 18 months of the final sentence, "*to aid rehabilitation and reform.*" This period of suspension was "*fitting and appropriate*" having regard to the significant steps taken by the appellant in rehabilitation, and to the assessment that she posed a low risk of recidivism. Counsel for the respondent refers the Court to the commentary of Prof. O'Malley SC in his treatise, *Sentencing Law and Practice* (3rd ed, Round Hall, 2016) at para. 5-58 wherein he makes the following remarks:-

> "*However, incentivising measures of this nature are not to be granted automatically or as a matter of right. A court must be confident that any concession granted for this purpose has some realistic chance of success, bearing in mind that accurately predicting future behaviour can be remarkably difficult. For instance, there is little point in taking such a step where the offender needs no further incentive to reform because the risk of re-*

offending is clearly minimal or the offender has already made significant and apparently successful efforts at rehabilitation."

Totality Principle and Proportionality

The Appellant

30. The appellant submits that the sentence imposed by the sentencing judge was excessive having regard to the principles of totality and proportionality.

31. In terms of proportionality, reference is made to the following excerpt from *People (DPP) v CW* [1994] 1 ILRM 321:-

> *"… the selection of the particular punishment to be imposed on an individual offender is subject to the constitutional principle of proportionality. By this I mean that the imposition of a particular sentence must strike a balance between the particular circumstances of the commission of the relevant offence and the relevant personal circumstances of the person sentence."*

32. *People (DPP) v McCormack* [2000] 4 IR is relied upon, as is *People (DPP) v MC* [2022] IECA 252, where this Court reduced a sentence of six years' imprisonment with the final twelve months suspended to one of four years' imprisonment for sexual offending committed by a grandfather against his granddaughter. The appellant was aged 71 at the time of the appeal. *MC* is distinguished from the present case on the ground that the appellant in *MC* had not entered a guilty plea and therefore did not benefit from the mitigation attached to same. It is said that this serves to highlight the disproportionate nature of the appellant's sentence.

33. In *People (DPP) v PR* [2019] IECA 150 this Court increased a sentence of five years with four years and three months suspended to a sentence of five years with the final three years suspended for sexual offending committed by a father on his son over a 13-year period. It is submitted that while both *PR* and the present case are concerned with a lengthy period of offending occurring within the family setting, the respondent in *PR* received a considerably more lenient sentence than that imposed on the appellant herein.

34. In terms of totality, *Gilligan v Ireland* [2013] 2 IR 745 is cited:-

> "*The totality concept is a form of check to ensure that, where proportionate sentences are chosen for each offence, the court may, when appropriate, adjust that overall sentence, or the last sentence imposed, in order to achieve proportionality and overall fairness."*

35. It is noted that in *People (DPP) v Crowley* [2021] IECA 178, the sentence was quashed for failing to observe the totality principle. It is submitted the sentence imposed in the present case offends the totality principle and is "*crushing*" in its effect; that its length is "*distributively disproportionate to the overall level of the offending conduct*".

The Respondent

36. The respondent in reply rejects the contention that the sentence imposed was excessive having regard to the principles of totality and proportionality. Counsel notes that the offending was split into two tranches of offending occurring over the course of two distinct periods of time, and that, in all, the case concerned "*a breach of trust of epic proportions*", involving persistent and

prolonged abuse perpetrated by a mother on her son, and giving rise to a very serious and "*deleterious effect*" on the victim.

37. Reference is made to the harrowing and vivid account of the victim who, in the course of his victim impact statement, explained the impact of the abuse on him, including *inter alia* soiling himself up until the age of 11 years and resulted in his ostracisation at the hands of family members who could not deal with the abuse that had occurred. The victim further described that the late guilty pleas had an impact on him too, inasmuch as he was left "*hanging until the very last second possible*" and that he felt as though he was being "*choked.*"

38. Counsel for the respondent disputes the applicability of *MC* as a comparator to the present case. It is said that factually, that authority bears certain distinctions from the present case, particularly: the difference in the quantity of counts on the indictment; the limited period in which the offending occurred; that the victim was aged 10/11 years when the abuse commenced, and; that the maximum custodial penalty available in *MC* was one of 14 years.

39. Similarly, *PR*'s relevance as a comparator is also disputed. The respondent distinguishes it on the following bases: it concerned an undue leniency review; that the headline sentence of 7 years nominated at first instance was upheld, and; that this Court found that the court below afforded an excessive discount for mitigation. More than anything else, it is said that *PR* was an exceptional case involving unique facts and circumstances whereby the offender had already served his carceral penalty and had to return to imprisonment on account of this Court quashing his sentence and resentencing him to a heavier penalty, all in circumstances where he had paid in full a restitutionary amount and had engaged in rehabilitative programmes. The respondent argues that in this regard, *PR* can be set apart from the present case.

40. The respondent refers this Court to several authorities which she regards as comparable to the present case. The first of these is *People (DPP) v SA* [2018] IECA 348, wherein this Court, in the context of an appeal against severity of sentence, upheld a sentence of 9 years' imprisonment with the final 18 months thereof suspended in respect of a number of sexual assault counts and inclusive of concurrent sentences of 3 years imposed in respect of buggery offences. The appellant was the uncle and godfather of the complainant who was aged between 15 and 17 years at the time of offending. The offending was described as very frequent and comprised, among other elements, oral sex. The headline sentence was one of 12 years, which was reduced by 25% to reflect mitigation. The respondent submits that while the offending in *SA* was arguably more serious, in the present case the offending continued for a more prolonged period and concerned abuse perpetrated against an infant and young child.

41. The Director refers to *People (DPP) v KC* [2016] IECA 278 which concerned the imposition, following a contested trial, of a 9-year custodial sentence in respect of indecent assault offences committed over a 4-year period and perpetrated against a female complainant aged 7 to 11 years who was the sister of the appellant. This Court stated, at para. 10 and 11 of its judgment:

> "*This Court has said again and again, that sex crimes against children are always serious. In this case there are factors present which aggravate the seriousness. The relationship of older brother and younger sister, the duration of the abuse spanning as it did such a significant part of the injured party's childhood and the frequency of the acts of abuse to mention some, but not all of those factors. While there are undoubtedly factors present in*

the case, that were in favour of the accused, as the judge acknowledged and which he specifically stated he was having regard to, it is the situation that in the absence of a plea which had it been forthcoming would always have been regarded as highly significant, there was limited scope present for mitigation."

42. This Court dismissed the appeal against severity of sentence in *KC* on the basis that while the sentence imposed was significant and fell in the upper end of the range of offending, it did not fall outside of the permissible range and accordingly did not give rise to an error in principle. Counsel for the respondent in the present case argues that while the offending in *KC* differs from that at issue here, parallels can be drawn *vis-à-vis* the abuse of trust and repetitive nature of the sexual abuse. It is further said that while the appellant in *KC* could not avail of the value of a guilty plea in mitigation, his offending (in comparison to the herein appellant's offending) was of much shorter duration.

Mitigating Factors

The Appellant

43. The appellant recites the mitigating factors in the case including; guilty pleas; admissions made by the appellant to One in Four without which the first set of offences would have been unlikely to have come to light; admissions concerning her offending behaviour to Corcoran and Associates where she attended for counselling thirty years earlier; remorse; efforts made by the appellant to rehabilitate herself since the commission of the offences; difficult experiences the appellant had in her early years owing to the sexual abuse she suffered; the Psychological Report; the absence of previous convictions; a low risk of re-offending; no adverse attention since the commission of the offences.

44. It is said that the sentencing judge failed to have proper and/or adequate regard to the full remit of mitigating factors in this case in the imposition of the ultimate sentence upon the appellant.

The Respondent

45. In response, counsel for the Director refutes any suggestion that the sentencing judge failed to have proper or adequate regard to mitigation in the present case. Reference is made to the sentencing judge's ruling in which, it is said, it can quite clearly be seen that all mitigating factors were considered and taken into account. The respondent states that express reference was made to the appellant's guilty pleas; her co-operation; her admissions; her lack of previous convictions; her contributions to her community; her own personal history and upbringing; her attendance at therapy sessions to address her underlying problems; the assessment of her as posing a low risk of re-offending, and; her extreme remorse. Further, counsel notes that the sentencing judge had at the outset, articulated his mandate to take into account all mitigating factors and that this was appropriately reflected in the sentence imposed.

Psychological Report and Testimonials

The Appellant

46. Particular reliance is placed on excerpts from the psychological report prepared by Dr. P. Randall in particular that it is said she does not meet the diagnostic criteria for paedophilia, she has insight and is at a low risk of reoffending.

47. It is said that taken together with the appellant's extensive history of counselling, the findings in the psychological report should have been afforded more significant weight in the court's consideration of the mitigating factors.

The Respondent

48. The respondent denies that insufficient weight was attributed to the psychological report and testimonials furnished to the sentencing court. It is said that the sentencing judge expressly stated that he was taking into account "*all the references and letters and recommendations handed in by various parties on behalf of the defendant*" and that he expressly noted that their contents were "*impressive.*" Moreover, it is submitted that on the day of the sentence, the judge elected not to proceed straight to sentencing following the hearing.

49. Finally, in relation to the various reports and testimonials, counsel for the respondent submits that it should be borne in mind that while the appellant underwent extensive counselling and accepted responsibility for some of her wrongdoing in advance of Garda involvement, when her sister made allegations in or around the year 2000, the appellant denied that any abuse had taken place. While the extensive counselling the appellant underwent is demonstrative of her desire to rehabilitate and address her issues, it did little to assist the complainant who, up until a few days before the trial, was under the impression that he would have to give evidence before a jury in respect of the latter tranche of offences.

The Grounds

50. Whilst several grounds of appeal have been filed and argued, ultimately, the complaint advanced in that when one looks to the cumulative effect of the issues, the sentence imposed is simply too high, and this is an error in principle. We will briefly address each ground.

The Absence of a Headline Sentence

51. We are not persuaded that this particular argument bears detailed scrutiny. We are cognisant that the sentencing judge is one of the most experienced judges in this jurisdiction and it is undoubtedly the position that he carefully absorbed, considered and analysed all the evidence before arriving at the ultimate sentence. We have repeatedly said that the absence of a nominated headline sentence is not necessarily an error in principle. Certainly, the nomination of a pre-mitigation sentence assists an appellate court in assessing the judge's methodology, but at the end of the day, the important issue is whether the ultimate sentence imposed is within the margin of appreciation. However, in cases such as this case where the offending is serious and there is much mitigation, the tiered approach would have been of assistance to this Court.

52. We can see that the judge was fully aware of the range of penalty open to him, distinguishing between the penalty available under the Criminal Law Rape Act, 1981 and the Criminal Law Rape (Amendment) Act, 1990. He summarised the facts in his usual precise and accurate manner, identifying succinctly the aggravating factors including the appalling breach of trust by the person in whom the injured party ought to have been able to place the most trust. Indeed, the judge properly called this the greatest betrayal, that of a mother to her child. Taking account of that and of the harm done to the injured party, the judge considered the appellant's moral culpability to be of a high degree. He also noted the prolonged and persistent nature of the offending.

53. The abuse of a young child by a parent is an enormous breach of trust, to abuse a child between the ages of zero and three years old is deeply offensive or as described by Mr Kennedy causes one to feel revulsion. However, a court must look to the nature of the activity involved to assess the moral culpability of an offender and the harm done. It must also be recalled that in the instance of the first tranche of offending, the matter only came to prosecution as a consequence of the appellant's admissions.

54. The abuse continued when the appellant's son was aged from 7 years to 11 years causing emotional pain and suffering to the injured party. The nature of this abuse was of an even more serious order. The previous offending aggravates these offences and the impact on the injured party was and continues to be really severe. The confusion, the disbelief, the extraordinary acts of a mother to abuse her own flesh and blood for her own gratification places this offending undoubtedly in the higher ranges of penalty and while the judge did not identify a headline sentence, he stated that she has a high degree of moral culpability, and he was certainly right about that.

Mitigation, the Antiquity of the Offending and Totality.

55. Moving on then to the discount afforded for mitigation, yes, it is the position that we cannot say with precision the discount afforded for mitigation, but, again, the judge was fully aware that the range of penalty for the offending contrary to the 1981 Act extended from that of a suspended sentence to one of 10 years imprisonment. He was of the correct view that in light of the enormous betrayal and the harm to her son, that her moral culpability was high. He then took account of all aspects of mitigation and it must be recalled that while the appellant pleaded guilty at an early stage to one count, being that of indecent assault, she took a trial date on the offences relating to the second tranche and did not enter pleas in respect of those matters until the trial date, however, the intention to notify pleas was conveyed to the Director.

56. Moreover, in arriving at the ultimate sentence the judge took into consideration the other counts to which the appellant had pleaded guilty.

57. While the judge did not specifically state that he was taking account of the principle of totality, we believe he did so. The second series of offending when the injured party was aged from 7 to 11 years old was even more serious in nature. The impact was and is, as stated, really severe, the matters we have already alluded to apply; the confusion, the breach of trust, the betrayal. The judge clearly intended to impose sentences on a consecutive basis and in order to take account of the totality principle and to thus ensure proportionality, he imposed a sentence of 2 years on the sexual assault counts.

58. So, we cannot find an error in the matters the judge considered in mitigation, but we do have a concern regarding the discount afforded for two very salient features of mitigation. First, the fact that no prosecution would have ensued without the admissions to the various parties by the appellant regarding the first series of offending and second, the fact that the appellant attended counselling some 30 years ago, prior to any allegations being made. These are relevant factors in the assessment of a proportionate sentence and while the judge acknowledged these, we are of the view that the ultimate overall sentence imposed is simply too high.

Rehabilitation

59. It is important to reiterate that the appellant attended a counselling service in 1992, and at that point stated her wrongdoing regarding the earlier period of offending. She then attended One in Four in November 2017 and acknowledged her earlier wrongdoing. She consented for all information to be provided to Tusla, and the Gardai. She attended another organisation, the Beacon of Light for psychotherapy sessions, committing to the therapeutic process and attending up to 118 sessions over a period of 3 years.

Decision

60. The sentencing judge properly identified the aggravating and mitigating factors, however, we consider the ultimate sentence of 8 years with the final 18 months suspended to be excessive which constitutes an error in principle. Consequently, we will quash the sentences imposed and proceed to re-sentence.

Re-Sentence

61. We sentence the appellant *de novo* as of today and take account of the factors which aggravate each tranche of offending. In respect of the first series of offending between 1984 and 1987, where the penalty extends from that of a suspended sentence to a maximum penalty of 10 years, we consider the appropriate headline sentence to be that of 5 years' imprisonment. We take account of the mitigating factors already outlined and in particular the fact that this offending could not have been prosecuted without the appellant's admissions. We reduce the headline in light of the mitigating factors to one of 3 years' imprisonment.

62. We now look to the second series of offending, where the maximum penalty is that of 5 years' imprisonment. Although, the maximum penalty is lower, the offending was of an even more serious nature, the impact on the injured party was and continues to be very severe. The offending was prolonged and persistent. It was aggravated by the previous wrongdoing which she acknowledged in 1992. In those circumstances, we mark this offending at the maximum level of 5 years. In considering mitigation, lesser weight must be afforded for the late pleas of guilty. We conclude the appropriate reduction for mitigation which includes her attendance at the counselling services to be that of 3 ½ years.

63. We consider that the sentence for the second tranche of offending should be imposed consecutively to the first series and so we impose a sentence of 3 years on count 1 and 3 ½ years on count 14, the remaining counts are taken into consideration. Giving a total sentence of 6 ½ years' imprisonment. In arriving at this sentence of 6 ½ years we have considered the principles of totality and proportionality.

64. In order to incentivise her rehabilitation, we suspend the final 18 months of her sentence on the same terms and conditions as in the court below. She remains on the sex offenders register for the mandated period under statute.