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ROYAL COURT

17th July, 1990

108.

Before: The Deputy Bailiff and
the Superior Number of the Royal Court

The Attorney General

- v -

MB

Sentencing on counts of indecent assault,
procuring an act of gross indecency and
attempted sodomy involving a fourteen
year old boy.

JUDGMENT

THE DEPUTY BAILIFF: The Court is unanimous in its view that this is a serious case. There are no grounds whatever here for an individualised measure. There is no mental disturbance or abnormality. MB is entirely sane and responsible for his own actions.

As we have seen from the authorities submitted to us, the scale of fixed term sentences for sodomy and attempted sodomy extends from three years' imprisonment upwards, and in the majority of cases a sentence between three and five years is appropriate.

The Crown has been right to pitch the total sentence at the lower limit, because there was no violence involved and MB has pleaded guilty.

The Court is bound to sentence MB on the version of the offences most favourable to him, where sentence proceeds, as in this case, upon a guilty plea.

But on his admissions, there was indecent assault, including oral sex, there was the procuring of oral sex or fellatio, and there was attempted buggery.

The Court does have regard to cases heard before the Court of Appeal in England.

In this case there was a serious aggravating factor in that MB was the co-habitee of his victim's mother and as such was in loco parentis to the boy. Therefore he abused that authority.

Additionally there was an element of corruption or potential corruption because there were small gifts of money and cigarettes.

Further, there was a degree of coercion, although the Court does not place great weight upon it. Nevertheless, the thought that the commission of sodomy on a boy could be acceptable by way of punishment is in itself revolting.

On the other hand there are mitigating factors, the most important of which is the plea of guilty which saves the victim from having to recount his experiences to a Court and Jury.

The plea in itself is strong indication of remorse and we accept that there is remorse. But that has to be qualified by the unexplained and inexplicable retraction of guilt to the Probation Officer and Consultant Psychiatrist and for the lack of concern for the victim.

There is also the age of the defendant - he is in his early twenties and authority shows that age continues to be a mitigating factor - albeit in decreasing degree, up to the mid twenties.

There is also the defendant's unfortunate background - but that factor really disappears when put against the defendant's circumstances

at the time of the offences when he was co-habiting in a heterosexual relationship.

And there is also the defendant's previous record - with only one conviction for an offence of a non-sexual nature - and although a previous good character does not have the same significance as in non-sexual cases, we accept that it does have some significance.

If it were not for those mitigating factors, the aggravating ones, in particular the abuse of authority, would demand a longer sentence for the attempted sodomy than that asked for by the Crown Advocate. It is only because we give full weight, as she has done, to the mitigation that we feel able to grant the conclusions and impose a sentence at the bottom end of the scale.

However, we are going to vary the conclusions slightly and upwards. The Court believes that to procure a young boy to commit fellatio is particularly revolting and more serious than fellatio as an indecent assault. The sentence on Count 2 will therefore be increased.

Therefore, MB on Count 1, you are sentenced to two years' imprisonment; on Count 2, you are sentenced to two and a half years or thirty months' imprisonment; and on Count 3, you are sentenced to three years' imprisonment; all those sentences to run concurrently, thus making a total of three years' imprisonment.

Authorities referred to:

Thomas' Principles of Sentencing (2nd Ed'n) at pp 132 et seq.

re. Buggery, indecent assault on males and gross indecency.

Willis (1974) 60 Cr. App. R.146.

Wilson (1979) 1 Cr. App. R. (S) 114.

~~Sheridan (1986) 8 Cr. App. R. (S) 10.~~

Roe (1988) 10 Cr. App. R. (S) 435.