

Neutral Citation No: [2024] NICC 31

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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No:

Delivered: 08/11/2024

IN THE CROWN COURT FOR THE DIVISION OF LONDONDERRY

THE KING

-v-

MICHAEL GERARD McMONAGLE

HHJ NEIL RAFFERTY KC

Facts/Background

[1] The defendant was arraigned on 4 June 2024 and entered pleas of not guilty to all counts on the indictment. He was re-arraigned on 23 September 2024 and entered guilty pleas to all counts except Count 10 which was left on the books. It is important to note that, whilst this had been the morning when this matter was listed for trial, prior communication had been received by the court indicating that the defendant would be re-arraigned, and a trial would not be required.

[2] On 19 August 2021, police attended at 22 Limewood Street, Derry the home of the defendant. A search was carried out under warrant in relation to information that he had been engaging with several online profiles of persons under the age of 16 between May 2020 and August 2021. He had been using various platforms such as ChatIW, KIK and Snapchat.

[3] The profiles were in fact what are known in this field as "Decoys." That is to say, as part of ongoing public protection measures a number of Police Services monitor Decoy online profiles. In this case, the profiles of 'Holly', 'Amber', 'Jess' and "Dylan" were in fact, police officers.

[4] The defendant himself had used a number of different online usernames. He posed as 'Derryman'; 'Mick Derry'; 'michaelmacmaong'; 'connmclaughli21'; and 'In Derry' in order to engage with Holly, Amber and Jess whom he thought were profiles which were underage children.

Indictment/Particulars of counts

Count 1

[5] This count relates to Amber, the profile of a 12-year-old girl. The conversation initially begins as 'Derryman' and moves to KIK with the username 'mickderry.' The content is sexual in nature throughout with the defendant describing to Amber how to masturbate and actually getting her to do this act. During the chat he sends her pictures of his erect penis and discusses those pictures with Amber.

Count 2

[6] This count relates to Jess, the profile of a 14-year-old girl. Again, it involves the defendant trying to encourage Jess to masturbate. Once again, the defendant uses the platforms ChatIW and KIK and usernames 'Derryman' and 'mickderry.' The chat is sexual throughout and masturbation is discussed.

Count 3

[7] The count relates to a profile known as 'Dylan' with the username Curioustean. It was a male profile for a 14-year-old boy: The defendant using platforms ChatIW and KIK had a sexually explicit chat with this male profile about masturbation using names 'In Derry' and 'mickderry'

Count 4

[8] This count relates to Curiousboy age 14. On ChatIW the defendant uses the username 'In Derry' and has a sexually explicit chat with this profile and discusses masturbation.

Count 5

[9] This count relates to Amber age 12. On 17 March 2021 on KIK and using the usernames 'Mick Derry' and 'Derryman' the defendant has a conversation with this profile using explicit language and telling her that he's 'wanking'.

Count 6

[10] This count relates to Curioustean age 13. On 22 March 2021 on ChatIW using the username 'michaelmacmaong' the defendant has a conversation with this male profile using sexually explicit language and talking about masturbation throughout.

Count 7

[11] This count relates to Jess age 14. On 24 March 2021 on ChatIW and SnapChat with usernames 'Derryman' and 'michaelmacmaong' the defendant in sexually explicit language discusses with this profile masturbation, telling her that lots of girls her age do it and as a teenager and that it's normal. He also tells her that some girls her age have sex. He talks to her about her genitals.

Count 8

[12] This count relates to Amber age 12. On 20 April 2021 on KIK and using the usernames 'Derryman' and 'mickderry' the defendant uses language of a sexual nature and tells her that he is in bed 'wanking.'

Count 9

[13] This count relates to a profile called Youngnbored who is aged 13. On 28 July 2021 on ChatIW and Snapchat usernames 'Derryman' and 'connmclaughlin21' the defendant chats about masturbation with this male profile and tells him that he is masturbating as he talks to him. He sends him a facial photograph (see p217 exhibits).

Count 11

[14] This count relates to Amber aged 12. On 3 August 2021 on KIK with using the usernames 'Derryman' and 'Mick Derry' the defendant engages in chat of a sexual nature and the defendant sends her a photograph of his lower half wearing boxers.

Count 12

[14] This count relates to Jess aged 14. On 10 August 2021 on ChatIW and KIK using usernames 'Derryman' and 'Mick Derry' the defendant uses sexually explicit language throughout and explains to the profile how to 'finger' herself.

Count 13

[15] This count relates to Jess aged 14. On 11 August 2021 on same platforms and with same usernames the defendant discusses the profile's genitals, masturbation and fingering. He also tells her that he has an erection.

Count 14

[16] This count relates to Jess aged 14. On 12 August 2021 on same platforms and with same usernames the defendant talks about her bum and genitals.

Count 15

[17] This count relates to Jess aged 14. On 16 August 2021 on same platforms and with same usernames the defendant again talks to her about her bum and genitals and discusses her underwear.

[18] In total, across the 15 counts on the indictment, there were in total six decoy/fictitious children ranging from 12 years to under 16 years.

Further investigation

[19] As a result of the search a large number of devices were seized for examination and the defendant was arrested and taken to Strand Road for interview.

[20] During the initial interview the defendant confirmed that he used a lot of chat sites and specifically those identified in this investigation. He also confirmed using the identified usernames. He stated that he used these sites daily and talked to many people online but denied knowingly communicating with anyone under 16.

[21] During the second interview the chat logs were put to him and he claimed that he did not remember talking to these people though some of the message content was similar to conversations he had online. He again stated that he never knowingly communicated with anyone under 16 as this was something he was not interested in. The last chat put to him was with 'wee Jess' on 16 August (Count 15). He stated he did remember it and confirmed it was him but denied knowing this person was under 16.

[22] He was released on bail pending the examination of all devices seized from his home.

[23] He was interviewed again on 6 July 2023 when he answered bail.

[24] He confirmed that in relation to the material found it must have been him as it was his mobile device and accepted that the usernames and accounts were his. He claimed again that he never intentionally communicated with anyone under the age of 16 and denied having a sexual interest in children. He said that hearing the content of the messages disgusted him.

Defendant's personal circumstances

[25] The defendant is a 42-year-old married man. He and his wife have separated following his detection for these offences. He is originally from the Bog-side area of the city where he currently resides. His father is deceased, and he provides care and support for his mother, who in turn has provided support to him following his detection. His three siblings have all distanced themselves from him and he presents to the author of the report as having become isolated. Whilst he has no history of

physical or mental health problems, he has on two occasions attempted to take his own life following his detection. More recently, it had been communicated to the court that he wished to have the case listed prior to 24 September (the date his trial was listed) so that he may plead guilty. The night before the case was listed, he attempted to take his own life. He subsequently pleaded guilty on the morning of trial. This is a relevant issue when I come to assess the reduction for his plea of guilty. The defendant was academically able and attained 7 GCSEs, A Levels, and a Degree in English at Queen's University Belfast. He gained professional qualifications as a journalist before becoming employed as a press officer for a local political party. He was suspended before having his employment terminated in July 2022. Subsequent employment was also terminated due to his offending, and he is currently unemployed.

[26] In the offence analysis portion of the report, the author notes that "Mr McMonagle accepts full responsibility for his involvement in today's premeditated, sexually motivated non-contact offences... The defendant described how he felt ashamed of his behaviour and deeply regretted the hurt and problems he has caused for other people which includes his wife and his immediate family as well as others." The author of the report states "Whilst Mr McMonagle targeted both male and female children for his own sexual gratification, he denies having any sexual interest in either pre or pubescent children. In his own words, he stated "I didn't connect the words on a screen to real life. I didn't think it was real, I was detached from reality. I am totally ashamed, it's not me in the real world, I'm mortified, to be honest, it's like I don't recognise myself by doing that." He is assessed as a medium likelihood of reoffending. He has no previous convictions. A Sexual Offences Prevention Order is sought.

Caselaw

[27] In *R v Watson* [2022] NICA 71, the Court of Appeal in Northern Ireland considered the approach to such cases. The appeal involved a number of issues, but the court set out some guidance in paras [15] and [16]:

"[15] As for the length of the sentence, we have heard argument concerning the relevance of the English guidelines. We would again reiterate this court's previous advice that those guidelines provide some assistance in identifying factors relating to culpability, harm, aggravation and mitigation, but that sentencers should avoid using the grid system set out in those guidelines (see, for example *McCaughey and Smyth* [2014] NICA 61 at [19]-[24]). This case is a prime example of why that advice applies. There was no harm in this case as the child was fictitious and we are dealing with attempts to commit offences. However, the appellant's intentions were that there would be harm and at a level

that would have escalated the case within the English grid.

[16] In any event, even using the English grid, the case fell to be dealt with by a starting point of 26 weeks and with a range of up to three years. The English Court of Appeal have recently upheld a sentence of eight months custody in similar circumstances with a fictitious Facebook profile which did not include the most serious offence of inciting a child to engage in sexual activity faced by the appellant (see *Charles* [2022] EWCA).

[28] Similar considerations have occupied the Court of Appeal in England and Wales. Following *R v Manning*, *R v Barker* and *R v Privett* the Court in *R v Reed & Others* [2021] EWCA Crim 572 sought to clarify the approach to the assessment of “harm” in cases where the child was fictitious or where no act took place for whatever reason. The court stated:

“[23] ...The harm should always be assessed in the first instance by reference to his or her intentions, followed by a downward movement from the starting point to reflect the fact that the sexual act did not occur, either because there was no real child or for any other reason.

24. The extent of downward adjustment will depend on the facts of the case. Where an offender is only prevented from carrying out the offence at a late stage, or when the child victim did not exist and otherwise the offender would have carried out the offence, a small reduction within the category range will usually be appropriate. Where relevant, no additional reduction should be made for the fact that the offending is an attempt.”

Aggravating and mitigating features

[29] I am obliged to counsel for their written submissions. There is broad agreement that there are the following aggravating features in this case:

- (i) The offending occurred over a reasonably extended period from May 2020 to August 2021.
- (ii) That the offending involved six separate victims.
- (iii) That the defendant sent body images of himself.

- (iv) That the defendant explained and gave instruction on how to masturbate.
- (v) That there is a significant disparity in age between the defendant and the victims, the youngest of whom was 12 years of age.

[30] In terms of mitigation, again, there is broad agreement:

- (i) The defendant pleaded guilty, although not at first opportunity.
- (ii) That the defendant was of previous good character with a full employment history until these offences.
- (iii) That the defendant has struggled with the enormity of his offending, and the public nature of it, to the extent where he has made two significant attempts on his own life.

[31] For my part, I accept that these are the aggravating and mitigating features that are present in this case and will apply them.

Consideration

[32] Mr Mallon KC in his submissions refers me to *R v Watson* which I have set out above. He submits that the offending in *Watson* is comparable to the offending in this case. Whilst I accept this with regard to the nature of the offending there are aspects of this case which, in my view, elevate the starting point above that applied in *Watson*. In this case, there are multiple victims, and the offending took place over a lengthier period. Allowing for the personal mitigation and that the defendant has had this case "hanging over him" for in excess of two years I am satisfied that the minimum sentence that I would have imposed had he been convicted by a jury is one of two years. In that figure I have reflected the totality principle and will sentence concurrently on all counts.

[33] Turning to the question of the reduction for his plea of guilty. Whilst not at the first opportunity, it had been intimated to the court in advance that the defendant would be pleading guilty. This was delayed by the defendant attempting to take his own life. On balance, I am satisfied that 25% reduction is appropriate. Accordingly, the sentence on each count will 18 months imprisonment – nine months custody followed by nine months statutory supervision.

Ancillary orders

[34] By virtue of the sentence that I have passed, you will be subject to the requirements of the Sexual Offenders Registration scheme for a period of seven years.

[35] You are barred and disqualified from working with children and vulnerable adults and may be placed on the barring list.

[36] With respect to the question of a Sexual Offences Prevention Order, I am satisfied that one is both necessary and proportionate and make one in accordance with the terms sought for a period of ten years.

[37] Offender levy of £25.00.