APPROVED

THE COURT OF APPEAL

Record Number: 09/2022

Birmingham P.
McCarthy J.
Burns J.

IN THE MATTER OF SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993

BETWEEN/

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

- AND -

RD

RESPONDENT

JUDGMENT of the Court delivered on the 23rd day of April, 2024 by Ms. Justice Tara Burns.

1. This is an application pursuant to s. 2 of the Criminal Justice Act 1993 seeking a review of the sentence imposed on the respondent on grounds of undue leniency.

2. The respondent was charged with 74 alleged offences, including 30 counts of oral rape contrary to s. 4 of the Criminal Law (Rape)(Amendment) Act 1990; 37 counts of sexual assault contrary to s. 2 of the Criminal Law (Rape)(Amendment) Act 1990; 1 count of attempted s. 4 anal rape contrary to common law; 1 count of false imprisonment contrary to s. 15 of the Non-Fatal Offences Against the Person Act 1997; 3 counts of assault causing harm contrary to s. 3 of the Non-Fatal Offences Against the Person 1997; and 1 count of criminal damage contrary to s. 2(1) of the Criminal Damage Act 1991. Some of these counts relate to individual events and some are charged on a sample count basis. These offences occurred between 1 May 2004 and 31 December 2006 when the injured party was a child aged 13 to 15 years old.

3. The respondent was also charged with a count of harassment contrary to s. 10 of the Non-Fatal Offences Against the Person Act, 1997 which occurred over a 3 year period between 1 June 2007 and 1 May 2010 and a further count of sexual assault which occurred between 1 January 2009 and 31 July 2009.

4. A trial date was taken in the matter, however on the date the trial was due to commence, the respondent entered pleas of guilty to 15 counts on a full facts basis. A *nolle prosequi* was entered in relation to three counts which alleged two sexual assaults and a s. 4 oral rape in a hotel in London.

5. On 20 December 2021, the sentencing judge imposed concurrent sentences on the respondent of:-

    i. 5 years imprisonment in respect of the sexual assault offences;
    ii. 10 years and 6 months imprisonment with the final 18 months suspended upon certain terms and conditions in respect of the s. 4 rape offences;
    iii. 2 years imprisonment in respect of the assault causing harm offences; and
    iv. 3 years and 6 months imprisonment in respect of the harassment offence.

Background

6. The facts of this case are unusual, shocking and extremely disturbing. The injured party, a child for nearly all of the offending, and a young man attempting to make his way in the world at the conclusion of the offending, was treated by the respondent in a manner devoid of humanity, morality and respect.

7. The injured party was between the age of 13 and 15 when all of the offending, except for the harassment and a single sexual assault offence, occurred. He was between the age of 16 and 19 when he was harassed by the respondent over a 3 year period and 19 when the final sexual assault offence occurred. The respondent was almost 11 years his senior.

8. The respondent was employed as a GAA coach in various schools in the locality where the injured party resided. He coached the injured party, who was a promising footballer, from 4th class until he finished primary school. The injured party became very friendly with the respondent. The night before the injured party commenced secondary school, the respondent contacted him via text message wishing him well. Thereafter, the respondent frequently text messaged the injured party who came to consider the respondent as another parent. At this time, the injured party was experiencing difficulties in his family life as one of his parents was suffering with alcohol addiction and the other parent worked long hours to provide income for the family.

9. A couple of months later, the respondent, who was also employed by the local GAA County Board, and reported on matches for a local newspaper, offered the injured party, then aged 12, a job doing administrative work. The injured party was delighted to accept. The amount of work offered to the injured party increased as the months went on. By summer 2004, the injured party spent almost every day working with the respondent at the local GAA grounds and helped the respondent with his newspaper reporting.

10. The injured party continued in his sporting pursuits and became an accomplished GAA player, playing at a high level.

11. The respondent began buying the injured party gifts, which increased in value over time. He brought him for meals and gave him a loan of an expensive laptop. The respondent contacted the injured party via text message, three to four times a day.

12. The respondent began to tell the injured party that they should stop being friends as the respondent feared that the injured party would turn his back on him. These conversations would result in the injured party becoming upset and the respondent comforting him. On one of these occasions, the respondent touched the injured party's genital area outside his clothes whereupon, the injured party froze. The respondent asked was he all right. He then proceeded to pull down his own trousers and pushed the injured party's head down to his genital area requiring him to perform oral sex on him. After the respondent ejaculated, he masturbated the injured party. At the conclusion of the incident, the respondent said, *"It's not so bad, is it?"* and carried on as if nothing had occurred.

13. About a week later, the respondent brought up what had occurred. When the injured party did not respond, the respondent commented "*It wasn't that bad*". He again began touching the injured party's genital area. The injured party was uncomfortable and nervous and tried to pull away, but the respondent persisted touching him. Again, he pulled the injured party's head towards his genital area and required him to perform oral sex on him until he ejaculated in his mouth.

14. From then on, this behaviour continued on a regular basis, to include the respondent also masturbating and performing oral sex on the injured party. It occurred two to three times a week at the GAA grounds, increasing to three to four times a week as time went on, with sexual assaults sometimes occurring twice a day.

15. In autumn 2004, the injured party stayed overnight at the respondent's house. After sexually abusing the injured party in the usual manner earlier in the night, and requiring the injured party to watch male gay pornography, the respondent attempted to anally penetrate the injured party when he went to bed. The injured party said he felt uncomfortable during this assault which concluded the event. However, he became very distressed and upset.

16. After Christmas 2004, the injured party was brought on a shopping trip by the respondent to Dublin. They stayed in a hotel overnight where the injured party was subjected to sexual assault and s. 4 oral rape. On another occasion, he was brought to the GAA club finals in Dublin by the respondent when again they stayed overnight in a hotel and the same abuse occurred. For the injured party's 14th birthday, the respondent bought him a very expensive phone. Before giving him the phone, the respondent asked whether the injured party loved him. Having answered in the affirmative, the phone was handed over to the injured party. Thereafter, the respondent bought credit for the phone on a regular basis.

17. The first incidence of violence occurred on an occasion when the respondent brought the injured party to the races in the summertime of 2005. When the respondent discovered that the injured party had been more successful gambling than he had been, he grabbed the injured party's wrists and squeezed them hard before letting them go.

18. At a summer camp the injured party was attending, the respondent came onto the pitch and asked to speak to the injured party in the dressing room. Having followed the respondent to the dressing toom, the injured party refused to masturbate the respondent. The respondent punched the injured party in the face bursting his lip. In the course of that summer, the respondent's aggressive and irrational behaviour continued with the respondent pulling the injured party's hair, and kicking and spitting at him on occasions that girls showed interest in him.

19. In September/October 2005, the respondent again attempted to have anal intercourse with the injured party. He managed to penetrate the injured party partially which caused excruciating pain. The injured party felt degraded and emotional and told the respondent that he did not want to do this.

20. The respondent brought the injured party to London in February 2006. When the injured party declined to engage in sexual activity with the respondent, he tore off his shirt, ripped it up and proceeded to beat the injured party all around his body, ultimately sitting on him and punching his body. The respondent also spoke in abusive and derogatory terms about the injured party and his family. The offences alleged to have occurred in London were not taken into consideration by the sentencing judge with *nolle prosequis* being entered in respect of those counts, but the facts relating to these events were adduced in evidence to give context to the overall offending behaviour.

21. While the sexual abuse continued after they returned from London, the injured party began objecting more frequently resulting in this activity becoming less regular. However, this resulted in the injured party being subjected to more aggressive behaviour by the respondent.

22. On an occasion of success in a significant match, the respondent insisted that the injured party return home with him rather than returning on the bus. When they stopped in a restaurant, the respondent proceeded to punch, kick and spit at the injured party in front of all the customers in the restaurant.

23. The respondent required that the injured party stop playing soccer, which the injured party also excelled at. Despite this, the injured party secretly played in a school match. When the injured party returned to the GAA grounds after the match, he met the respondent in his office who locked the door. The respondent then proceeded to beat the injured party up, beating him around his body but avoiding his face. He smashed his phone. He also punched him in the testicles and then began to

masturbate him. This ordeal lasted for two to three hours with the injured party pleading to be let go.

24. From April/May 2006 until September 2006, sexual abuse continued to occur, however physical abuse became a regular feature when the injured party refused to engage sexually with the respondent.

25. By September 2006, the sexual abuse ceased. However, the respondent began texting, emailing and calling the injured party even more regularly and staying on the phone for hours. This contact displayed bullying and threatening behaviour, with the respondent being regularly abusive towards the injured party by denigrating the injured party and his family and telling him he was worthless.

26. By November 2006, the injured party contemplated committing suicide and took steps towards that. The respondent discovered the injured party in a very distressed state and promised that he would stop his behaviour. While there was a period when he ceased to have contact with the injured party, he began contacting the injury party again from February 2007.

27. Rumours about the injured party and the respondent being in a relationship began circulating with a distressing public announcement being made at a public event.

28. The respondent told the injured party not to attend certain GAA games. This was despite the fact that the injured party was an accomplished player. If the injured party attended at a game, the respondent would text him telling him to get off the grounds. On one occasion, the respondent came up to the injured party, who was in company, and began swearing at him before he intentionally knocked a drink out of his hand. When the injured party attended training, the respondent sometimes would take his clothes from the dressing room. On one occasion, the respondent showed the injured party a jersey of his which had gone missing and which was now ripped up. As a result of threats to make a scene of him if he attended games, the injured party ceased attending.

29. The respondent also threatened the injured party with beatings and threatened that he would bring down men from Northern Ireland to kneecap or kill him.

30. The injured party left his GAA club as the respondent told him he would force him out. He had to stop reporting for the local papers as the respondent said he would report him to the National Union of Journalists. The injured party began drinking heavily as a result of the psychological pressure he was under. The respondent told him that he was not to go out in his local town or else he would beat him up and make a scene. He threatened that he was going to tell his female friends that he was gay. The respondent text him constantly.

31. On an occasion that the injured party was socialising in a neighbouring village, the respondent met him on the street and began to beat him up. Two strangers intervened to stop the attack, however, the respondent followed the injured party down the road and continued his attack on him.

32. As the injured party's leaving certificate approached, he asked the respondent to leave him alone so that he could study. While a short break occurred, the texts, calls and threats began again and were incessant.

33. In 2009, the injured party was asked by another man, who had some knowledge of the beatings which had been administered to the injured party by the respondent, to come to the GAA grounds to do some work. When he went to the office, the respondent was present and began beating the injured party up. He got on top of the injured party and began spitting and punching him in the face and stomach whilst touching the injured party's genital area.

34. The injured party left his hometown to attend college in another county. After a few months, the respondent began texting and calling again. He found out where the injured party was living and made him aware of this. On one night alone, he called the injured party over 50 times and sent him 100 text messages. He also emailed the injured party. One such email reads:-

> *"No matter what it takes I'll meet you face to face in town before Christmas and see how big a man you are then. Text me and act all big and hard but I have lots of time and what I don't mind doing is waiting, that's for sure, because it will be better when it happens. You think this is over. It's only f…ing starting. This will never be over until one of us is dead and I mean that. Kill me if you want. I don't care. Why should I let you have a good time?"*

35. The injured party dropped out of college. He stopped playing any sport, attending any GAA matches, and reporting on matches. He wished his life was over. It had come to the point that he suffered from significant depression and found himself crying every night. In short, he was a prisoner in his own young life which was decimated as a result of the sexual acts perpetrated upon him by the respondent and the respondent's manipulative, controlling and obsessional behaviour towards him. An impressive and detailed victim impact report was before the sentencing Court wherein the injured party described the devastation wrecked on his life by the respondent.

Grounds for Review of Sentence

36. By notice dated 13 January 2022, the applicant appealed the sentence of the respondent on the following grounds:-

> *"1. The Learned sentencing judge erred in fact, law and in principle in placing the offending in the "more serious range of offending" (10 – 15 years) in accordance with DPP v FE [2019] IESC 85 and not "the most serious range of offending" (15 years – life imprisonment) bearing*

in mind the intrinsic culpability of the Respondent and the aggravating factors surrounding the commission of the offences including:-

a) The vulnerability and age of the victim when the offending commenced.
b) The significant and grave breach of trust involved given that the Respondent was the victim's coach, engaged the victim in quasi employment and was nearly 11 years older than him.
c) The multiplicity of the offending and the fact that the sexual offending was ongoing over a period of more than two years.
d) The grooming of the victim and the dominant position of the Respondent in the victim's life.
e) The gratuitous violence inflicted on the victim.
f) The public humiliation of the victim.
g) The threats issued to the victim.
h) The harassment of the victim for up to three years after the sexual offending ended which the learned sentencing Judge described as "serious numerous and significant".
i) The severe and lasting impact of the offending on the victim.

2. If the Learned sentencing Judge was correct in not taking into consideration the harassment of the victim by the Respondent for a period of three years after the sexual offending ended, as he appears not to have done, for the purpose of assessing the range of gravity of the sexual offending in accordance with the guidelines in FE, the Learned sentencing judge erred in fact, law and in principle in ordering all sentences to run concurrently. In particular he erred in ordering the sentence of 3 years and 6 months imposed on the charge of harassment which had occurred on divers dates between the 1st June 2007 and the 1st May 2010 to run concurrently with the sentence of nine years imposed in respect of the sexual offending which had taken place between the 1st May 2004 and the 31st December 2006, apart from a sole count of sexual assault which occurred in 2009.

3. The Learned sentencing judge erred in law, in fact and in principle in holding that, following the judgment of this Honourable Court in DPP v SK [2021] IECA 90, and in the circumstances which prevailed in the instant case, the threshold for rape under Section 4 was lower than the threshold for rape cases as set out in DPP v FE [2019] IESC 85, where factual absence of consent is required. It was not contended by the Respondent herein that there was consent on the part of the victim nor could it have been in circumstances where the victim, who was a vulnerable child from a difficult family background, was groomed by the Respondent, who was in a position of trust, prior to the commencement of the sexual offending so that he thought such offending was normal.

4. The Learned sentencing judge erred in fact, law and in principle in imposing a net custodial sentence of 9 years which was not proportionate, in all the circumstances, to the gravity of

the offending and the circumstances of the Respondent, taking into consideration in particular the intrinsic culpability of the Respondent, and the aggravating factors surrounding the commission of the offences (having regard to the factors listed at 1 a) – h)).”

Personal Circumstances

37. The respondent was 41 when sentenced. He is a single man. He had worked with the GAA county board and also as a sport journalist with a local newspaper. He was arrested in the United States on foot of an extradition warrant on 16 January 2019, having left this jurisdiction after he was questioned in relation to these allegations, and was returned to Ireland on 5 April 2019. He has been in custody since that date. He had no previous convictions at the time of sentencing but is awaiting sentence before the Circuit Court where he has entered guilty pleas in respect of three charges of gross indecency which had taken place between 2005 and 2006.

Sentencing Determination

38. The sentencing judge determined to impose a global sentence reflecting all of the offences committed and indicated that having regard to *The People (Director of Public Prosecutions) v. FE* [2021] 1 IR 217, which he analysed in detail, a headline sentence of 13 years imprisonment was appropriate. He stated:-

“Nevertheless, given the multiplicity of the offending and the level of culpability and the great harm caused, in accordance with the totality principle, the Court must bear in mind all of this, when assessing the headline sentence. In my view, given all of these factors, the appropriate headline sentence, taking into, and I again repeat, the factors, these factors being multiplicity of offending, breach of trust and age disparity, must be at a point towards the mid-range of the more serious offences. In the circumstances, I am satisfied that the appropriate sentence, on a global basis, in respect of the section 4 rape offences and attempted rape, before taking into account mitigation is 13 years.”

39. Having regard to mitigatory factors present in the case, he reduced the headline sentence by two and a half years and imposed a term of imprisonment of 10 and a half years of which he suspended 18 months on certain terms and conditions.

40. In relation to the sexual assault offences, the sentencing judge determined a headline sentence of 7 and a half years imprisonment was appropriate. He imposed a term of imprisonment of 5 years having regard to mitigatory factors. With respect to the s. 3 assault causing harm offences, he determined that a headline sentence of 3 years imprisonment was appropriate. He imposed a sentence of 2 years imprisonment having regard to mitigatory factors. In relation to the harassment offence, he determined that the offending fell into the mid-range category of offending and that a headline sentence of not less than 5 years was appropriate. He imposed a sentence of 3 years and 6 months imprisonment in light of mitigatory factors.

Submissions of the Parties

41. The applicant submits that, having regard to the circumstances of the case, the sentences imposed constitute a substantial departure from an appropriate sentence, such that they are unduly lenient within the meaning of s. 2 of the Criminal Justice Act 1993 and having regard to the principles set out in *The People (Director of Public Prosecutions) v. Stronge* [2011] IECCA 79.

42. The applicant submits that the sentencing judge erred by identifying the range of offending as being in the mid-range band of offending, which attracts a headline sentence of between 10 – 15 years, as opposed to the most serious band of offending which attracts a headline sentence of 15 years to life imprisonment. It is submitted that given the additional assaults and harassment which occurred, the sentence imposed does not adequately reflect the seriousness of the offending. It is further submitted that either a consecutive sentence should have been imposed for the harassment offence, or the headline sentence should have been higher.

43. It is also submitted that the sentencing judge erred in his consideration of *The People (Director of Public Prosecutions) v. SK* [2021] IECA 90 and determined a headline sentence lower than was appropriate having had regard to submissions made on behalf of the respondent to the effect that because it was not necessary to prove a lack of consent with respect to the sexual offences which occurred prior to the injured party attaining 15 years of age, this should be reflected in the nominated headline sentence.

44. The respondent submits that the sentence imposed by the sentencing judge was carefully considered and within his discretion and adequately reflected the totality of the offending at issue.

Discussion and Determination

45. The principles for determining undue leniency are well established and are set out in *The People (Director of Public Prosecutions) v. Stronge* which this Court adopts. In essence, the applicant must prove that the sentence imposed constitutes a substantial departure from the appropriate sentence such that an error of principle is established, before this Court will intervene.

Headline Sentence

46. In *The People (Director of Public Prosecutions) v. FE* [2021] 1 IR 217, Charleton J set out the considerations applicable when determining what category of seriousness a rape offence falls into. With respect to offences falling within the mid-range of seriousness, he stated at paragraph 59 and 64 of his judgment:-

> *"59. There is a category of rape cases which merit a headline sentence of 10 to 15 years imprisonment. What characterises these cases is a more than usual level of degradation of the victim or the use of violence or intimidation beyond that associated with the offence, or the abuse of trust.*
>
> *…*
>
> *64. It remains the situation, on the run of precedents since the WD analysis, that a series of offences is not an ordinary rape and, on the headline sentence, is not to be punished as*

if such offences were in that lower band of seriousness. Where there is unusual violence or humiliation or cynical planning, the ordinary category of rape cases is passed and consideration of this higher band should be where the sentencing court starts."

In relation to the most serious type of offending, attracting a penalty of 15 years to life imprisonment, Charleton J. approved the following passage from *The People (DPP) v. WD* [2008] 1 IR 308, at paragraph 65 of his judgment:-

"The courts have placed particular emphasis on the harm that rape does to the victim and where there is a special violence, more than usual humiliation, or where the victim is subjected to additional and gratuitous sexual perversions, these will have a serious effect on the eventual sentence. Abusing a position of trust, as with a person in authority, misusing a dominant position within a family, tricking a victim into a position of vulnerability or abusing a disparity in ages as between perpetrator or victims also emerge as aggravating factors. Abusing a particularly young or vulnerable victim increases the already serious nature of the offence of rape. Coldly engaging in a campaign of rape, shows a particularly remorseless attitude which is not necessarily mitigated by later claims of repentance. Participating in a gang rape involves a terrifying experience for the victim and using death threats and implements of violence for the purpose of wielding authority or sexual perversion are also serious aggravating factors. Attacking the very young or the very old also emerges as an important aggravating factor from these cases."

47. As already stated by the Court, the offending in the instant case was truly shocking and appalling.

48. With respect to the sexual offending, the injured party was only 13 – 15 years old when all bar one sexual offence took place; he was a vulnerable child who had difficult family circumstances which were known to the respondent; the respondent was almost 11 years older than the injured party; the respondent was in a dominant position with respect to the injured party and occupied a position of trust which he knowingly breached in the most grievous fashion; the offending was incessant over a period of two year occurring a minimum of twice a week up to a maximum of 4 times per week, and on occasion twice a day; and the respondent accepted that he knowingly engaged in an planned system of grooming and control. On two occasions, physical violence was utilised in conjunction with a sexual assault. On another occasion, the injured party was required to watch male gay pornography.

49. However, there are a number of additional factors present in this case which are separate to the sexual offending and which must also be reflected in the sentence imposed, namely the serious assaults which were perpetrated on the injured party; the humiliating and degrading behaviour which he was subjected to in public by the respondent; the significant campaign of harassment which occurred over a three year period; the level of control and domination which the respondent sought to exercise over the injured party in all aspects of his life; and the serious level of harm caused to the injured party arising from the offending as a whole.

50. It was open to the sentencing judge to impose either a consecutive sentence with respect to the offences relating to these matters, most particularly the harassment offence which occurred some time after the sexual offending ceased, or to impose a global sentence reflective of these significant aggravating factors. Acting within his discretion, the sentencing judge determined to impose a global sentence and an error in principle does not arise from this approach.

51. However, we are of the view that the headline sentence identified by the sentencing judge did not adequately reflect the global seriousness of the offending at issue and that the additional non-sexual factors present aggravated the offending to the extent that it fell into the *"most serious"* category of offending.

52. The respondent made the argument, both at the sentence hearing and before us, that as the assaults which were perpetrated on the injured party were not in aid of forcing the injured party to submit to sexual activity, violence was not a feature of the sexual offending. Firstly, that is not quite accurate, as a sexual assault of the injured party occurred on the occasion that he was falsely imprisoned by the respondent and beaten up over a two to three hour period despite his pleas to be allowed to go. Secondly, while the assaults, apart from the false imprisonment assault, were divorced from coerced sexual activity, and for that reason are not reflective of the nature of violence referred to in *The People (Director of Public Prosecutions) v. FE,* the assaults still must be factored into a headline sentence when sentencing in a global manner and are properly considered as aggravating matters.

53. The same reasoning applies in relation to the respondent's argument with respect to humiliation and degradation. While the injured party was not exposed to extreme levels of humiliation or degradation in the course of the sexual offending, he was so exposed in the course of the public assaults, which must be taken account of when determining a global sentence.

54. In addition, the separate harassment offence must be taken account of. Having nominated a headline sentence of not less than five years for the harassment offence, the headline sentence ultimately identified for the global offending does not appropriately reflect the seriousness of that offending.

55. This is an unusual case because of the existence of the very significant non-sexual offending. This differentiates the instant case from *The People (Director of Public Prosecutions) v. FE* and the examples referred to in FE. Once the sentencing judge determined to impose a global sentence, it was incumbent on him to identify a headline sentence that adequately reflected the very serious offending comprised in the non-sexual offending. The sentencing judge fell into error by not categorising the global offending to be in the most serious category which error led to a substantial departure from what the appropriate sentence was in this matter within the meaning of s. 2 of the Criminal Justice Act, 1993.

The People (Director of Public Prosecutions) v. SK

56. The applicant made a further submission that the sentencing judge identified a headline sentence lower than was appropriate having had regard to submissions made on behalf of the respondent to the effect that because it was not necessary to prove a lack of consent with respect to the sexual offences which occurred prior to the injured party attaining 15 years of age, this should be reflected in the nominated headline sentence. Counsel for the applicant submitted that it was the applicant's case that consent to the sexual offending was not present as the injured party was not in a position to give a valid consent in light of the exercise of dominion over him by the respondent.

57. It is not clear to us that the sentencing judge did in fact factor this into his assessment of the headline sentence. This accords with the respondent's assessment of the sentencing judge's ruling. In light of the uncertainty with respect to the sentencing judge's determination in this respect, we are not disposed to consider this submission further.

Conclusion

58. Accordingly, in light of the error in principle identified by the Court, we are of the opinion that the sentence imposed in respect of the s. 4 rape offences was unduly lenient within the meaning of s. 2 of the Criminal Justice Act, 1993. In light of this determination, the Court will quash the sentence imposed and proceed to re-sentence the respondent *de novo* as of today's date.

Re-Sentence

59. As already indicated, we are of the view that imposing a consecutive sentence in respect of the harassment offence or increasing the headline sentence in respect of the s. 4 rape offences to reflect the aggravating nature of the non-sexual elements of the offending, are both available options when imposing sentence. In light of the fact that the sentencing judge determined to impose a global sentence, we will follow that course and identify a headline sentence in respect of the s. 4 rape offences which adequately reflects the aggravating features of the assaults which the injured party was subjected to; the public humiliation and degradation which the respondent perpetrated on him; the campaign of harassment which lasted for three years; the impact of the global offending upon the injured party; together with all of the aggravating matters relating to the sexual offending already referred to, namely that the injured party was only 13 – 15 years old when all bar one sexual offence took place; he was a vulnerable child who had difficult family circumstances which were known to the respondent; the respondent was almost 11 years older than the injured party; the respondent was in a dominant position with respect to the injured party and occupied a position of trust which he knowingly breached in the most grievous fashion; the offending was incessant over a period of two year occurring a minimum of twice a week up to a maximum of 4 times per week, and on occasion twice a day; and the respondent accepted that he knowingly engaged in an planned system of grooming and control.

60. Having regard to all of these aggravating features, we are of the opinion that a headline sentence of 17 years imprisonment is appropriate.

61. We accept the sentencing judge's assessment of the mitigatory factors present in the case and adopt the level of reduction of two and a half years from the headline sentence which he provided for.

62. At the hearing before us, Counsel for the respondent urged that we should have regard to the effect on a prisoner of the Covid regime which was introduced into prisons during the pandemic, and the effect of over-crowding in prisons. Neither of these matters were urged upon the sentencing judge, nor were they referred to in the respondent's written submissions. Furthermore, no evidence was placed before the Court with respect to either of these issues or how they may have had an effect on the respondent. For these reasons, the Court will not have regard to this submission and will not further reduce the headline sentence to reflect these issues.

63. Counsel for the respondent also referred to the delay in bringing this appeal before the Court. Sentence in this matter was passed on 20 December 2021. An undue leniency appeal was filed and served on the respondent, within time, on 13 January 2022. However, the course of affairs following on from the lodging of the appeal was not straightforward. An Order pursuant to s. 10(3) of the Non-Fatal Offences Against the Person Act 1997 was made in the case, the terms of which proved difficult to finalise. This Order was eventually made on July 2022. Only after the finalisation of this Order, was the appeal progressed. It is unfortunate that this delay occurred. While Counsel for the respondent has referred to how the effect of uncertainty with respect to his sentence must be de-stabilising for the respondent, the reality is that he was at all times aware of the appeal and is serving a long sentence in any event. Accordingly, we are of the view that a further reduction from the headline sentence is not merited for this reason.

64. Finally, we will also adopt the sentencing judge's approach of suspending the last 18 months of the sentence to incentivise rehabilitation.

65. Accordingly, on Count No. 2, which is a s. 4 rape offence, we impose a fourteen and a half year term of imprisonment on the respondent, of which we will suspend the last 18 months for a period of 18 months, on the same terms and conditions as were imposed by the Central Criminal Court. Counts No. 5, 13, 15, 21, 31, 52, 54 and 62 have been taken into consideration in relation to the sentence imposed on Count No. 2.

66. With respect to the remaining offences which the respondent pleaded guilty to, we will impose the same sentences as imposed by the sentencing judge. Accordingly, on Count No. 1, which is a sexual assault offence, the Court imposes a sentence of 5 years imprisonment, with Counts No. 6, 14, 68, 72 and 74 being taken into consideration. On Counts 41 and 66, which are assault causing harm offences, the Court imposes a term of imprisonment of two years. Finally, on Count No. 73, which is the harassment offence, the Court imposes a term of imprisonment of 3 and a half years.

67. All sentences are to run concurrently and are to be backdated to the date the respondent first entered custody, namely the 16 January 2019.